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14 Underwriters Pay $4.58M to Settle Disclosure Violations Under MCDC.

The SEC's action completes its sweep of underwriters under the voluntary enforcement program and tees up the commission's first round of issuer settlements.

The Securities Industry and Financial Markets Association provided a tepid response to the announcement.

"Now that the SEC has completed its MCDC Initiative settlements with municipal securities underwriters, the underwriting community can work with regulators and industry members to focus on ways to improve the disclosure paradigm," said Leslie Norwood, a managing director and co-head of munis at SIFMA. "We believe that when nearly 100 percent of a regulated community self-reports and settles with the SEC with respect to a particular enforcement issue, the problem may be more with underlying rules and practices than with nearly every participating underwriter in the industry."

The SEC found that between 2011 and 2014, the 14 underwriting firms sold municipal bonds using offering documents that contained materially false statements or omissions about the issuers' compliance with their continuing disclosure obligations.

The SEC also found that the underwriting firms failed to conduct adequate due diligence to identify the misstatements and omissions before offering and selling the bonds to their customers.

The 14 firms, which did not admit or deny the findings, agreed to cease and desist from such violations in the future. They paid civil penalties of up to $500,000. The firms each agreed to retain an independent consultant to review its policies and procedures on due diligence for municipal securities underwriting.

This is the third wave of settlements with underwriters under the MCDC initiative. In all, 72 underwriters have been charged under the voluntary self-reporting program targeting material misstatements and omissions in municipal bond offering documents.

"The settlements obtained under the MCDC initiative have brought much-needed attention to disclosure obligations in municipal bond offerings," said Andrew J. Ceresney, Director of the SEC's Enforcement Division. "As part of the settlements, 72 underwriting firms – comprising approximately 96% of the market share for municipal underwritings – have agreed to improve their due diligence procedures and we expect that investors will benefit from those improvements."

The MCDC Initiative, announced in March 2014, offered lenient settlement terms to municipal bond underwriters and issuers that self-reported violations. The first enforcement actions against underwriters under the initiative were brought in June 2015 against 36 municipal underwriting firms. An additional 22 underwriting firms were charged in September 2015.

The MCDC Initiative is being coordinated by Kevin Guerrero of the Enforcement Division's Municipal Securities and Public Pensions Unit. The cases announced today were investigated by members of the unit, including Michael Adler, Robert Barry, Joseph Chimienti, Kevin Currid, Peter Diskin, Robbie Mayer, Heidi Mitza, William Salzmann, Ivonia K. Slade, Jonathan Wilcox, Monique C. Winkler, and Deputy Unit Chief Mark R. Zehner, with assistance from Ellen Moynihan of the Boston Regional Office.

The SEC's orders and penalty amounts are:

- Barclays Capital Inc. – $500,000
- Boenning & Scattergood Inc. – $250,000
- D.A. Davidson & Co. – $500,000
- First Midstate Inc. – $100,000
- Hilltop Securities Inc. – $360,000
- Janney Montgomery Scott LLC – $500,000
- Jefferies LLC – $500,000
- KeyBanc Capital Markets Inc. – $440,000
- Mitsubishi UFJ Securities (USA) Inc. – $20,000
- Municipal Capital Markets Group Inc. – $60,000
- Roosevelt & Cross Inc. – $250,000
- TD Securities (USA) LLC – $500,000
- United Bankers' Bank – $160,000
- Wells Fargo Bank N.A. Municipal Products Group – $440,000

THE BOND BUYER

BY LYNN HUME

FEB 2, 2016 5:32pm ET

Overview of the Municipal Bond Market.

New York City, March 16, 2016

7 CPE Credits

View Full Agenda

Much media and analyst attention is focused on municipal bond issuers, especially in light of the ongoing Detroit bankruptcy. Because municipal issuers are not as transparent as corporate of financial institution issuers, identifying and measuring the risk of municipal debt is much more challenging. This interactive course will include a presentation, case studies, exercise, and relevant articles for discussion to illustrate the mechanics and risks of municipal debt.

After this course, participants will be able to:

- Identify different types of municipal debt

- Compare differences between municipal debt, sovereign and corporate debt
- Create a framework to identify potential red flags in municipalities' finances
- Compare and contrast advantages and risks of investing in munis
- Discuss current issues impacting municipal issuers

1. Types of Municipal Debt

- Identify the different types and purposes of short and long term debt
- Differentiate between Revenue and General Obligation Bonds
- Describe advantages of municipal debt
- Enumerate risks in investing in municipal debt

2. Analyzing a Municipal Issuer

- Establish a framework to analyze key factors impacting a municipality
- Economics
- Demographic changes
- Labor activity
- Business trends
- Political risk
- Pension obligations
- Corruption

Case Study: Bell, CA

3. Financial Analysis of Municipal Debt

- Discuss process of obtaining municipal financials
- Evaluate municipality's accounting methodologies and reporting process
- Describe a municipality's contingent obligations

4. Identifying Warning Signals

- Develop a framework to identify warning signals
- Enumerate potential red flags negatively influencing municipalities
- Discuss probability of default in the public sector
- Identify how the public sector has been hedging their risks after issuing debt

Case Study: Detroit, MI

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Registration Fee: The price for this one-day training seminar is $995.

To Register: Please register online. Call 973-615-8967 with registration questions or e-mail our registrar.

EPA's Financial Technical Assistance Designed to Spur Community Water Infrastructure Projects.

The U.S. Environmental Protection Agency (EPA) is providing funding and guidance to communities to help them develop effective investment strategies, which can include various types of partnerships, to improve their drinking water and wastewater management infrastructure.

Through its WaterCARE program, EPA will spend a total of $500,000 to provide 10 communities with financial and technical support which will include assistance in developing rates, revenue and affordability analyses, asset management practices, water efficiency studies, resiliency assessments, and financing and funding options.

The communities that were chosen to receive this assistance have populations of less than 100,000 with below-average median household incomes, face public health challenges, and/or are able to undertake water infrastructure projects. The results of successful projects will be shared with other communities that have similar water infrastructure development needs.

The WaterCARE program participants are:

- Buchanan County, Va.
- Confederated Salish and Kootenai Tribe (Mont.)
- Gatesville, Texas
- Haines Borough, Alaska
- Hoopa Valley Tribe (Calif.)
- Johnston, Iowa
- Lawrence, Mass.
- Selma, Ala.
- Township of South Orange Village, N.J.
- Youngstown, Ohio

The WaterCARE program is one of several initiatives being conducted by EPA's Water Infrastructure and Resiliency Finance Center, "which works with on-the-ground partners to provide financial technical assistance to communities," EPA explained.

The Clean Water State Revolving Fund (CWSRF) program, for example, is a federal-state partnership that provides communities a permanent, independent source of low-cost financing for a range of water quality infrastructure projects, which can be conducted through P3s. In connection with this, the center is launching a State Revolving Fund Peer-to-Peer Learning Program with the Council of Infrastructure Financing Authorities and engaging in other SRF outreach on state-of-t-e-art practices.

The center is conducting a Water Infrastructure Public-Private Partnership and Public-Public Partnership Study and local government training with the University of North Carolina Environmental Finance Center and West Coast Exchange.

The center is also working with its partners to promote the use of new tools such as EPA Region 3's "Community-Based Public-Private Partnerships (CBP3) Guide for Local Governments," which helps communities explore alternative market-based tools, P3s and other funding sources to build and maintain integrated green stormwater infrastructure.

NCPPP

By Editor

February 4, 2016

From Camps to Campaign Funds: The History, Anatomy, and Activities of 501(c)(4) Organizations.

Abstract

501(c)(4) “social welfare” organizations are the second-most common type of nonprofit organization registered with the Internal Revenue Service. They are also the legal home of some of the most powerful political interest groups in the country. In 2013, the US Treasury Department proposed regulations that attempted to clarify the rules governing 501(c)(4) political activity. In light of such attention and the still-looming potential for a regulatory overhaul, the need for objective information about 501(c)(4) organizations is greater than ever. This report is an overview rather than an exhaustive examination of the 501(c)(4)s that reveals knowledge gaps.

Read the full report.

The Urban Institute

by Jeremy Koulish

January 28, 2016

As Water Utilities Move Online, Hackers Take Note.

America’s power grid has gotten a lot of attention, but water utilities are increasingly vulnerable to cyberattacks.

The Department of Homeland Security (DHS) released a report last year that showed the nation’s water grid, not just its electric grid, was also vulnerable to attacks by hackers. In fact, water utilities were most likely to have reported what DHS categorizes as an advanced persistent threat, which involves exploiting flaws in software programs that run water valves and controls, among other things. The worst kind of these attacks can go undetected for long periods of time.

Water utilities have in recent years — like pretty much everything else — become more reliant on the Internet to operate its networks of pipes and pumps. These controls can help monitor conditions around the clock and the benefits for both water and electrical utilities can be greater reliability and lower labor costs as fewer workers are needed to monitor the valves, controls and switches.

But hackers are looking for ways to test the vulnerabilities of critical infrastructure, and while so much attention has been paid to America’s power grid, water utilities are particularly exposed. Hackers and state-sponsored terrorists are “mapping the control systems for water and wastewater [systems] to understand where the controls systems are located,” says Dr. Paul Stockton, a former assistant secretary of defense and managing director of Sonecon, a Washington-based security consulting firm. “This kind of mapping could be preparatory work in anticipation of attacks that are designed to disable and disrupt critical infrastructure.”

Indeed, the FBI confirmed in 2014 that operatives in China, Iran and Russia were doing just such a mapping operation, looking for cybersecurity weaknesses in the country’s water and electric infrastructure.

In case of such an event or a natural disaster, most utilities operate mechanical backup systems. But maintaining a dual control system is expensive. “Utility companies want to reduce their costs as they transition to a new generation of industrial control systems,” says Stockton. The risk is that “they will stop maintaining these backup systems and stop retaining the staff that operate them.”

To keep utilities running backup systems, Stockton and other experts suggest that public utility commissions and the feds help utilities recover the costs of running two systems while also investing in promising strategies to protect infrastructure from cyberattacks. State regulators could also help reduce risks by working more collaboratively with federal regulators to push utilities to focus on creating comprehensive cybersecurity strategies rather than just complying with regulatory requirements, according to a report by the Government Accountability Office.

Other methods for mitigating a possible cyberattack on water infrastructure include the adoption of a set of standards for the entire industry; better sharing of information by utilities about cybersecurity vulnerabilities, incidents and best practices; and stronger requirements that smart grid and water control systems have built-in security features.

If all else fails, the National Governors Association’s Council of Governors has developed plans for a cybersecurity National Guard that would provide a unified response in the event of an attack that disrupts, damages or destroys utilities. Let’s hope it’s not needed.

GOVERNING.COM

BY TOD NEWCOMBE | FEBRUARY 2016

How Oil States Are Dealing With Sinking Prices and Revenue.

Oil prices are now at their lowest level in 12 years — below $30 a barrel. That’s great news for consumers, but not for the states that depend on oil tax revenues.

The falling price of oil, which has declined more than 60 percent since June 2014, has some states scrambling. With no end in sight, states that are more dependent on the industry simply can’t replace the revenue by withdrawing from their substantial rainy day funds.

Oil, natural gas and mining account for about 10 percent or more of gross domestic product in eight states: Alaska, Louisiana, New Mexico, North Dakota, Oklahoma, Texas, West Virginia and Wyoming. Last year, total tax revenues in the eight states declined by 3.2 percent, according to a new analysis by the Nelson A. Rockefeller Institute of Government. In contrast, the remaining 42 states reported a 6.5 percent increase in total tax revenues.

Although most of these states tend to budget conservatively, the good years for oil had an impact on their finances.

“As oil went up in price, so did budgets and spending,” said Roy Eappen of Wells Fargo Securities. “I think now they’re realizing — if they didn’t before — that they can’t assume oil is going to bounce back.”

As these states consider changes to address the revenue shortage, their potential solutions vary widely — from a complete financial overhaul to minor budget tweaks.

The Poster Child: Alaska

Alaska's situation is the most precarious because it's the only state that directly funnels much of its oil revenue into its operating budget. Until recently, high oil revenues paid for up to 90 percent of the state's operating costs and allowed Alaska to beef up its rainy day reserves to about $17 billion — enough to cover more than two full years of state expenses.

But in 2015, the state withdrew $2.8 billion from its rainy day savings to close a budget gap. This year's budget relies on a $3.4 billion withdrawal despite cutting about $1 billion in spending. In the past year, the state's total tax revenue has dropped by two-thirds. Last month, Standard & Poor's downgraded the state's credit rating from a top-rated AAA to AA+ and warned it could be downgraded again.

In response, Gov. Bill Walker has proposed completely revamping Alaska's revenue system. His fiscal 2017 budget, which starts July 1, includes the state's first income tax in more than three decades. While small — about 1.5 percent for most Alaskans — the tax likely won't be popular with residents.

Walker's budget proposal would also restructure the state's $47 billion Permanent Fund, a low-risk investment fund that's fed by about one-quarter of the state's oil revenue and pays an annual dividend to residents. The state would seize the fund, increase the amount of oil revenue going toward it by half and put the fund's investment earnings toward future operating budgets. The other half of oil revenue would be used for residents' dividends. This year's payments were about $2,000; under Walker's proposal, payments would likely be cut to $1,000.

Looking Long in Louisiana

In Louisiana, the drop in oil prices has merely exacerbated the state's longstanding structural budget issues. Many say the state's budget imbalance started during its building boom and revenue surge following Hurricane Katrina in 2005. Instead of socking the money away in a rainy day fund, the state cut income taxes. Between that and the economic downturn, the state has struggled to meet revenue expectations ever since.

The previous administration tended to rely on one-time fixes to balance the budget. But that approach won't work for Gov. John Bel Edwards, who just inherited an estimated $750 million shortfall in the current fiscal year, which ends June 30. Next year's shortfall is projected to be up to $1.9 billion.

Edwards recently announced across-the-board cuts to address the current budget gap and has asked lawmakers to consider long-term solutions for next year's budget, including raising the tobacco tax and reducing business tax credits and personal income tax deductions.

Cuts, Cuts, Cuts

Like Alaska and Louisiana, Oklahoma and West Virginia are considering spending cuts to address the oil shortfalls. But unlike them, they aren't considering longer term solutions. The governor in West Virginia made across-the-board cuts of 4 percent for most state agencies to address a $250 million-plus gap. While officials in Oklahoma already made across-the-board spending cuts for the current fiscal year and are eyeing more cuts to close a projected $900 million gap in fiscal 2017.

A Local Problem, Too

In North Dakota and Texas, some of the biggest pressure is localized.

Williston, N.D., the epicenter of the state's boom since the discovery of the Bakken Shale deposit in 2009, is seeing signs of an economic slowdown. Still, slowing down from warp speed is relative. For example, Williston only recently lost its top ranking in the state for the amount of sales tax it collected. For the first time in four years, Fargo — which has more than five times the population of Williston — collected more sales taxes than the boomtown.

West Texas began feeling the slowdown in oil production last year. So far, lower oil prices and weaker production have caused property tax values to drop 6 percent compared with a year ago. "Layoffs have caused weaker consumer spending, which is impacting sales tax revenues," according to a Moody's Investors Service analysis.

Still, the state governments are also feeling the slowdown and making adjustments.

North Dakota Gov. Jack Dalrymple on Monday ordered state agencies to cut their budgets 4 percent to offset the projected shortfall of more than $1 billion. North Dakota is the second most dependent state on oil revenue, after Alaska, but it has taken steps to buffer itself from that volatility. For example, North Dakota caps the flow of severance tax revenue — the tax imposed on the production of oil and minerals — into the general fund to about 4.4 percent. Excess funds get diverted to local governments and special funds.

In Texas, total tax collections declined 6 percent in just the first four months of fiscal 2016. Texas diverts much of the oil revenue into its rainy day fund. Still, Texas Comptroller Glenn Hegar cut the state's revenue expectation in October by 2.3 percent to $110.4 billion over its current two-year budget cycle. But Wells Fargo's Eappen notes that Heger also set the budget well below what the real revenues have been. This "created an additional cushion against oil price revenue shocks, even beyond the downward revenue adjustment in October," said Eappen.

Then There's New Mexico and Wyoming

New Mexico is considering withdrawing from its rainy day fund to fill a $145 million hole in this year's budget. Lawmakers are also reconsidering a $230 million spending increase in Gov. Susana Martinez's fiscal 2017 budget. Wyoming's governor, on the other hand, is setting aside unspent appropriations from this year to plug in next year's estimated shortfall of $150 million.

GOVERNING.COM

BY LIZ FARMER | FEBRUARY 4, 2016

Update on Kentucky, Ohio and Indiana Bond Cap Allocations.

Federal and state "volume cap" allocations for small manufacturing bond issues, underutilized since the Great Recession of 2007-2008, are available in Kentucky, Ohio, Indiana and in neighboring states. Manufacturers and lenders should take a new look at this lower-cost option for financing capital investment in 2016.

In the Commonwealth of Kentucky, the state's Private Activity Bond Allocation Committee announced that it will be accepting applications for volume cap for new small manufacturing bond issues from February 1, 2016 through March 7, 2016. The Commonwealth expects to receive $442,509,200 in volume cap from the United States Government for calendar year 2016. Thirty percent (30%) of this, or $132,752,760, is available to the Local Issuer Pool for small manufacturing bonds and for solid waste recovery bonds. Sixty percent (60%) of the volume cap goes to the State Issuer Pool and 10 percent (10%) of the volume cap goes to Energy Efficient Project Pool, the latter for manufacturing facility energy efficiency bonds issued pursuant to KRS 103.282.

Volume cap for small manufacturing bond issues is also available in the states of Ohio and Indiana (and in most other states).

Volume cap for small manufacturing bonds has been drastically overlooked for the past few years. For instance, in Kentucky in 2015 only one manufacturing company submitted, obtained and used an allocation of volume cap for a small manufacturing bond issue (Frost Brown Todd acted as bond counsel). Tax-exempt bonds are an attractive option for a small manufacturing company because the cost of borrowing can be 25-30% lower than the cost for a taxable borrowing for the same borrowing entity. Qualifying "small manufacturing" companies are ones that will expend no more than $20 million in capital expenditures at a particular site over a six-year period (three years back and three years forward) and that meet certain other requirements. The total amount of tax-exempt small manufacturing bonds that can be issued is $10 million. However, this can be combined with a taxable borrowing for a project, so long as the total of capital expenditures at a manufacturing facility does not exceed $20 million over the six-year period.

It is noted that tax-exempt small manufacturing bonds cannot be "bank-qualified" under Internal Revenue Code Section 265(b)(3); thus the discount for tax-exempt small manufacturing bonds to a taxable interest rate is somewhat less than the discount to a taxable interest rate for small issue governmental or non-profit bonds (the latter, sometimes up to 35%). Notwithstanding this, tax-exempt small manufacturing bonds are another lending option that financial institutions can – and do – offer for attractive manufacturing projects.

Frost Brown Todd LLC

by John S. Egan

February 1, 2016

Kansas Lawmakers Scrutinize KU's Out-of-State Bond Issue.

The University of Kansas borrowed $330 million to build facilities without the approval of the Kansas Legislature.

KU used a Wisconsin agency to issue $326.9 million in bonds last month, setting up a private corporation to serve as the debtor so it would not have to seek legislative permission.

University officials say they followed the law.

But House Speaker Ray Merrick, R-Stilwell, criticized the arrangement as "circumventing legislative oversight and escaping the public view."

House Republicans are drafting legislation to prevent state universities from making similar arrangements in the future.

"Kansas taxpayers deserve for their elected representatives to be involved in substantial financial deals to make certain there is transparency and accountability wherever state assets are involved," Merrick said in an e-mail.

Lawmakers have expressed concern that students will be forced to pay off the debt through tuition increases, a fear that KU officials say is unfounded.

The $326.9 million in bonds was issued on behalf of the KU Campus Development Corporation, a nonprofit corporation the university established in October that is led by KU chancellor Bernadette Gray-Little and other high-level university administrators. Another $56 million was collected from premiums that investors paid for the bonds.

The money will be used to finance the construction of a science building, a dormitory, a student union and other facilities on the university's Lawrence campus as part of a revitalization plan. Maryland-based Edgemoor Infrastructure and Real Estate will design and build the facilities for $350 million.

To pay for the project, KU relied on the Public Finance Authority in Wisconsin to issue the bonds during the first week of January – instead of the Kansas Development Finance Authority, the agency that typically handles Kansas bond issues. A bond issue by the finance authority would have required legislative approval; going out of state to borrow money did not.

Structuring the bonds this way "protects the state from liability for that debt," said Tim Caboni, KU's vice chancellor for public affairs.

The corporation will have to pay back the bonds over 30 years at a 3.76 percent interest rate. It will get that money from KU, which will lease the newly constructed buildings from the corporation at a cost of $21.85 million a year.

'They rushed'

Rep. Mark Hutton, R-Wichita, said he and other lawmakers had raised concerns about the project in recent months. The university issued the bonds in the first week of January, shortly before lawmakers returned for the session.

"I would maintain that they rushed to do the project before we gaveled in for session, because they knew we were going to raise those issues and try to block the project," Hutton said. "We have not been given adequate information to be able to justify or validate whether the need is there or not."

Caboni said the university tried to issue the bonds through the state finance authority. The agency said that would have required legislative approval.

Although the state finance authority was required to get legislative approval, the university was not, Caboni said. He added that state law "says if we're not using state funds, there's no requirement to get approval of the Legislature. So, No. 1, we followed the law. There was no need for legislative approval."

The university chose to issue the bonds through a Wisconsin agency instead so that the new residential facility can open in time for the 2017 fall semester, Caboni said. He added that the university has a great need for more bed space.

"We know the Legislature has said to us over and over again 'Don't come to us and ask for investment. We don't have the funds to do that right now,' " Caboni said, noting that the governor and other policymakers have challenged the university to act more like a business in recent years. "We were creative. We operated like a business, and we did what institutions across the nation have done: partnered with a private entity and bundled projects together to get a great deal for the families and students of the University of Kansas and for the state of Kansas."

Moody's Investor Services downgraded the university's credit outlook from stable to negative in December, citing the risks of the large capital expansion financed through bonds.

Tuition concerns

Hutton expressed concern that the university would rely on student tuition to pay off the bonds.

"This is $22 million a year in debt service that the university is going to have to come up with. They've made it clear they're not asking for money from us. So where it's coming from?" Hutton said. "It's going to come from students. We asked them in Joint Committee (on State Building Construction) if they had any studies as to how the impact of this debt would be on tuition, and they said they had done no studies on that."

Caboni disputed the notion that the bonds would cause tuition to increase. He said some of the projects paid for by the bonds will be self-financing, such as the new dorm and parking garage.

Caboni said tuition would go to cover some of the cost of paying off the bonds but that it would come from expected enrollment increases by international students rather than a tuition increase.

About $6.4 million of the annual cost is expected to be covered by nonresident enrollment growth, according to the university. The remaining cost will be covered by revenue generated by the facilities, operational savings and an $18.70 per semester student fee that was passed by the Student Senate to finance the construction of the student union, the university said.

"Look, I know there's been some suggestion that this will raise tuition at the university. What really drives tuition (is that) … the per-student subsidy by the state is down 40 percent since 2000. That's the main driver of tuition increases. It's not this project. We have a $1.2 billion budget, of which $20 million is going to pay off these bonds," Caboni said. "If we can't make our budget, that means we've got bigger problems – not as an institution but as a state. Because what that means is the small percentage of our budget which we get from the state will have cratered."

Hutton called KU's bypassing of the Legislature a "slap in the face to every legislator."

"If this is such a great project, if this is going to enhance KU and the regents universities so much that it's worth all this to go through, then surely you trust it enough to bring it to the Legislature," Hutton said.

Regents OK project

The project received approval from the Kansas Board of Regents in December.

Rep. Ron Ryckman, R-Olathe, House budget committee chairman, said lawmakers had raised concerns about the cost of the project at a November meeting of the Joint Legislative Budget Committee. He said the Board of Regents was supposed to get answers to lawmakers' questions before the bonds were approved, but that did not happen.

Breeze Richardson, spokeswoman for the regents, said in an e-mail that her office was "unaware of any requests that were not met. The Board Office has confirmed with the University of Kansas, following the meeting of the Legislative Budget Committee on Monday, November 9, all questions asked of the University were answered."

Meeting notes taken by Ryckman's staff show the committee raised numerous concerns that were to receive further clarification – about the cost of the project, whether the state and students would be liable for the debt and that, unlike a typical public-private partnership, the corporation formed by the university would be bringing no capital to the project. Ryckman and his staff said those concerns were not addressed.

The KU bond sale comes at a time when lawmakers have called for more oversight of the state's finances in the wake of financing arrangements made by the Brownback administration.

"It's the same thing. It's all one thing to me," Ryckman said. "More accountability, more oversight, more structure."

Hutton said the House speaker has tapped him to write a bill to prevent state universities and state agencies from circumventing the Legislature on bond issues in the future. He hopes to introduce legislation this week.

Passing legislation to prevent state universities from doing this in the future would be an "awful message to be sending to the national business community that actually is looking at this project as an innovation," Caboni said. "The way the university has done this has made us a national leader in the relationship between universities and private entities."

THE WICHITA EAGLE

BY BRYAN LOWRY

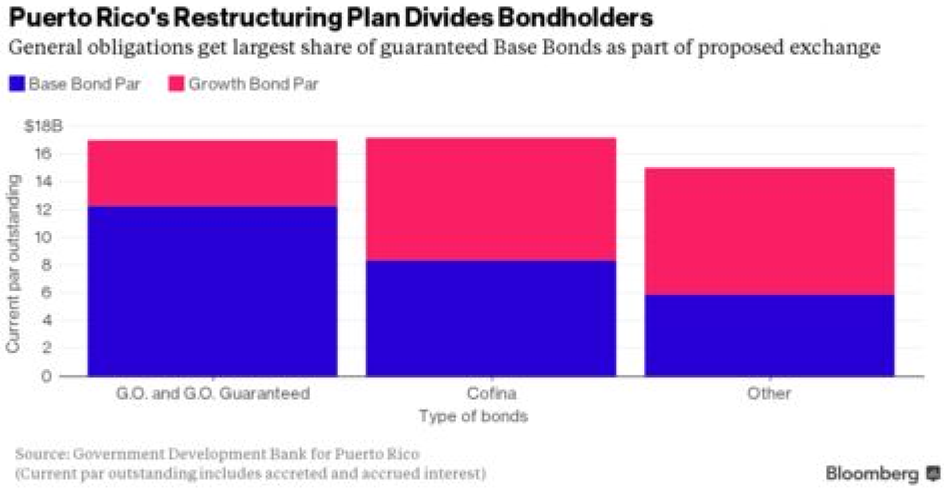
FEB 1, 2016

blowry@wichitaeagle.com

[Puerto Rico Bonds Zigzag With Recovery Rates Unclear in Proposal.]

Puerto Rico's release of a restructuring plan prompted a flurry of bond trades that show how investors are trying to make sense of what the proposal means for the recovery value of more than a dozen different securities.

A basic way to calculate an approximate recovery rate would be evaluating how much investors get in so-called Base Bonds relative to the par value of their securities, said Lyle Fitterer at Wells Capital Management and Matt Dalton at Belle Haven Investments. The Base Bonds would have payments guaranteed by the commonwealth along with statutory liens on sales-and-use taxes and levies on petroleum products. The commonwealth would only pay the proposed debt known as Growth Bonds if revenue exceeds certain projections.



By that ratio, general-obligation investors would recover about 72 percent, as they exchange about $17 billion of debt for $12.24 billion in Base Bonds. Holders of sales-tax debt, known by the Spanish acronym Cofina, would recover about 49 percent, with $17.2 billion outstanding obligations exchanged for $8.4 billion of Base Bonds. Other investors, with $15 billion of debt, would have a 39 percent recovery.

Actual recovery rates aren't quite as simple as looking at the Base Bonds because if the commonwealth again found itself strapped for cash, some investors would fare better than others. Those securities would be divided into four tranches: bondholders trading in general obligations and commonwealth guaranteed debt would be paid first, followed by senior Cofina debt, then subordinated Cofina bonds, and finally the remaining securities.

Bond Moves

The restructuring plan is beginning to adjust prices in some Puerto Rico bonds.

The commonwealth's benchmark general obligations with an 8 percent coupon and maturing in 2035 extended declines on Monday, trading as low as 70 cents, down from 72.1 cents on Friday, data compiled by Bloomberg show. Yet others at lower prices gained. Debt due in 2031 with a 5.125 percent coupon climbed to as high as 62.75 cents, the highest since Jan. 12.

Commonwealth-guaranteed debt from the Puerto Rico Public Buildings Authority, which would be included in the group with the highest estimated recovery, traded at an average 54.9 cents on the dollar, the highest since Dec. 7.

Puerto Rico highway securities due in 2042 jumped to 22 cents on the dollar, about twice the price of last month and the highest since November, Bloomberg data show. Puerto Rico Infrastructure Financing Authority bonds maturing in 2041, which are in default, changed hands at an average 17.5 cents, the highest since December. Both would be considered in the lowest tier of recoveries.

The most-traded Cofina bonds declined, trading at an average 40.7 cents on the dollar from 41.6 cents on Jan. 27, Bloomberg data show. The securities, with a subordinate claim on sales taxes, are at the lowest price since Jan. 7.

Bloomberg Business

by Brian Chappatta and Michelle Kaske

February 1, 2016 — 11:05 AM PST

S&P: Looking Toward U.S. Public Finance Ratings and Markets in 2016.

U.S. public finance (USPF) enters 2016 after year of growing credit strength and higher volume in 2015. It is likely that ratings in the sector will continue their upward movement, but volume should decline after a year of heavy refunding drove the first eight months of 2015 to a record pace that dissipated in the last third of the year. Data from Thomson-Reuters indicate that volume increased to $398 billion in 2015 from $334 billion in 2014, growing 19%. Throughout 2015, Standard & Poor's upgraded about 1,100 ratings while downgrading approximately 570. This trend was consistent, as upgrades outpaced downgrades in each quarter of 2015. That trend should continue, although it is likely Puerto Rico will cause the number of defaults in U.S. Public Finance (USPF) to spike, perhaps to record numbers.

Continue reading.

27-Jan-2016

S&P Video: A Big Picture Look at What Lies Ahead for U.S. Public Finance.

We believe it's likely that U.S. public finance ratings will continue their upward movement this year, but volume could well decline. Upgrades outpaced downgrades in each quarter of 2015. That trend should continue, although it is likely Puerto Rico will cause the number of defaults in the sector to spike. In this CreditMatters TV segment, Senior Director Larry Witte explains what lies ahead.

Watch the video.

Jan. 27, 2016

Amid Revenue Shortfalls, Oklahoma's Budget Decisions Will Be Critical For Credit Quality.

Facing a $900.8 million, or 12.9%, revenue shortfall going into fiscal 2017, Oklahoma lawmakers have challenging decisions to make that could be critical to the state's credit quality. Having made steep cuts across state agencies in fiscal 2016—including a $47 million cut in education in January–officials may find themselves contemplating cutting further.

Continue reading.

Feb. 4, 2016

Wyoming Outlook Revised To Negative On Expected Operating Reserves Pressure; 'AAA' ICR Affirmed.

Standard & Poor’s Ratings Services revised its outlook on the State of Wyoming to negative from stable. At the same time, Standard & Poor’s affirmed its ‘AAA’ issuer credit rating (ICR) on the state.

Continue reading.

Feb. 4, 2016

Massachusetts Governor's Budget Proposal Is Mildly Credit Positive.

Standard & Poor’s Ratings Services believes Massachusetts Governor Charles Baker’s recently released executive budget proposal for the fiscal year ending June 30, 2017, indicates mildly positive credit trends regarding state fund balances and revenue growth.

Continue reading.

Feb. 4, 2016

S&P Medians Report: U.S. Not-For-Profit Cultural Institutions.

U.S. not-for-profit cultural institutions rated by Standard & Poor’s Ratings Services remained on stable financial footing in 2015 despite more modest investment returns than the two previous years (which were buoyed by record stock market growth).

Continue reading.

Feb. 4, 2016

Credit Challenges Tied To The Flint Water Crisis Run Deep For Michigan.

The water crisis in Flint, Mich. has presented serious humanitarian concerns, with the greatest social and economic costs borne by Flint residents, and the repercussions will likely affect the region for years. At the state level, political costs for Michigan have been greater than financial costs at this point.

Continue reading.

Feb. 1, 2016

S&P: In The U.S. Merchant Power Space, A Stable Business Climate Has Become An Oddity.

Being stranded is something U.S. independent power producers and merchant generators are familiar with these days. In earlier, more hopeful times, the sector had heralded the advent of energy efficiency, distributed generation, and proliferating renewables as progressive developments for the electric power industry.

Continue reading.

Feb. 2, 2016

Standard & Poor's Maintains Its Focus On Direct Loans After Evaluating $15.8 Billion In 2014.

Providing a precise measure of the U.S. public finance direct bank loan market is challenging for a variety of reasons—but primarily because bank loans are not explicitly required to be disclosed because they are not securities.

Continue reading.

Jan. 27, 2015

House Republicans Lean Toward Federal Oversight for Puerto Rico.

Lawmakers in the U.S. House showed support for establishing federal oversight of Puerto Rico as Congress looks for ways to help the island emerge from a fiscal crisis brought on by $70 billion of debt.

The House Natural Resources Committee Tuesday spent about two hours discussing the possibility of putting a U.S. authority in place to help end to the chronic budget strains that have pushed the Caribbean island to default on some of its bonds. The idea has gained backing with Republicans as the House seeks to craft legislation the end of March to assist the U.S. territory, though the scope of the new federal powers are still being considered.

“It’s not going to be simplistic, and it’s not going to be that easy,” Representative Rob Bishop, the Utah Republican who chairs the panel, told reporters after the hearing about the potential legislation. “But it can be done and it needs to be done in the right way.”

The Republicans who control both houses of Congress have yet to unite behind specific measures to address the escalating crisis, which led Puerto Rico Monday to propose a debt-restructuring plan that would leave bondholders receiving less than they’re owed. House Speaker Paul Ryan has told lawmakers to come up with a plan by March 31.

No Funding

Senate Majority Leader Mitch McConnell said Tuesday that talks are underway about how to give

Puerto Rico some flexibility to tackle their debt crisis, but he drew a firm line.

"No solution to the Puerto Rico problem that involves the use of U.S. taxpayer dollars is going to be passed in this Congress," he told reporters.

Puerto Rico, congressional Democrats and President Barack Obama's administration have pushed to allow some island agencies to file for bankruptcy, a step that hasn't been endorsed by key Republicans. In December, Senate Republicans proposed directing up to $3 billion to Puerto Rico through a new authority that would oversee the island's budget and could borrow on its behalf.

Puerto Rico's non-voting House delegate, Democrat Pedro Pierluisi, said the island is facing "massive" defaults in May or July at the latest, when the commonwealth has its next major round of bond payments. The island defaulted on some securities in January and last year, while Puerto Rico Governor Alejandro Garcia Padilla has delayed tax rebates and payments to suppliers to pay creditors.

Control Board

Former District of Columbia Mayor Anthony Williams was among witnesses who spoke in favor of a federal control board, which was once used to stabilize the nation's capital city.

"The time is now for Congress to create an authority that would have as its goals both achieving financial stability and a balanced budget for the island," Williams told the panel.

House Democrats, including Luis Gutierrez of Illinois, who have urged Congress to grant the island power to restructure its debt, got support from one of the witnesses, Massachusetts Institute of Technology economist Simon Johnson. He said Congress needs to create a board with authority to restructure some or "potentially" all of the island's debt.

Republicans have resisted extending Chapter 9 municipal-bankruptcy protections to Puerto Rico, arguing that it's not a long-term fix.

"I understand that we need a financial control board, I am undecided about the bankruptcy," said Raul Labrador, a Republican from Idaho. "I'm not sure where that bankruptcy protection should come in — if at all."

Bloomberg Business

by Kasia Klimasinska

February 2, 2016 — 11:53 AM PST

MCDC Credited with Boosting Muni Disclosure.

AUSTIN – Municipal market participants said continuing disclosure is improving and credited the Securities and Exchange Commission's voluntary enforcement initiative with giving it a boost.

They also had positive things to say about federal oversight and rules for municipal advisors.

They made their remarks here Tuesday at The Bond Buyer's 20th annual Texas Public Finance Conference, as the SEC announced its final group of underwriter settlements under the

Municipalities Continuing Disclosure Cooperation initiative.

The MCDC initiative offered favorable settlement terms to municipal bond underwriters and issuers that self-reported violations. In three waves, the SEC hit 72 underwriters with a total of $18 million in fines for failing to conduct adequate due diligence to identify issuer misstatements and omissions before offering and selling their bonds to their customers.

It will soon begin announcing settlements with issuers for selling munis using offering documents that contained materially false statements or omissions about their compliance with their continuing disclosure obligations.

During the panel, David Medanich, the vice chairman of FirstSouthwest, now Hilltop Securities, who is a municipal advisor, said his firm created a disclosure department years ago when the SEC's continuing disclosure rules took effect and took those rules very seriously.

But he credited the MCDC with making market participants more diligent about being timely in meeting their deadlines for disclosing financial and operating information. It also triggered firm and issuer reviews of the whole continuing disclosure process.

"Overall, this has been a real eye opening experience for me … for the firm and for clients. It's definitely focused everybody on continuing disclosure," he said.

Both he and Kim Edwards, a senior vice president at Piper Jaffray & Co. who was also on the panel, said muni issuers want to do the right thing.

Paul Maco, a partner at Bracewell in Washington, D.C. who moderated the panel, asked if underwriters in Texas have ever walked away from a deal because of the issuer's failure to meet its continuing disclosure obligations.

Edwards said underwriters try to work with issuers to improve their continuing disclosure compliance, rather than walk away from deals. If an issuer has chronic continuing disclosure problems, the firm asks it to provide a statement or some form of certification that it has improved its policies and procedures so the disclosure failures stop, she said.

Georgia Sanchez, assistant city treasurer of Austin who also was on the panel, said that as a result of MCDC, her city reviewed the entire issuance and disclosure process and that this "really helped us."

"It really helped us step up our game and be more transparent," she said.

Shamoil Shipchandler, director of the SEC's Ft. Worth Regional Office and a panelist, said the fact that MCDC has made underwriters and issuers go back and look at their continuing disclosure policies and procedures is a "collateral benefit that is helpful … sort of across the board."

A lot of the larger issuers have adopted policies and procedures on continuing disclosure, but some of the smaller, infrequent issuers have not, Edwards said.

Medanich gave the Government Officers Association and other such organizations kudos for making it clear that disclosure policies and procedures are important to have.

Edwards added that it's good when an issuer has them in place so the underwriter doesn't have to "reinvent the wheel" on continuing disclosure with every transaction.

Maco pointed out that if issuers have policies and procedures in place, it's hard for the SEC to charge them with negligence for violations. “It’s a bit of an insurance policy,” he said.

He asked Shipchandler if his SEC office will follow up to make sure underwriters that settled under the MCDC initiative are not violating their orders to cease and desist from violations.

Shipchandler said the office won’t go searching for violations of C&D orders, that usually the SEC is made aware of them through a competitor or anecdotal information.

Edwards said she’s noticed more issuers disclosing more information on their websites. “In general, I think there is more information now,” she said.

But when Maco asked if issuers are starting to disclose information beyond what is required for material event notices, such as when an employer leaves and hurts the local economy, Medanich said not really.

If an issuer discloses one large company leaving the area, must every company that leaves from there on out? Medanich asked.

“I’m hesitant,” he said. “It’s not that I don’t want to, but I’m hesitant to supply something additional when I’m not sure of the outcome because where do I stop.”

“Just simply filing something to be over-protective is not necessarily a good thing,” he said.

Edwards said there’s a trend of credit rating agencies trying to be more proactive, probably as a result of their mistakes during the financial crisis.

They “have started to offer … opinions” on various topics, she said.

It was challenging for some Texas issuers trying to sell bonds recently, when a rating agency issued a report warning about the credit impacts of falling oil prices. “It’s going to make [issuers’ lives] more challenging,” she said.

Maco asked the panelists how the municipal advisor rules have affected them and whether they are concerned about underwriters giving issuers advice that causes the firms to become MAs.

Medanich he’s always felt he has had a fiduciary duty to put his issuer clients’ interest first, before his firm’s. He said he also thinks underwriters recognize their obligations to deal fairly with market participants.

The MA rules, he said, “clearly define the roles” of the MA and underwriter and makes clear a firm is either one or the other.

“I think it’s a great thing,” he said. “I think it’s made things a little bit clearer and a little bit easier.”

Edwards agreed, but noted, “internally. We’ve had more procedures and policies to clarify.”

“It hasn’t really impacted us at all,” she said. Most issuers have hired an independent registered municipal advisor, she said. The MA rules allow an underwriter firm to avoid having to register as an MA as long as the issuer retains, as its own MA, an advisor that doesn’t have ties to an underwriting firm, and says that it will rely on that MA’s advice.

For issuers that haven’t hired an IRMA, “we are a little bit more cautious,” Edwards said.

Asked about the SEC exam process, Shipchandler said his office will “likely not” be involved in routine examinations of MAs but will certainly look into any complaints or suspected violations.

THE BOND BUYER

by Lynn Hume

FEB 3, 2016 3:44pm ET

Grand Jury Report Slams Miami-Dade's Anti-Blight Tax Districts.

A Miami-Dade grand jury report released Thursday slammed county taxing districts created to fight slum and blight, saying some appear to fund pet projects of elected officials and flirt with "slush fund" status while shunning desperate needs for affordable housing.

The report takes aim at districts called Community Redevelopment Agencies, which siphon property taxes from general services like police and transit in order to focus spending within their boundaries. While billed as anti-poverty initiatives, CRAs have been used to subsidize museums, concert halls and a production studio in downtown Miami, tapped to cover county cultural expenses as it pursued funding for Marlins Park, and enlisted for a string of neighborhood amenities.

"It is unfathomable to us that in this day and age, citizens in our community live in housing units where sewage backs up within their apartments or overflowing sewage being released on the grounds of their apartment buildings are a regular occurrence," the grand jury wrote in the report. "This, while millions of dollars are being spent annually to fund ball stadiums, performing arts centers and dog parks is an outrage."

Supporters see CRAs, which are authorized by state law, as important tools in helping revive neighborhoods where seed money from government can spur private investment. But critics see them as ways to circumvent public scrutiny of tax expenditures, and reserve millions of dollars for projects that otherwise would lose out in the normal budget process.

They're set to cost Miami-Dade about $37 million in the current budget year — twice what it spends on Animal Services — and new CRAs have been floated as ways to subsidize the planned Miami Wilds amusement park in south Miami-Dade and expanding transit to accommodate a David Beckham soccer stadium. The dollars in play can be significant: a recent report predicted that downtown Miami's Omni and Overtown CRAs would cost the city and county $1 billion in lost property-tax revenues through 2030.

The grand jury report urges reforms of how CRAs are run, noting elected leaders rarely appoint civilians to boards so that, instead, elected leaders themselves can be in charge of the money. (Read the full report by clicking here.)

"We discovered several examples of CRA boards spending large amounts of taxpayer dollars on what appeared to be pet projects of the elected officials," the report said. "Additionally, there is, at a minimum, a perception and appearance that certain CRA boards are controlled by the commissioner or councilman within whose district boundaries the CRA operates."

"Under these circumstances," it continued, "we believe there is a significant danger of CRA funds being used in slush funds for the elected officials."

The report also noted that the Miami-Dade County Commission, which has authority over spending, routinely provides required approval of CRA budgets well after the fiscal year begins. As a result, it is retroactively approving expenditures of property-tax dollars nominally under its control.

Use of CRAs has long been controversial, and release of this report comes during a recent contretemps over a potential extension of a downtown district's 2030 retirement date. The Omni CRA, in Miami's northern downtown, is being eyed as potential source for an operating subsidy at the Frost Museum of Science, a non-profit named after billionaire philanthropists that is now seeking county hotel taxes to boost its $275 million construction effort.

Miami-Dade Mayor Carlos Gimenez wants to borrow $45 million for the Frost against a stream of county hotel taxes that had been earmarked for a $4 million yearly Frost operating subsidy. Gimenez said that planned budget support would be scrapped to instead fund the construction dollars.

Separately, he also recommended that, if Miami and Miami-Dade agree to extend the Omni CRA's life another 15 years, that money be found to subsidize operations at Frost as well as its sister property in Museum Park, the Perez Art Museum Miami, and the nearby Adrienne Arsht Center for Performing Arts.

To the south, controversy ensued when Miami's Overtown CRA agreed in late 2014 to provide up to $108 million in tax refunds to help finance the massive Miami Worldcenter project in Park West. A larger deal is currently being negotiated with a developer planning an 1,800-room hotel and expo center on the old Miami Arena site. Both agreements hinged on local workforce hiring commitments and enhanced wages.

In exchange for the subsidies, developers have agreed to hire from within Overtown and other poor Miami communities and pay elevated wages. Redevelopment executives argue that tax incentives spur investment that in turn finances improvements in residential neighborhoods, lures in important retail and commercial businesses and brings jobs to the community. In Overtown, new development allowed the CRA to borrow $60 million to help finance the construction of several affordable and mixed-income rental projects, as well as rehab residences in the low-income Town Park communities.

Miami Commissioner Keon Hardemon, who is chairman of the Overtown CRA, said during a community meeting Wednesday at Trinity CME Church in Overtown that bringing new development to Overtown has also allowed the agency to fund rehabs of existing co-op and townhome communities, and rehab low-income apartment buildings.

"It takes money to get things to happen," he said.

Kevin Crowder, a CRA consultant working with North Miami and North Miami Beach, said the grand jury seemed to misunderstand the emphasis state laws place on the creation of affordable housing by redevelopment agencies. He said parts of the report were inaccurate, and glossed over the way economic activity can rebuild entire communities.

"It's not just housing. It's about investment, it's about jobs, creating wealth for everybody in the area," said Crowder, director of economic development for the RMA consultancy.

The grand jury report does not name names and largely avoids singling out specific CRAs or parties that may be responsible for questionable actions. It notes "we also found several CRAs which effectively and efficiently used their funds to accomplish the intended goals."

But its most pointed passages paint a picture of taxing districts spending millions largely out of the normal public oversight. It noted that CRAs regularly borrow money on the board's authority alone, using the same property-tax dollars that otherwise would require a public referendum before being used to backstop government debt.

And for districts charged with helping Florida's most blighted neighborhoods, the grand jury found a string of expenditures that seemed aimed at less pressing needs. One unnamed CRA spends most of its money running the CRA itself. Because of failed projects, the report said, tax revenue coming into the district amounted to $400,000 a year while the CRA's administrative budget amounted to $300,000.

"The CRA board was spending $300,000 in salary and benefits to 3 employees who were managing the remaining $100,000," according to the report.

New CRAs are assigned a portion of all property-tax revenue generated either by higher property values or new construction, allowing the existing property-tax base to continue flowing into the regular government coffers.

The idea is that removing slum and blight would improve property values, and generate a stream of revenue for the CRA. But the grand jury said affordable-housing projects lose out in the calculation, since their creation doesn't tend to boost tax values.

"CRAs are not formed to see how profitable they can become," the report stated. "They are formed to address the needs of the community. In many of these communities, one of the major needs is that of safe and sanitary affordable housing."

MIAMA HERALD

BY DOUGLAS HANKS AND DAVID SMILEY

FEB 4, 2016

Advocates Say Climate Right for Resilience Ratings.

BOSTON — Climate experts and municipal issuers see the capital markets — investors with more than $70 trillion in assets under management — as valued financing streams for resilience and green projects.

Transparent carrot-and-stick bond rating criteria along resiliency lines would help, they say.

"Now is the time to be pushing infrastructure projects," South Miami, Fla., Mayor Philip Stoddard, an aquatic scientist, said in an interview. "By the time sea levels are rising, no one's going to loan us money."

Quirky weather is in the national headlines more frequently. As August began, and just as President Obama unveiled a major climate-change plan, severe flooding hit Tampa, Fla.; wildfires struck Northern California; a tornado touched down in Michigan; and severe thunderstorms knocked out power in parts of southern New England.

Bond rating agencies are increasingly studying the ramifications of environmental and climate developments such as the far-reaching Obama proposal, earthquakes, and hydraulic fracturing to extract natural gas and oil deposits from shale rock.

Recently, climate experts met at Standard & Poor's in New York to discuss rating incentives as proactive steps to obtain capital and insurance more cheaply, avoid downgrades and minimize the cost of debt service to taxpayers.

"We regularly publish extensive research on the implications of environmental and climate-related risks for entities that we rate, and our evaluation of environmental, social and governance risks is a key part of our ratings methodology," S&P said in a statement. "We continue to review the relevance of climate risk for creditworthiness and how we assess and present it as a risk factor in our analysis."

A spokesman said S&P welcomes feedback from market participants on climate change and their role in the ratings process, and that its current climate-change related research goes back 10 years but has intensified over the last three.

S&P on Wednesday issued a report on the increase of fracking-related earthquakes in the Midwest, and what it sees as potential credit consequences for municipalities in that region.

"Resilient financing projects need to be started now to protect public health and property," said Alan Rubin, a storm financing expert and managing director at Tigress Financial Partners.

Rubin, nicknamed the "Hurricane Czar," helped design and underwrite the catastrophe fund for hurricane relief in 1992, while working in Lehman Brothers' investment banking division, after Hurricane Andrew caused more than $30 billion in damage in South Florida.

Regions such as South Florida and the Gulf Coast are notably vulnerable, though not alone. Hurricane Sandy struck the Northeast in October 2012, killing 185 people overall as it right-angled directly into the New York City region. Boston last winter received a record 109 inches of snowfall that forced repeated shutdowns of its mass transit system.

"In my city, it has become painfully obvious that we have to set difficult goals for ourselves. The extent of the climate crisis demands it," New York Mayor Bill de Blasio said in the Vatican last month at the Pontifical Academy of the Sciences.

According to the U.S. Climate Assessment Report, New York State must protect against a two- to six-foot mean sea level rise in New York Harbor and Long Island, and make properties resilient in much larger flood plains due to 71% more intense precipitation and a 12% rise in flood magnitude.

In the Southeast, Stoddard has been educating his citizens about rising sea levels.

"Capital market financing, reflecting our risk reduction with credit ratings and financial incentives, will be necessary throughout coastal regions of the country due to the magnitude of funds needed," he said. "Everyone I've talked to thinks it's a great idea. I haven't gotten any resistance. We need every kind of incentive to make things more resilient.

"They want to keep the government at arm's length for the time being," Stoddard said of the rating agencies. "But it's critical to set up rating guidelines and incentives a pretty clear picture. We need them to be more clear about carrots and sticks."

In June, Moody's Investors Service called on coastal cities in Virginia's Hampton Roads region — home to the world's largest naval base and second-largest U.S. east-coast port — to continue investing and planning to mitigate negative credit effects from weather-related and tidal flooding.

“Cost forecasts indicate a potential need for greater investment in this area by local governments across the region,” Moody’s said in a report. Moody’s said Hampton Roads municipalities, which include Virginia Beach and Norfolk, generally have high credit ratings and budget flexibility.

In the last three years, the city of Hampton, which Moody’s rates Aa1, has spent $28.7 million on flood mitigation and has set aside funds in its 2016 budget for additional consultancy preparation.

Late in 2013, S&P issued its first surge-only rating, BB-minus to New York’s Metropolitan Transportation Authority’s $200 million MetroCat Re Ltd. Series 2013-1, the first catastrophe bond that covered storm-surge risk arising from named storms.

“We anticipate that this deal represents the start of a long-term alternative reinsurance option that diversifies MTA’s risk-management strategy,” authority Chairman Thomas Prendergast said at the time.

S&P said its rating reflected the principal at-risk nature of the offering. MetroCat Re collateralized the reinsurance through a cat bond and had its own credit rating separate from mainstream MTA credits such as transportation revenue bonds and dedicated tax fund bonds.

Last month, the Port Authority of New York and New Jersey approved a series of street-level flood barriers across the 16-acre World Trade Center site, primarily around its transportation hub.

The Port Authority’s board of commissioners approved $113 million for flood mitigation and resiliency projects designed to prevent further Sandy-type damage. A grant through the Federal Transit Administration’s emergency relief program is expected to cover about 75% of the cost, or about $85 million.

Peter Ellsworth, senior manager for investor programs at Boston-based advocacy group Ceres, said members of its investor network on climate risk, whose total assets under management exceed $13 trillion, are increasingly attentive to material climate-related risks and the opportunities for investing in related projects.

“We believe that credit rating agencies could send a strong signal about the value of effectively managing long-term sustainability risks, including those associated with climate change, by having credit ratings reflect the presence of such strategies and practices designed to reduce such risk,” he said.

Consensus resilience criteria, say Ellsworth and others, would be similar to the commercial mortgage-backed securities risk reduction criteria S&P uses and could be piloted to provide data for S&P use. They also say green and resilient bonds are more profitable, less risky and free up 30-year profitable business models.

Rubin said green bonds and resilience bonds weave common threads, though sometimes they are erroneously lumped together.

“If you have a coal-burning plant and you want to improve the environment with better technology, that’s green. If you have a system that protects the plant from disaster, that’s resilience. They can be symbiotic,” he said.

The Rockefeller Foundation is working with the Swiss nonprofit Global Infrastructure Basel and other organizations to integrate ratings with resilience as part of its 100 Resilient Cities initiative. “We’re starting to think about resilience more broadly,” said Elizabeth Yee, vice president for strategic partnerships and solutions at 100 Resilient Cities.

The project aims to help cities worldwide become more resilient to what it considers “shocks” — catastrophic events including hurricanes, fires, and floods — and “stresses,” including water shortages, homelessness and unemployment. “We’re helping cities become more resilient to physical and economic challenges,” said Yee.

The foundation, which has committed $164 million to the program, has chosen 67 cities to date, including 16 in the U.S. Last month it began its push for the final 33. The foundation encourages collaboration: For instance, San Francisco, Oakland and Berkeley qualify as separate municipalities, but still work together on common Bay Area concerns.

“We know how integral the value of resilience is to many municipalities and we have a number of tools in our platform,” said Yee, who spent 14 years as a muni bond banker at Morgan Stanley, Lehman Brothers and Barclays in San Francisco and New York.

THE BOND BUYER

BY PAUL BURTON

AUG 7, 2015 12:31pm ET

Fitch: Texas Drought Leaves a Lasting Impact on Water/Sewer Utilities.

Fitch Ratings-Austin-01 February 2016: Eight months after flooding ended Texas’ drought, the state’s water and sewer utilities will see a lasting impact on their finances and operations, according to Fitch Ratings.

‘The lessons and momentum that the dry spell left on political leaders, water suppliers and consumers will have lasting effects on the sector,’ says Gabriela Gutierrez, Director. ‘While Texas typically experiences dry spells, the most recent drought stretched for four long years and heightened the urgency to ensure adequate water supplies are available to sustain a prosperous economy.’

As of January 2016, 95% of Texas was drought-free, compared with just 34% the year prior; reservoirs are now 85% full, up from 63% in early 2015.

Recent wet weather from El Nino combined with a continued focus on conservation is likely to curb water consumption. As a result, retailers are likely to see a pull-back in revenues, which may result in modest declines in financial metrics. Fitch believes the base cost of water will inevitably rise as Texas utilities look to stabilize revenues while continuing the substantial investments required to ensure adequate water supplies.

Fitch’s portfolio of Texas water and sewer utilities weathered the drought well, with only four downgrades attributable to the impact of drier conditions. These include Fort Worth, Garland, and two related credits for Palo Pinto County Municipal Water District No. 1 and its retailer, Mineral Wells. In addition, the city of Austin’s municipal water and sewer bonds were assigned a Negative Rating Outlook. Only one utility, Grand Prairie, was upgraded.

Despite mostly resilient financial metrics, Fitch is concerned that surplus revenues have not been sufficient enough to maintain existing assets. Given the added challenge of updating aging infrastructure, utilities will be increasingly reliant on borrowable resources for funding.

The full report, ‘Texas Water and Sewer 2016 Update,’ is available at www.fitchratings.com.

TAX - TEXAS

Jack County Appraisal District v. Jack County Hospital District

Court of Appeals of Texas, Fort Worth - January 14, 2016 - S.W.3d - 2016 WL 299703

County hospital district appealed county appraisal review board’s appraisal of leased computerized tomography (CT) scanner. The District Court granted summary judgment in favor of hospital district. Appraisal district appealed.

The Court of Appeals held that hospital district was the owner of the scanner, and, therefore, scanner was exempt from taxation.

Hospital district, a political subdivision of state, was “owner” of leased computerized tomography (CT) scanner, for purposes of statute exempting from taxation tangible personal property owned by political subdivision and providing that political subdivision was owner of such property if property was subject to lease-purchase agreement providing that political subdivision was entitled to compel delivery of legal title at lease’s end, even though purchase price was undetermined and lease payments were not credited. Hospital district had right to compel delivery of legal title at end of lease by buying scanner at fair market value or at average of values determined by two appraisers if hospital district and lessor could not agree on fair market value.

Safe Havens In a Stormy Market for Muni Bonds.

Reading a municipal bond prospectus isn’t the most entertaining or easiest of reading you’ll ever do. But for municipal bond investors, it is mandatory.

In today’s credit-crammed society, it’s easier to tiptoe around the municipal bond sinkholes than the corporate ones. Yet investors who ignore the details in a municipal bond offering and remain exclusively yield driven will suffer the consequences of credit quality and price erosion.

The muni sinkholes are numerous but easily avoided if you read the public information. Take for example the Board of Education of the City of Chicago (aka Chicago Public Schools, CPS). This school system has financially collapsed. The Chicago Public School system has for years had the same approach to debt management as Puerto Rico—NONE.

Management has issued more and more debt, papering over deficits and never displaying the will to take corrective action. Their ineptness is clearly spelled out in the $875 million January 14, 2016 municipal offering that was pulled due to lack of investor interest. This offering listed for investors all the things they never, ever wanted their bonds to be involved with. It contained words and phrases like: *The Pension Fund is underfunded; swap terminations; credit downgrades; operating budget gaps; structural deficits.* You get the idea.

The 28-year tax-free CPS municipal bonds were going to be offered at 7.75%. This is a whopping 5% more than a comparable investment grade muni. Geeze…the more one reads the more the Chicago School System mirrors Puerto Rico.

I am not saying a deal won't eventually close. But it's curious that the hedge funds already burned by the Puerto Rican folly barely showed a pulse for the CPS debt.

Retail investors don't belong in B2 rated junk municipal bonds like Chicago Public Schools. Instead, invest in pristine, highly rated tax-free municipals that will preserve capital. There are dozens of ways to take investment risk—municipals should not be among them.

Stick with the boring, reliable, and trustworthy names you know. If you are public minded and want to loan money to a school system, then consider the Texas Permanent School Fund backed munis (PSF).

The PSF fund has been around since 1854. Stocks, bonds, real estate, mineral rights and commodities back it. Such a guarantee is exceptional. Plus, its management and good history puts the old-line municipal bond insurers to shame. According to the Texas PSF unaudited financials, total assets are $28.95 billion. Not every year is a financial winner but you can bet the PSF won't rubber stamp or guarantee any bonds without proper due diligence.

Consider the newly issued Grand Prairie Texas Independent School District General Obligation bonds, 4.00% due August 15, 2029 CUSIP: 386155DR3. Grand Prairie has a population of 138,000 with a growing economy. It is a stone's throw from the Dallas-Fort Worth-Arlington area. School enrollment is a hair over 29,000 and has grown about 2% since 2012.

Bonds on their own are rated AA-. With the PSF Guarantee they are AAA rated. These bonds are an excellent credit on their own but should a financial calamity occur, the Permanent School Fund steps up and pays the interest and principal.

The district has a fund balance and has made its 2014 pension and other post-employment payment obligations. The ten largest taxpayers represent 9.2% of net taxable assessed value. Bonds yield 2.42% to the February 15, 2026 call and 2.75% to the August 15, 2029 final maturity. That's a 4% taxable equivalent yield to the call if you are in a 39.6% Federal bracket and 4.56% TEY to maturity. Plus, there's no 3.8% ObamaCare tax if you meet the net investment income and adjusted gross income thresholds. Good quality munis for baby boomers are a win-win.

Forbes

by Marilyn Cohen

Feb 2, 2016 @ 02:01 PM

[Puerto Rico's Argentina-Like Debt Gambit Comes With a Big Catch.]()

Puerto Rico is turning to a novel, yet increasingly popular, approach to lighten its crippling $70 billion debt load.

Pioneered by Argentina in the mid-2000s, and used by Greece and Ukraine in debt restructurings in recent years, the proposal is part of a plan to cut the island's obligations by 46 percent and avert a default that would be the biggest of its kind. The novel part is a sweetener — in the form of "Growth Bonds" — that could potentially help creditors get all their money back.

But there's a catch: the bonds only pay out if Puerto Rico can collect enough taxes over the next 35 years. And for the commonwealth, that’s a big if.

While it worked in Argentina because the commodities boom helped the nation quickly recover from its fiscal crisis, Puerto Rico faces a very different set of circumstances. Not only has the economy contracted in the past decade, its prospects remain bleak. That’s raising questions about whether the offer is credible enough to win over bondholders as they kick off negotiations over how to restructure its debt.

“It’s hard to see any meaningful economic growth coming out of Puerto Rico in the foreseeable future,” said Matt Fabian, a partner at Municipal Market Analytics, a research firm based in Concord, Massachusetts.

“Those securities would essentially have no value. The most likely outcome is that they never receive a payment.”

The stakes are high. After years of borrowing to fix budget shortfalls, Puerto Rico warned creditors that it may stop debt-service payments if it fails to renegotiate its debt before May 1, when a $422 million Government Development Bank payment comes due. Two commonwealth authorities have already defaulted on payments to investors.

Puerto Rico’s proposal, announced on Monday, would reduce its obligations to $26.5 billion from $49.2 billion. Bondholders would swap their securities for new notes that delay principal and interest payments.

The plan consists of two types of securities: so-called Base Bonds that begin paying interest in 2018 and the aforementioned growth bonds, which repay principal after 10 years only if Puerto Rico’s revenue collections surpass targeted levels. Creditors have a chance to recoup all of their money if revenue growth exceeds the estimated annual rate of inflation.

Puerto Rico estimates it will begin repaying the growth bonds in 2029, if the island’s economy begins to grow at 2.5 percent by 2022, according to the restructuring plan. That might be an optimistic assumption.

“It’s difficult to come up with economic scenarios where Puerto Rico grows at 2.5 percent in the near future,” said Orlando Sotomayor, a professor of economics at the University of Puerto Rico. “All economic fundamentals point in the opposite direction and include declining population, workforce participation, reduced investment, and education.”

The proposal also doesn’t detail how the commonwealth will support its largest pension fund, which owes current and future retirees $30.2 billion — a big question mark for Lyle Fitterer, the head of tax-exempt debt at Wells Capital Management, which oversees $39 billion of municipal bonds, including Puerto Rico securities.

“That’s a big unknown,” Fitterer said. “That obviously will impact bondholders’ ability to get paid back.”

Upside Potential

Growth bonds aren’t entirely new to the $3.7 trillion municipal-bond market. Many housing or community development-projects are financed with tax-exempt securities that are repaid based on future increases in property taxes or assessment fees.

Greece and Ukraine have sold similar securities to help restructure their debt. Last year, Ukraine included so-called GDP-linked warrants, whose payouts are tied to economic growth hurdles. The benefit for the issuer is that payments aren't made until economic growth can support them. For bondholders, they offer the potential for bigger profits once the borrower gets back on its feet.

"The upside of the growth bonds is directly in line with the economic recovery of the commonwealth," Barbara Morgan, a spokeswoman who represents the Government Development Bank at SKDKnickerbocker in New York, said in an e-mail. "Without a willingness from all parties to invest in solutions that move the island's economy down that path, no one wins."

Still, the securities can be notoriously hard to value. And for issuers, it's questionable whether they're worth it because of how big a liability they can become over time. When Argentina initially issued the GDP warrants in its 2005 debt swap after defaulting on $95 billion in 2001, the securities were deeply discounted by some investors who were skeptical of the country's growth prospects.

As the economy grew, the warrants created a larger-than-anticipated debt payment for Argentina. It's paid investors about $10 billion since 2005. And the country could potentially be on the hook until 2035 — when the warrants finally mature.

"It really depends individually on each country and each security that you look at," said Siobhan Morden, the head of Latin American fixed-income strategy at Nomura Holdings Inc.

Bloomberg Business

by Michelle Kaske

February 2, 2016 — 9:01 PM PST Updated on February 3, 2016 — 5:54 AM PST

Municipal Bond Sales Poised to Accelerate as Redemptions Rise.

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

States and localities plan to issue $11.9 billion of bonds over the next 30 days, according to data compiled by Bloomberg. A week ago, the calendar showed $10.1 billion planned for the coming month. Supply figures exclude derivatives and variable-rate debt. Some municipalities set their deals less than a month before borrowing.

Dallas Area Rapid Transit Authority plans to sell $483 million of bonds, King County, Washington, Sewer Revenue has scheduled $279 million, Metropolitan Atlanta Rapid Transit Authority will offer $247 million and Hawaii County, Hawaii, will bring $235 million to market.

Municipalities have announced $7.9 billion of redemptions and an additional $12.4 billion of debt matures in the next 30 days, compared with the $20.2 billion total that was scheduled a week ago.

Issuers from Texas have the most debt coming due with $3.5 billion, followed by New York at $1.34 billion and Minnesota with $1.11 billion. California has the biggest amount of securities maturing, with $396 million.

Investors added $1 billion to mutual funds that target municipal securities in the week ended January 20, compared with an increase of $1.3 billion in the previous period, according to

Investment Company Institute data compiled by Bloomberg.

Taxable Equivalent

Exchange-traded funds that buy municipal debt increased by $259 million last week, boosting the value of the ETFs 1.31 percent to $19.9 billion.

State and local debt maturing in 10 years now yields 90.219 percent of Treasuries, compared with 89.793 percent in the previous session and the 200-day moving average of 98.678 percent, Bloomberg data show.

Bonds of Illinois and Maryland had the best performance over the past year compared with the average yield of AAA rated 10-year securities, the data shows. Yields on Illinois's securities narrowed 11 basis points to 3.35 percent while Maryland's declined 6 basis points to 1.80 percent. Puerto Rico and New Jersey handed investors the worst results. The yield gap on Puerto Rico bonds widened 149 to 11.82 percent and New Jersey's rose 6 basis points to 2.69 percent.

Bloomberg Data News

February 1, 2016 — 4:24 AM PST

This story was produced by the Bloomberg Automated News Generator.

Chicago Schools Pay Bigger Bond-Market Penalty Than Puerto Rico.

If municipal-debt investors want further evidence that Chicago's schools are in financial distress, its $725 million bond deal this week is all the proof they need.

After delaying the sale when some investors balked, the district issued 7 percent debt for as little as 84 cents on the dollar, signaling that investors have doubts they'll be repaid in full. No municipal borrower — not even cash-strapped Puerto Rico — has had to offer such a steep discount on a bond deal of that magnitude since at least the 2008 financial crisis, data compiled by Bloomberg show.

"The only time you're going to see this big of a discount is when it's a distressed situation," said Burt Mulford, a manager of tax-exempt funds in St. Petersburg, Florida, at Eagle Asset Management, which oversees $2.5 billion of munis. He said he didn't buy the bonds. "The ultimate buyers want to minimize the pain if it stops paying interest, so if they have the bonds at a discount, that would help offset that."

The nation's third-largest district, with almost 400,000 students, is on the brink of insolvency after years of skipping pension payments, drawing down reserves and borrowing to cover operating costs, pushing its $6 billion of outstanding debt deeper into junk. While Mayor Rahm Emanuel, a Democrat, has pushed for more aid, Republican Governor Bruce Rauner has called for a state takeover and changing the law so the district could file for bankruptcy.

The district's ability to access the market Wednesday showed there's some optimism that it will be able to deal with its fiscal strains. The proceeds provided an injection of cash that will help it pay off maturing debt and reduce the near-term strain on its budget. It has a debt-service payment due on Feb. 15, which officials said will be made.

“We’re buying time to fix the system,” Forrest Claypool, the district’s chief executive officer, said during a Feb. 3 interview on “Chicago Tonight,” a public television show. When asked whether the district can go back to Wall Street to borrow again, Claypool said he didn’t know.

The discounted price on the securities increased the yields — which measure the return after interest payments based on the full face value — to as much as 8.5 percent, about 5.8 percentage points more than top-rated securities. That gap was half a percentage point more than Puerto Rico paid in March 2014, when it sold $3.5 billion of bonds in a last-ditch attempt to stave off insolvency. The island’s bonds have since slipped from 93 cents on the dollar to about 70 cents as it edges closer toward defaulting on the government-guaranteed debt.

With distressed debt, buyers tend to focus more prices because of the risk that interest or principal payments won’t be made.

The Chicago Board of Education’s sale price indicates that investors burned by Puerto Rico have learned a lesson. They’re demanding more to lend to highly indebted issuers that rely on a steady stream of borrowed money, said Alan Schankel, a managing director at Janney Montgomery Scott, and Richard Ciccarone, the president of Merritt Research Services, which tracks municipal finance.

Jessica Francisco, a spokeswoman for JPMorgan Chase & Co., a main underwriter on the deal, declined to comment. Emily Bittner, a spokeswoman for the schools, declined to comment.

Landmark Deal

No state or local government has managed to issue so much debt with credit ratings as low as Chicago’s schools, Bloomberg data show. Puerto Rico had a BB+ rating from Standard & Poor’s, three steps higher than the district’s B+, when it last borrowed almost two years ago. Even Jefferson County, Alabama, had an investment grade upon emerging from bankruptcy in 2013, when it issued 6.5 percent sewer debt due in 2053 at 95 cents on the dollar.

Illinois law doesn’t allow Chicago’s schools to file for bankruptcy, which gives investors some confidence that what they’re owed won’t be written down in federal court. Democrats who control the legislature dismissed Rauner’s push to allow for Chapter 9 as dead on arrival. Emanuel has enacted a record property-tax increase and sought to reassure the bond market that the city’s finances are on the mend.

Investors in the Chicago deal probably bought with the expectation that state and city officials will take steps to put the school district on more stable financial footing, said Dan Solender, head of municipals in Jersey City, New Jersey for Lord Abbett & Co., which holds Chicago school bonds among its $17 billion of debt. He declined to say whether he bought at this week’s sale.

If it eventually wins higher credit ratings, the school system could refinance the long-term debt in 10 years by triggering call provisions that allow it to buy back the securities. At that point, investors would get repaid $100 for every $84 they invested.

And if the district veers towards the bankruptcy route endorsed by Rauner, bondholders won’t have lent it as much money as they would have last week, when underwriters initially tried to sell $875 million of debt.

“It really tells us the market is starting to think about how distressed credits trade,” said Neil Klein, senior managing director in New York at Carret Asset Management, which oversees $750 million of munis and declined to buy the Chicago debt.

"There's not as much concern about the ultimate yield to maturity you're achieving. They're looking at dollar price," he said. "That's very different than your traditional municipal bond buyer, who makes assumptions that bonds will pay until maturity."

Bloomberg Business

by Brian Chappatta and Elizabeth Campbell

February 4, 2016 — 9:01 PM PST Updated on February 5, 2016 — 4:46 AM PST

Bloomberg Brief Weekly Video - 02/04

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

Watch the video.

February 4, 2016

Moody's: Pennsylvania Faces Limited Choices as Unfunded Pension Liabilities, Costs Mount.

New York, February 05, 2016 — The Commonwealth of Pennsylvania's (Aa3 negative) unfunded pension liabilities continue to mount despite implementing numerous benefit changes for new employees in 2010, Moody's Investors Service says. Limited by strong legal pension protections, Pennsylvania has little flexibility to ease rapidly growing accrued liabilities, leaving it and many of its local governments facing considerable increases in pension costs.

"State pension contributions have risen steadily in conjunction with climbing pension debt," Tom Aaron, a Moody's Assistant Vice President-Analyst says. "Leverage from unfunded pension liabilities facing the state has grown faster than state resources over the past decade."

State and local pension costs and unfunded liabilities will remain well above historical levels for years to come, Moody's says in "Moody's Public Pension Landscape Series: Limited Options for Pennsylvania to Avoid Accelerating Pension Costs."

For example, large pension plans in the Cities of Philadelphia (A2 stable) and Pittsburgh (A1 positive) have also experienced growing cost and liability trends. Philadelphia's reported liabilities have been driven up in part by a steady decline in its investment return assumption from a high of 8.75% in 2009 to 7.8% currently. While Pittsburgh has dedicated parking revenues to help shore up its pension funds, its contributions remain too low to prevent its unfunded liabilities from growing under its investment return assumptions.

Through a series of rulings, the Pennsylvania Supreme Court has strictly interpreted legal protections for pension benefits of current and former employees. Using the limited flexibility it has, however, the state has lowered benefits for newly hired employees and constrained cost growth related to cost-of-living adjustments (COLAs).

Several rulings dating to the 1980s provide very stringent legal protections, effectively limiting unilateral changes to benefits to new employees only," said Aaron.

Pennsylvania has more than 3,200 public pension plans, the largest number of all 50 states. However, the state plays an active role in local pensions by mandating minimum funding requirements and providing contribution assistance.

Three out of the four largest plans in the state have fewer active members than retirees and other inactive members. The state and local governments are increasingly susceptible to contribution volatility and funding challenges stemming from negative plan cash flows as the growing portion of retirees increases.

The report is available to Moody's subscribers here.

SEC Fines Municipal-Bond Underwriters for Making False Statements.

Firms paid about $4.58 million for violating federal securities laws between 2011 and 2014

The Securities and Exchange Commission charged and fined 14 municipal-bond underwriting firms on Tuesday for giving investors inaccurate information in the third batch of penalties for such firms under the U.S. agency's voluntary self-reporting program.

The firms—which didn't admit or deny the charges—paid about $4.58 million for violating federal securities laws between 2011 and 2014 by selling municipal debt using offering documents that contained "materially false statements or omissions" about the borrowers' compliance with disclosure obligations. Regulators said the firms failed to conduct adequate due diligence to identify the problems before selling the bonds.

The SEC launched the crackdown in 2014 in a bid to pressure underwriting firms and state and local borrowers to admit voluntarily to lapses in investor disclosures in exchange for favorable settlement terms. The lapses include such issues as failing to disclose missed filings of annual financial reports or credit-rating changes.

The agency said Tuesday that 72 underwriters have been charged under the voluntary self-reporting program. The first round of charges was brought in June against 36 municipal underwriting firms. Another 22 were charged in September.

All the firms settled and paid civil penalties up to a maximum of $500,000.

"The settlements obtained under the…initiative have brought much-needed attention to disclosure obligations in municipal-bond offerings," said Andrew Ceresney, director of the SEC's enforcement division.

The 72 firms make up about 96% of the market share for municipal underwritings, he said, and all have agreed to improve their due diligence procedures.

Firms in Tuesday's announcement included Barclays Capital Inc., TD Securities LLC and Wells Fargo Bank N.A. Municipal Products Group.

THE WALL STREET JOURNAL

By ANNE STEELE

Feb. 2, 2016 2:46 p.m. ET

Write to Anne Steele at Anne.Steele@wsj.com

Fitch Releases Exposure Draft on Adding Enhanced Recovery to U.S. Local Gov't Criteria.

Fitch Ratings-New York-02 February 2016: Today Fitch Ratings is releasing an exposure draft for public comment that proposes the inclusion of enhanced recovery prospects in its U.S. local tax-supported ratings.

"During the comment period for our state and local government criteria, Fitch received many comments from investors, issuers and other market participants suggesting rating above the ULTGO/IDR in certain circumstances based on distinct and significantly different recovery prospects in the event of a municipal bankruptcy," said Amy Laskey, Managing Director.

"We have identified two such circumstances: statutory liens and visibility during bankruptcy."

Municipal securities benefiting from a substantial preferential right in a bankruptcy proceeding as a result of a statutory lien granted under state law have significantly improved bondholder protection. Fitch proposes to rate bonds backed by revenues with a statutory lien one to two notches higher than the equivalent stream without the statutory lien.

Recovery can also reasonably be estimated when there is sufficient visibility, via a plan of adjustment, into the potential recovery prospects during a bankruptcy proceeding.

Fitch invites feedback from market participants on this proposed criteria addition until Friday, February 26.

Fitch will host a conference call to discuss the proposed criteria addition on Thurs., February 11 at 2:00 PM EST. To receive dial-in details for the call, please resister here: http://dpregister.com/10080506

Fitch Teleconference: Adding Enhanced Recovery to U.S. Local Gov't Criteria.

Teleconference discussing the proposed criteria addition to our U.S. local tax-supported ratings.

Feb 11, 2016 – 2:00 pm EST

Register for the complimentary teleconference.

Fitch: Rates Key for California Water Utilities Amid Continued Conservation.

Fitch Ratings-San Francisco-04 February 2016: California's water and sewer utilities will see weaker financial margins in Fiscal 2015 and 2016 as the state's mandated conservation targets hit water sales, says Fitch Ratings. Many utilities will opt for rate increases or alternate rate structures in the next several years to mitigate the financial impact of lower demand.

"Capital-intensive issues like infrastructure investments and regulatory mandates don't dissolve in a drought, so even if mandated conservation ends tomorrow, many of California's water utilities still have important questions to answer regarding how they generate revenue," said Shannon Groff, Director in Fitch's U.S. Public Finance group.

On Feb. 2, 2016, the State Water Control Resources Board extended the state-wide conservation mandates through Oct. 31, 2016.

Utilities that already have flat rate structures in place or are quick to adopt them will be better positioned to adjust to lower demand, especially given uncertainty around the drought's length. Fitch believes many utilities will implement rate changes by Fiscal 2017, which will help their financial metrics recover from the expected dips in Fiscals 2015 and 2016.

Historically, California's water and sewer sector has enjoyed healthy margins and strong credit quality, supported by political and public support for rate adjustments. However, this flexibility continues to be tested as rates move higher.

Fitch downgraded three California utilities – Millbrae, Fresno and Contra Costa Water District – over the past two years due to a combination of lower water sales, large capital programs and reduced rate flexibility. However, upgrades still outpaced downgrades, while the majority of ratings remained stable.

In addition, Fitch has released its Fitch Analytical Comparative Tool (FACT) for the Water and Sewer Sector. FACT is an interactive Excel-based analytical tool for comparing an institution's key financial metrics to median calculations on a notch-specific rating basis, compared to entities rated within the same rating category and against Fitch's portfolio of credits.

The full report, 'California Water and Sewer Sector: 2016 Update,' and the FACT are available at www.fitchratings.com.

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[MSRB Holds Quarterly Board Meeting.]

Washington, DC – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) held its quarterly meeting January 27-28, 2016 where it discussed initiatives to shed more light on costs and potential risks to investors in the municipal market, and to improve the utility of its Electronic Municipal Market Access (EMMA®) website, among other topics.

Mark-Up Disclosure
The MSRB is in the process of developing a possible new regulation that would require municipal securities dealers to disclose on customer confirmations the amount of the "mark-up" or "mark-down" on a certain class of transactions with retail investors. The MSRB has been coordinating with the Financial Industry Regulatory Authority (FINRA) on a parallel initiative for transactions in corporate bonds. At its meeting, the MSRB Board agreed that its next step is to seek public comment on regulatory guidance on how dealers calculate their mark-ups. Dealers in municipal securities, as in markets for other types of securities, benchmark such charges to investors off what is known as the "prevailing market price" of the security.

"We heard in comment letters on our mark-up disclosure proposal that the industry wants guidance on establishing the prevailing market price for municipal securities," said MSRB Chair Nathaniel Singer. "The MSRB plans to proceed with developing this guidance by publishing a proposal for public comment. This step is critical to establishing prevailing market price guidance that is appropriately tailored for the municipal market."

Bank Loan Disclosure
For several years, the MSRB has been advocating for improved disclosure about direct purchases of securities and bank loans by state and local governments. These types of alternative financings are frequently not disclosed to municipal bondholders but may have priority payment status in the event a municipality is not able to meet its obligations. "This is a risk that is often unknown to bondholders," Singer said. "Investors should have as full a picture as possible about a municipality's overall debt."

At its meeting, the Board authorized MSRB staff to develop a concept release seeking public input on whether and how the MSRB could improve disclosure of the amounts and material terms of these alternative financings. "We are taking our call for improved voluntary disclosure to the next level," Singer said. "We want input from the public on the ways we might address this very important issue." The MSRB has repeatedly called for voluntary disclosure of bank loans and other alternative financings by state and local governments. However, very few municipalities have publicly provided such information.

EMMA Enhancements
At its meeting, the Board also discussed ways to improve the utility of its EMMA website, the official source of municipal bond data and disclosures. The Board approved the addition of an economic calendar on EMMA so that issuers, investors and others have easy access to federal economic data releases at the same source for information about municipal securities.

Other Regulatory Developments
In other regulatory developments, the Board discussed [MSRB Rule G-15], on confirmation, clearance, settlement and other uniform practice requirements for dealers with respect to transactions with customers, related to minimum denominations. The Board approved issuing a request for comment regarding MSRB Rule G-15(f)(iii), which provides a limited exception to the prohibition against sales

to customers in amounts below the minimum denomination of an issuance. The request will seek comment on whether the MSRB should expand the exception to include other transactions that may be consistent with the original intent of the prohibition.

In other dealer rulemaking, the Board approved filing a proposed rule change with the Securities and Exchange Commission (SEC) to amend MSRB Rules G-12 and G-15 in order to support the industry-wide initiative to move from a T+3 to a T+2 settlement cycle. To ensure consistency, the effective date of the amendments would be predicated on the SEC making amendments to its rules to establish a T+2 settlement cycle for the equity and corporate bond markets.

In support of the MSRB's efforts to promote research in the municipal market, the Board decided to move forward with its plans to create a historical municipal trade data product for higher education institutions. The proposed product still requires approval from the SEC.

Finally, the Board discussed the MSRB's jurisdiction with respect to the sale by municipal securities dealers of interests in ABLE accounts and the potential applicability of various MSRB rules. The Achieving a Better Life Experience (ABLE) Act of 2014 permitted states to create tax-advantaged savings programs to help individuals with disabilities maintain health, independence and quality of life. The Board agreed that if it is determined that the MSRB has jurisdiction over the sale of ABLE accounts, it would further review its rules for dealers and consider what amendments may be needed.

Date: February 1, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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Investors Demand Premium for Chicago School Debt.

Pricing data show a majority of the $725 million bond offering priced to yield 8.5%

Chicago's public schools closed a critical bond offering Wednesday, but the district was forced to pay rates rarely seen in the municipal bond market in recent years.

Pricing data show a majority of the $725 million bond offering priced to yield 8.5%, nearly a 6-percentage-point premium over what states and cities with top-rated credit pay. The offering is smaller than the $875 million deal school officials planned. The deal had been delayed by the district last week as school officials looked to woo wary investors.

The nation's third-largest school district faces a mounting liquidity crunch. Illinois Gov. Bruce Rauner recently called for a state takeover and state legislation that would give the district the option to file for bankruptcy. The district also saw its contract offer to the Chicago Teachers Union shot down earlier this week, raising concerns of a strike later this year.

"Though some wanted our efforts to fail, (the schools) needed to move forward in order to keep our doors open," said Ron DeNard, senior vice president for finance for the school district.

Money raised from the bond sale is expected to be used to replenish operating funds as the district looks to have enough cash to make it through the end of the school year.

“The sale of these bonds will produce sufficient proceeds to mitigate our cash flow challenges through the end of the fiscal year,” Mr. DeNard said.

THE WALL STREET JOURNAL

By MARK PETERS and AARON KURILOFF

Updated Feb. 3, 2016 6:43 p.m. ET

Write to Mark Peters at mark.peters@wsj.com and Aaron Kuriloff at aaron.kuriloff@wsj.com

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A Warning on Bankruptcy in Puerto Rico’s Debt Crisis.

WASHINGTON — Puerto Rico’s financial troubles are so complex and far-reaching that bankruptcy alone will not solve them, and might even make them worse, experts on financial distress told lawmakers in Washington on Tuesday.

Instead, they recommended appointment of a federal control board, saying it would have a better chance of resolving Puerto Rico’s debt in the short term and preventing the island from falling into debt again in the future.

As evidence, witnesses pointed to Detroit’s recent experience with municipal bankruptcy, the largest so far in American history. Bankruptcy proceedings helped Detroit reduce its debts, they said, but did not leave the city with a recovery plan.

The impairment in value of Detroit’s bonds was so severe that it damped investors’ appetite for municipal bonds over all — not just Detroit’s but other cities’ too.

By contrast, some pointed to the financial crisis that gripped Washington in the late 1990s. The district never went bankrupt but was placed under supervision of a financial control board and now enjoys a double-A bond rating.

“In my view, the time is now for Congress to create an authority that would have as its goals both achieving financial stability and a balanced budget for the island,” said Anthony A. Williams, who served as Washington’s chief financial officer during the period of federal supervision.

He and others who testified before the House Subcommittee on Indian, Insular and Alaska Native Affairs said a strong control board could set the stage for an eventual restructuring of all of Puerto Rico’s $72 billion debt.

Puerto Rico officials have been saying that they want to restructure the debt but do not expect to be able to do so without the protection of Chapter 9, the bankruptcy chapter used by insolvent municipalities.

But some legal analysts now say the Territorial Clause of the United States Constitution gives Congress authority to enact laws that would give Puerto Rico the ability to restructure without declaring bankruptcy.

Such a law has not yet been drafted.

Tuesday’s hearing was one step in that direction. The subcommittee is one of the bodies that the

House speaker, Paul D. Ryan, Republican of Wisconsin, instructed to draft a suitable legislative package for Puerto Rico by the end of March.

The full House Natural Resources Committee plans to hold one more hearing first.

Even though such a measure would give Puerto Rico new powers for dealing with its creditors, Mr. Williams said he was sure it would also draw complaints that Congress was depriving Puerto Rico's citizens of self-determination. He said that was the initial reaction when he took control of Washington's finances.

"Whatever negative hue and cry is initially heard readily erodes," Mr. Williams said, "as positive developments, achieved by a neutral body, start taking hold."

The positive developments would appear, he and other witnesses said, if Puerto Rico took its steps toward recovery in the right order. That would mean straightening out its own fiscal affairs first, rebuilding business confidence, improving tax collections, stemming the tide of residents leaving the island — and only then restructuring its debts.

"The people who leave are the people who pay taxes," said Simon Johnson, a professor of entrepreneurship at the M.I.T. Sloan School of Management and a former chief economist of the International Monetary Fund. He said the loss of population was a critical problem because it left the island's debt burden on fewer shoulders.

Another witness, Carlos Garcia, a former chairman of Puerto Rico's Government Development Bank, described the island's previous experience with a control board, one created by its own legislature in 2009.

Mr. Garcia said the board quickly found almost $4 billion in debt that no one had noticed before, slowed the growth of new debt, lengthened maturities and set up a program to cushion people who lost their jobs. The main problem with that board, he said, was that it was created with just a two-year mandate, which was too short.

"What happened after the local control board disappeared is painfully known to all of us, as we sit here today, trying to find constructive solutions for a re-enacted Puerto Rico crisis," he said.

Puerto Rico has been struggling to keep up with the payments on its $72 billion debt, defaulting on some of its bonds while servicing others. But its biggest payments since the crisis began are due at the end of June, and if it defaults on those, there is talk of Congress having to create another unpopular bailout mechanism like the Troubled Asset Relief Program of 2008 that rescued banks on the verge of failure during the subprime mortgage crisis.

That is why members of Congress and the Treasury Department are trying to get a law on the books in time to take Puerto Rico through that date without incident.

Thomas Moers Mayer, a bankruptcy lawyer representing bondholders, said that Chapter 9 municipal bankruptcy would not help Puerto Rico, even if the island were allowed to use it, because it would limit restructuring to the debt of Puerto Rico's public corporations. That would do nothing to help the government balance its own budget, he said.

Mr. Mayer testified about the effect of Chapter 9 bankruptcy in Detroit, saying that it had given that city's emergency manager a way to reduce debt, but not a way to bring about an economic recovery or streamline its government operations.

“The city exited Chapter 9 with the same 28 government agencies it had when it entered bankruptcy,” said Mr. Mayer, a partner with the firm of Kramer Levin Naftalis & Frankel. “Note that Puerto Rico has at least 120 government agencies, and 78 municipalities for an island with 3.5 million people.”

Reducing debt even worked against Detroit in some ways, Mr. Mayer said. Investors took significant losses and have not been eager to invest there ever since.

“Even now, over a year after Detroit emerged from bankruptcy, Detroit has no access to the low-cost ordinary municipal market,” he said. When Detroit must borrow, it does so with the help of the State of Michigan. The unsecured notes that it issued as part of its bankruptcy settlement “trade at around 23 cents on the dollar,” Mr. Mayer said.

THE NEW YORK TIMES

By MARY WILLIAMS WALSH

FEB. 2, 2016

Chicago Schools Slash High-Yielding 'Junk' Bond Deal.

CHICAGO — Chicago’s troubled public school system on Wednesday had to slash the size of one of the biggest “junk” bond offerings the municipal market has seen in years and agree to pay interest costs rivaling Puerto Rico’s in order to lure investors into the deal.

The Chicago Board of Education managed to sell only $725 million of an originally planned $795.5 million of tax-exempt bonds, and yields on the deal topped out at 8.5 percent, a massive premium relative to higher-rated debt sold in the U.S. municipal bond market and a clear indication of investors’ view of the depths of the district’s fiscal woes.

Wednesday’s sale came a week after the school system had to pull the deal in its first attempt at an offering amid worry by investors that the district could end up in bankruptcy.

The nation’s third-largest public school system has become dependent on borrowing to bolster its budget, which is sinking under escalating pension payments, despite credit ratings that have dropped into the “junk” level.

The 8.5 percent yield for bonds due in 2044 with a 7 percent coupon was slightly below the 8.727 yield for 21-year bonds in the municipal market’s last big junk bond sale – a $3.5 billion Puerto Rico issue in March 2014.

But the school district’s so-called credit spread over the market’s benchmark triple-A scale was wider at 580 basis points versus 514 basis points for Puerto Rico in 2014, indicating investors are demanding a stiffer penalty from the Chicago Public Schools (CPS).

“It’s a Puerto-Rico grade yield and clearly signals that the district is on an unsustainable path,” said Matt Fabian, a partner at Municipal Market Analytics.

In contrast, a top-rated issuer’s debt would yield only around 2.70 percent on Wednesday, according to Municipal Market Data’s benchmark scale.

CPS officials said bond proceeds will reimburse the district's operating fund for out-of-pocket capital costs and free up $206 million by pushing out debt service payments. Portions of the deal to restructure variable-rate debt to fixed rate and finance-related interest rate swap termination fees were postponed.

"Along with the tough cuts announced yesterday and earlier this year, the sale of these bonds will produce sufficient proceeds to mitigate our cash flow challenges through the end of the fiscal year," said CPS Senior Vice President of Finance Ron DeNard in a statement.

Late on Tuesday, the district tried to assure prospective investors that revenue pledged to pay off the debt could continue to flow to them should the school district end up in bankruptcy court in the unlikely event the Democratic-controlled Illinois legislature would pass a Republican-sponsored bill permitting the move.

Republican Governor Bruce Rauner on Wednesday condemned the district's second attempt at borrowing, but denied trying to sabotage the system's bond issue by publicly advocating bankruptcy for CPS.

"The numbers don't lie," he told reporters. "CPS has been a financial disaster for years. The balance sheet is stunningly bad. Now they're looking at borrowing more money to cover operations."

REUTERS

FEB. 3, 2016, 6:30 P.M. E.S.T.

(Editing by Grant McCool and Matthew Lewis)

U.S. House Approves Bill to Classify Muni Securities as High Quality Liquid Assets.

On February 1, the House voted to approve HR 2209, bipartisan legislation that would require federal regulators to classify all investment-grade, liquid, and readily marketable municipal securities as high quality liquid assets (HQLA). This important legislation is necessary to amend the liquidity coverage ratio rule approved by federal regulators last fall, which classifies foreign sovereign debt securities as HQLA while excluding investment-grade municipal securities in any of the acceptable investment categories for banks to meet new liquidity standards.

Not classifying municipal securities as HQLA would increase borrowing costs for state and local governments to finance public infrastructure projects, as banks would likely demand higher interest rates on yields on the purchase of municipal bonds during times of national economic stress, or even forgo the purchase of municipal securities. The resulting cost impacts for state and local governments could be significant, with bank holdings of municipal securities and loans having increased by 86% since 2009.

GFOA has been leading advocacy efforts to support this legislation and sincerely thanks Representatives Luke Messer (R-IN) and Carolyn Maloney (D-NY) for their leadership in advancing this important bill, as well as all of GFOA members who sent letters to their federal elected leaders urging support for this bill. Our attention now turns to the Senate, where we are working with a group of bipartisan Senators to introduce a Senate companion bill to HR 2209. Stay tuned.

GFOA

Tuesday, February 2, 2016

- IRS Webinar: What's New for 2016?
- GFOA Executive Board Approves New Best Practices and Advisories.
- California AG's Opinion Targets School Bond Practices.
- MSRB to Seek Public Comments On Prevailing Market Price, Bank Loans.
- Moody's RFC: Green Bonds Assessment – Proposed Approach and Methodology.
- Derivatives Mean U.S. Cities Get No Free Pass From Crisis Legacy.
- NABL: GASB Seeks Input on Revenue from Exchange Transactions.
- And finally, while it's all well and good that the court in *City of El Paso v. Collins* held the city accountable for a dangerous drain in one of its public pools, we were horrified to note that the court glossed right over the fact that fellow swimmers did not quickly spot a trapped child due to the fact that the water was "extremely cloudy." That's not the threshold public health and safety concern? Oh wait, isn't there some legal concept holding that it's your own damn fault if you elect to jump into a public pool teeming with children? What was that? Assumption of the Pi**?

INVERSE CONDEMNATION - CALIFORNIA

Pacific Shores Property Owners Association v. Department of Fish and Wildlife

Court of Appeal, Third District, California - January 20, 2016 - Cal.Rptr.3d - 2016 WL 234482 - 16 Cal. Daily Op. Serv. 830

Owners of undeveloped subdivision along lagoon's shore, whose properties suffered flooding damage when lagoon rose above certain level, filed inverse condemnation action against Department of Fish and Wildlife and Coastal Commission, alleging owners suffered a physical taking from Department's actions related to breaching lagoon's sandbar, and a regulatory taking by Commission retaining land use jurisdiction over subdivision instead of transferring it to county.

The Superior Court found Department and Commission liable for physical taking and awarded damages, but concluded owners' claim for regulatory taking was barred, awarded owners attorney fees, and denied owners any precondemnation damages. All parties appealed.

The Court of Appeal held that:

- Commission's approval of permit to breach sandbar triggered period in which owners were permitted to file writ petition challenging permit;
- Statute governing period in which aggrieved person was permitted to file writ petition applied to Commission's approval of permit and owners' inverse condemnation action;
- Inverse condemnation action against Department accrued when Department adopted management plan for lagoon;
- Department was liable for physical taking under theory of strict liability;
- Department actions related to breaching sandbar were unreasonable;

- Administrative jurisdiction exception to doctrine of exhaustion of remedies did not apply to regulatory taking claim asserted against Commission;
- Evidence supported determination that owners were not entitled to precondemnation damages; and
- Trial court properly limited attorney fees to amount owners agreed to pay under contingency agreement.

Costal Commission's approval of permit to breach lagoon's sandbar at eight to ten feet mean sea level (msl) triggered 60-day period in which owners of undeveloped subdivision along lagoon's shore were permitted to file petition for writ of administrative mandate challenging permit or any other decision or action of Commission, as required for owner's to file subsequent inverse condemnation action against Commission, stemming from flood damage to owners' properties that occurred when lagoon rose above eight feet msl.

Statute governing 60-day period in which aggrieved person was permitted to file petition for writ of administrative mandate challenging decision of Costal Commission and requirement that inverse condemnation claim be filed with petition applied to Commission's approval of permit to breach lagoon's sandbar at eight to ten feet mean sea level (msl) and inverse condemnation action filed by owners of undeveloped subdivision along lagoon's shore, stemming from flood damage to owners' properties that occurred when lagoon rose above eight feet msl; despite contention that 60-day statute and requirement to file writ petition first did not apply because Commission's actions constituted a physical taking, Commission did not physically invade or damage owners' properties, but rather Commission's actions were limited to denying and issuing permits.

Cause of action against Department of Fish and Wildlife for inverse condemnation filed by owners of undeveloped subdivision along lagoon's shore accrued under stabilization doctrine, and three-year statute of limitations for claims for damage to real property began to run, when Department adopted management plan for lagoon that called for breaching lagoon's sandbar at eight to ten feet mean sea level (msl) and subsequent resulting flooding of owners' lands, which suffered flooding damage when lagoon rose above eight feet msl, became certain. Although type of damage that occurred from breaching sandbar at eight feet msl was known prior to adoption of management plan, and although emergency and interim permits had been issued to breach sandbar at different levels, taking did not become permanent until management plan was approved.

Department of Fish and Wildlife was liable for physical taking under theory of strict liability in inverse condemnation action filed by owners of undeveloped subdivision along lagoon's shore, whose property flooded when lagoon rose above eight feet mean sea level (msl), based on Department's approval of management plan for lagoon that called for breaching lagoon's sandbar at eight to ten feet msl. Department's decision to breach sandbar at eight to ten feet msl was a decision to flood owners' properties intentionally whenever needed to protect environmental resources and did not constitute flood control project, and by its actions, Department chose to lessen flood protection that had been provided to owners for decades.

Department of Fish and Wildlife acted unreasonably in determining to breach, and actually breaching, lagoon's sandbar at eight to ten feet mean sea level (msl), and thus rule of reasonableness, as exception to strict liability for a physical taking, did not apply to Department in inverse condemnation suit filed by owners of undeveloped subdivision along lagoon's shore, stemming from flooding damage to their properties that occurred when lagoon rose above eight feet msl. Project was not designed to protect owners' properties from flooding, there was a feasible alternative that reduced risk of flooding, and owners bore disproportionate cost of Department's project.

Administrative jurisdiction exception to doctrine of exhaustion of remedies did not apply to regulatory taking claim asserted against Coastal Commission in inverse condemnation action filed by owners of undeveloped subdivision along lagoon's shore, alleging that Commission committed a regulatory taking by retaining land use jurisdiction over subdivision instead of transferring it to county, and thus owners were not excused from not filing a permit with Commission as a prerequisite for bringing claim for regulatory taking and then challenging Commission's decision on that application in administrative mandate. Commission had not acted, and was not acting, beyond its jurisdiction.

Substantial evidence supported trial court's determination that owners of undeveloped subdivision along lagoon's shore were not entitled to precondemnation damages in inverse condemnation suit based on Coastal Commission's actions in deferring certification of county's local coastal program for subdivision, combined with increased flooding that owners experienced when lagoon rose above eight feet mean sea level (msl). Evidence showed that delay arose from county's decision not to submit revised local coastal program for subdivision, that without that application, Commission was obligated to retain land use authority over subdivision, and that Commission had no duty to prepare a program for subdivision or to compel county to do so.

Trial court properly limited attorney fees awarded to owners of undeveloped subdivision along lagoon's shore, whose properties flooded when lagoon rose above eight feet mean sea level (msl), to amount owners agreed to pay under contingency agreement with their counsel in owners' inverse condemnation action against Department of Fish and Wildlife and Coastal Commission, stemming from adoption and approval of management plan that called for breaching lagoon's sandbar at eight to ten feet msl. Statute governing award of attorney fees in inverse condemnation actions limited fees to those actually incurred, and amount owners agreed to pay in contingency agreement constituted amount they were obligated to pay.

PUBLIC UTILITIES - CALIFORNIA

Monterey Peninsula Water Management Dist. v. Public Utilities Com'n

Supreme Court of California - January 25, 2016 - P.3d - 2016 WL 299103

Public Utilities Commission (PUC) approved privately owned water utility's request for a rate increase, but directed utility either to take over environmental mitigation work from the water management district or to meet and confer with the district to discuss the possibility of doing the mitigation work as a joint project. The Supreme Court granted district's petition for a writ of review.

The Supreme Court of California held that PUC lacked authority to review amount of environmental mitigation fee that district imposed on utility's customers.

Public Utilities Commission (PUC) lacked authority to review the amount of an environmental mitigation fee that a water management district imposed on a privately owned water utility's customers, even though the utility was under a legal obligation to take over the mitigation work from the district if the district ever stopped performing the mitigation work, absent evidence that the district had been acting as the utility's agent in performing the mitigation work.

MUNICIPAL ORDINANCE - COLORADO

[Ryals v. City of Englewood]

Supreme Court of Colorado - January 25, 2016 - P.3d - 2016 WL 297371 - 2016 CO 8

Registered sex offender brought action against municipality challenging constitutionality of residency ordinance that effectively barred him from living in 99% of the municipality's residences. The United States District Court for the District of Colorado entered judgment in favor of offender. Municipality appealed. The United States Court of Appeals certified question whether city ordinance was preempted by Colorado law to the Colorado Supreme Court.

The Colorado Supreme Court held that:

- City ordinance would have an extraterritorial impact on residents outside the municipality, as a factor in determining whether state law preempted city ordinance;
- Fact that city ordinance was a zoning ordinance did not require a finding that sex offender residency was a local matter, for purposes of determining whether state law preempted city ordinance;
- State constitution did not clearly favor either the state or the city as a factor in determining whether state law preempted city ordinance;
- Degree of cooperation needed between state and city with regard to the placement of sex offenders was not so stringent as to weigh in favor of state, as factor in determining whether state law preempted city ordinance;
- Legislature's declaration that it was necessary for public safety to comprehensively evaluate, identify, treat, manage, and monitor sex offenders did indicate that management of sex offenders was a matter of statewide concern, as a factor in determining whether state law preempted city ordinance;
- Sex offender residency was an issue of mixed state and local concern, as a factor in determining whether state law preempted city ordinance; but
- City ordinance did not conflict with state law, and therefore, was not preempted by state law.

IMMUNITY - ILLINOIS

[Coleman v. East Joliet Fire Protection Dist.]

Supreme Court of Illinois - January 22, 2016 - N.E.3d - 2016 IL 117952 - 2016 WL 280515

Administrator of decedent's estate filed claims for wrongful death and survival, alleging willful and wanton conduct by fire protection districts, ambulance crew, and county, among others, in responding to emergency call. The Circuit Court, Will County, granted summary judgment to defendants. Administrator appealed. The Court of Appeals affirmed. Administrator petitioned for leave to appeal, which was allowed.

The Supreme Court of Illinois held that common-law public duty rule, which had provided that local governmental entities owed no duty to individual members of the general public to provide adequate government services, and its special duty exception, are abolished, and therefore, in cases where the legislature has not provided immunity for certain governmental activities, traditional tort principles apply; abrogating *Zimmerman v. Village of Skokie*, 183 Ill.2d 30, 231 Ill.Dec. 914, 697 N.E.2d 699, *Schaffrath v. Village of Buffalo Grove*, 160 Ill.App.3d 999, 112 Ill.Dec. 417, 513 N.E.2d 1026, *Leone v. City of Chicago*, 156 Ill.2d 33, 188 Ill.Dec. 755, 619 N.E.2d 119, *Burdinie v. Village of Glendale Heights*, 139 Ill.2d 501, 152 Ill.Dec. 121, 565 N.E.2d 654, *Huey v. Town of Cicero*, 41 Ill.2d 361, 363, 243 N.E.2d 214.

ANNEXATION - INDIANA

Town of Zionsville v. Town of Whitestown

Supreme Court of Indiana - January 22, 2016 - N.E.3d - 2016 WL 280899

The Town of Whitestown brought a declaratory judgment action against the Town of Zionsville, seeking a declaration that the prior reorganization of Zionsville and the Township of Perry – pursuant to the Indiana Government Modernization Act (GMA) – was contrary to law and that Whitestown could initiate certain annexations. Defendant town filed counterclaim for declaratory judgment. The Superior Court granted summary judgment to Whitestown. Transfer was granted.

The Supreme Court of Indiana reversed, holding that:

- Upon reorganization, Zionsville had power to further reorganize;
- Perry and Zionsville met adjacency requirement for reorganization;
- Separate voting tallies were not required for Perry and Zionsville to reorganize; and
- Perry and Zionsville were protected from invasive annexations.

INITIATIVE / REFERENDUM - KANSAS

State ex rel. Schmidt v. City of Wichita

Supreme Court of Kansas - January 22, 2016 - P.3d - 2016 WL 275298

State brought action in quo warranto, seeking writ declaring null and void a city ordinance that reduced severity level of first-offense convictions for possession of 32 grams or less of marijuana and/or related drug paraphernalia from misdemeanor to "infraction" when offender was 21 years of age or older.

The Supreme Court of Kansas held that:

- The Court would maintain jurisdiction;
- Court would decline to determine whether ordinance was unconstitutional under Home Rule Amendment; and
- Proponents of ordinance failed to comply, absolutely or substantially, with requirement that proposed ordinance be filed with city clerk.

Supreme Court would maintain jurisdiction in quo warranto action, in which the State challenged city ordinance that reduced severity level of first-offense convictions for possession of 32 grams or less of marijuana and/or related drug paraphernalia from misdemeanor to "infraction" when offender was 21 years of age or older. Possible conflict between criminal statutes of the state and ordinance and possible significance of failure to comply with language of statute authorizing people to submit proposed law directly to city's governing body were questions of sufficient public concern to warrant potential relief in quo warranto.

Supreme Court would decline to determine whether city ordinance was unconstitutional under Home Rule Amendment, where procedural issue as to proper filing of the ordinance prior to its enactment was determinative of the case, so that any consideration of substantive constitutional issue could have resulted in mere advisory opinion on constitutionality.

Proponents of proposed ordinance regarding punishment for first-offense convictions related to marijuana, by filing petition with city clerk, but only posting ordinance on its website and averring merely that ordinance was widely publicized in the media and that at least two members of city council had copies of the ordinance, failed to comply, absolutely or substantially, with requirement that ordinance and petition be filed together with city clerk. Submission of the petition alone left doubt as to validity of proponent's support, and failure to file ordinance impaired city council's ability to become fully aware of what could have become unalterable law and deprived electorate of opportunity for full awareness before voting.

ANNEXATION - NEW YORK

City of Johnstown v. Town of Johnstown

Supreme Court, Appellate Division, Third Department, New York - January 14, 2016 - N.Y.S.3d - 2016 WL 155582 - 2016 N.Y. Slip Op. 00220

City filed petition to determine whether proposed annexation of property in town was in over-all public interest. Property owner intervened. Town moved to dismiss.

The Supreme Court, Appellate Division held that owner's environmental assessment form (EAF) did not satisfy his obligation to provide environmental impact statement in support of annexation.

Property owner's submission of environmental assessment form (EAF) did not satisfy his obligation under State Environmental Quality Review Act (SEQRA) to provide environmental impact statement in support of city's proposed annexation of his property in neighboring town after town determined that action would include potential for at least one significant adverse environmental impact.

LIABILITY - TEXAS

City of El Paso v. Collins

Court of Appeals of Texas, El Paso - January 20, 2016 - S.W.3d - 2016 WL 240882

Parents brought premises liability and negligence action against city after child suffered injuries at a swimming pool owned and operated by city. City filed plea to the jurisdiction. The District Court denied plea. City appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. On remand, parents filed amended petition, and city filed plea to the jurisdiction. The trial court denied plea. City appealed.

The Court of Appeals held that:

- Parents sufficiently alleged that city had subjective knowledge that dangerous conditions existed at pool on day of accident, as would be required under the Recreational Use Statute to defeat city's plea to the jurisdiction as to parents' premises liability claim; and
- Alleged condition of city's swimming pool, which purportedly had suction occurring at drain site that caused child to become entrapped or entangled, constituted a hidden defect that was capable of supporting a determination that city had duty to warn or rectify, and therefore parents' pleading of such defect precluded grant of city's plea to premises liability claim; but
- Parents' purported negligent use claim against city under the Tort Claims Act was not a separate,

valid claim from parents' premises liability claim.

Public Pension Reform Advocacy Group Launches.

PHOENIX – Well-known figures in municipal finance and local government are leading a new advocacy group created to help local governments face what it describes as the "uncertain future" of public pension plans.

The Retirement Security Initiative launched publicly Tuesday.

Leaders include municipal bankruptcy expert Jim Spiotto, former New York Lt. Gov. Richard Ravitch, Lois Scott, Chicago's former chief financial officer, and former San Jose, Calif. Mayor Chuck Reed.

Spiotto, a managing director of Chapman Strategic Advisors, said that the RSI is there to help provide government officials with help and information about what reform steps other governments have taken, and to generally "help them help themselves."

Backers describe the initiative as a national, bipartisan advocacy organization.

"The initiative is really to be of service to state and local governments," Spiotto said.

The RSI said in its announcement that pension liabilities are in excess of $1 trillion, putting state and local governments throughout the U.S. under tremendous strain to both provide public services and meet their pension obligations.

"As pension costs continue to skyrocket, policymakers often pull funds from important public services like education, public safety and transportation to pay pension debt," the announcement said. "In the end, it's taxpayers and communities that pay the price."

Former Utah state senator Dan Liljenquist said that it is essential to act quickly to prevent an even bigger problem down the road.

"We need to fix the pension crisis now to avoid further tax increases and public service disruptions," said Liljenquist, who advocated for pension reforms as a state lawmaker. "Many pensions, as they are currently structured, are like the game Pac Man, chewing up funds that should be going toward essential community services."

The RSI said it advocates for state and local governments to act to ensure that their retirement plans are "sustainable, fiscally sound and responsibly managed so that all retirees and employees get paid what they have earned." The organization also advocates for decision making and management of retirement plans to be "open, transparent and non-political." It says it advocates at the federal, state, county and municipal levels.

Reed, who fought for pension reform in San Jose, was one of the primary promoters of California ballot initiative efforts to give voters more power over government pension benefits and to limit government spending on retirement costs. Initiative backers withdrew from the field this year, saying they would come back in the next election cycle because financial backers believe the 2018 political climate might be more receptive.

All stakeholders need to have some input in pension solutions, Reed said. "Solutions to the funding and cost crises need to be developed with input from employees, retirees, labor, management, taxpayers and fiscal experts," said Reed. "RSI has the experience and resources to bring all of these parties together."

Ravitch, Reed, Scott, Spiotto, and Liljenquist are the members of the RSI board of directors.

Peter Furman, the initiative's executive director, formerly worked as Reed's chief of staff in San Jose.

THE BOND BUYER

BY KYLE GLAZIER

JAN 26, 2016 2:48pm ET

California AG's Opinion Targets School Bond Practices.

PHOENIX – School and community college districts violate California law if they hire outside firms to campaign for bond ballot measures or purposely incentivize municipal finance professionals to advocate for passage of a bond measure, the state's attorney general said in a formal legal opinion.

Attorney General Kamala Harris released the opinion Tuesday in response to a request from Treasurer John Chiang.

California law prohibits using public funds to influence the outcome of an election, including campaigning for the passage of a bond measure. Voter-approved bonds backed by property taxes are the primary method of new school construction in the state, and Chiang sought a clarification on whether some common industry practices might be violating the law.

"A practice has developed within the municipal financing industry whereby investment bankers, financial consultants, and bond attorneys offer to contract with a school district to provide the pre-election services that the district seeks," the opinion said. "Under such an arrangement, the firm agrees to provide the pre-election services at no, or reduced, charge to the district in exchange for the district's promise to select the firm as its contractor to provide postelection services, if the bonds are approved by the voters. Naturally, it is within the firm's financial interest to be awarded the contract to provide post-election bond services."

Such California attorney general's opinions are advisory, and not legally binding on courts, but are generally considered authoritative by the officers and agencies who have requested them and given respect by judges.

Robert Doty, a lawyer and former financial advisor who now runs his own litigation consulting firm AGFS in Annapolis, Md., said the opinion is a significant development.

"This is a very important analysis for finance," Doty said. "It is not a general attempt to say that contributions are good or bad, except when they are tied to getting business."

A previous Bond Buyer investigation found a nearly perfect correlation between broker-dealer contributions to California school bond efforts in 2010 and their underwriting of subsequent bond sales, and financial advisors have similarly been accused of using "pay-to-play" tactics.

Former California Treasurer Bill Lockyer questioned the legality of the practices, and in 2013 twelve dealer firms asked the Municipal Securities Rulemaking Board to adopt further restrictions on bond ballot contributions by broker-dealers, which they are required to disclose to the board.

Harris' opinion points to a 1976 California Supreme Court case, Stanson v. Mott, in which the court ruled that public money could be used only to provide "a fair presentation of relevant information" related to a bond question. Chiang's request covered several questions, which the opinion dealt with in turn.

First, Harris concluded, school districts violate the law if they hire a firm for services that could be construed as campaigning for the bond measure. Second, they also violate the law if they receive services from a firm in return for bond business when the campaign is successful if the district "enters into the agreement for the sole or partial purpose of inducing the firm to contribute to the bond-election campaign" or when "the firm's fee for its post-election bond-sale services is inflated to account for its campaign contributions and the district fails to take reasonable steps to ensure the fee was not inflated."

The opinion notes that districts may legally select an underwriter beforehand and essentially guarantee them the business if the campaign is successful, but the motivation of the district would determine the legality.

"In the absence of evidence to the contrary, of course, it is to be assumed that a district's actions are proper," the opinion said. "We therefore would not conclude that the existence of a contingent-compensation contract, standing alone, violates the law."

The attorney general also concluded that a district runs afoul of the law if it reimburses a municipal finance firm for providing the pre-election services as an itemized component of the fee that the district pays to the firm in connection with the bond sale, as well as if it uses bond proceeds to reimburse the firm.

Finally, Harris' office found, an entity that provides campaign services to a bond measure campaign in exchange for an exclusive agreement with the district to sell the bonds incurs an obligation to report the cost of such services as a contribution to the bond measure campaign in accordance with state and local campaign disclosure laws.

Lori Raineri, president of independent financial advisory firm Government Financial Strategies in Sacramento, said she was pleased by the opinion and that the attorney general deserved a lot of credit for taking an "important step." Raineri said there are some subtleties and loopholes that will likely to continue being exploited despite the opinion, but that many of the most blatant conflicts of interest have stopped due to increased focus on this issue in recent years. She said she will show the opinion to prospective clients so they are fully informed about the law.

THE BOND BUYER

BY KYLE GLAZIER

JAN 28, 2016 4:09pm ET

TAX - ILLINOIS

[WKS Crystal Lake, LLC v. LeFew]()

Appellate Court of Illinois, Second District - December 23, 2015 - N.E.3d - 2015 IL App (2d)

150544 - 2015 WL 9460075

Taxpayers brought action challenging propriety of tax levy ordinance enacted by city. The Circuit Court granted summary judgment in favor of taxpayers. City appealed.

The Appellate Court reversed, holding that:

- Tax levy ordinance was not ordinance directed at expenditure of money requiring stricter voting requirements;
- City's adoption of Robert's Rules of Order was not inconsistent with Municipal Code; and
- Ordinance's reference to Municipal Code did not render Code's voting requirements applicable to passage of ordinance.

City's tax levy ordinance was not directed to the expenditure of money, and therefore provision of Municipal Code governing adoption of ordinances did not require the affirmative vote of all elected members city council in order to pass ordinance, rather ordinance was directed at raising of money through a tax levy.

Home rule city's adoption of Robert's Rules of Order was not inconsistent with Municipal Code, and therefore Municipal Code provision governing city council meeting voting requirements did not apply to city council's adoption of tax levy ordinance. City's adoption of Robert's Rules of Order to provide the voting procedures generally applicable in city council meetings operated as a statute "governing the passage of ordinances" within the city, and Municipal Code explicitly yielded to such home rule ordinances.

Tax levy ordinance's reference to "Illinois Municipal Code" did not render Code's city council voting requirements, which required more affirmative votes than did city code's requirements, applicable to passage of ordinance, where applicable section of Municipal Code expressly permitted adoption of other voting procedures.

IRS Webinar: What's New for 2016?

From the Director of Tax Exempt Bonds: What's new for 2016?

Date: February 25, 2016 – 12 p.m. EST

IRS Presenters:

Rebecca Harrigal, Director, IRS office of Tax Exempt Bonds
Karen Skinder, Acting Program Manager, IRS office of Tax Exempt Bonds, Compliance and Program Management

Learn about:

- TE/GE Program Letter – including Knowledge Management discussion
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Register for the Webinar.

January's New Money Deals Fail to Offset Drop in Refunding.

Municipal bond volume fell in January as a drop in refunding outweighed a pickup in new money deals, a trend that analysts predicted would continue through the rest of the year.

Monthly Volume

Total volume for the month dropped 18% to $24.11 billion in 741 transactions from $29.45 billion in 834 transactions in January 2015, according to data from Thomson Reuters. Refundings plummeted to $8.82 billion in 309 deals from $16.79 billion in 438 deals a year earlier.

"The month played out pretty close to what we anticipated, as we originally thought we would end up with $26 billion for the month," said Chris Mauro, director of municipal bond research at RBC Capital Markets. "Although volume was down year over year, we finished the month above long-term five-year and 10-year averages for the month."

Mauro said it is almost unfair to compare year over year refunding volume, given the size of last year's wave of deals, as issuers sought to take advantage of record low interest rates. The Federal Open Markets Committee lifted the Federal Reserve's benchmark rate target from near zero to 0.25%-0.50% in December, then signaled at its January meeting that it may slow the pace of increases later this year.

"This past month was continuation from what we saw in the fourth quarter of last year, and that's a firming of new money and a decline in refundings," Mauro said. New money issuance gained 24.4% to $10.62 billion in 382 issues from $8.54 billion in 338 issues.

Mauro said that the first half of this year should be generally favorable for refunding, but that the activity will drop off in the second half.

"The key is how much the move down in rates will boost refunding activity in February," he said.

Dan Heckman, senior fixed-income strategist at U.S. Bank Wealth Management, said though January's supply was a little weaker than he anticipated, there are good signs to take away.

"We are seeing signs that [supply] will pick back up, as there is a strong undertone to the muni market and we think that will continue throughout the first quarter and first half," said Heckman. "The problem is that we aren't seeing enough bonds in comparison to the demand."

Heckman said volume later in the year may be affected by election politics.

Combined new-money and refunding issuance improved by 13.5% to $4.67 billion.

Issuance of revenue bonds fell 32.3% to $12.82 billion, while general obligation bond sales rose 7.4% to $11.29 billion.

Negotiated deals were down 23.3% to $17.34 billion and competitive sales increased by 17.3% to $6.59 billion.

Taxable bond volume was 24.8% lower to $1.26 billion from $1.66 billion, while tax-exempt issuance declined by 17.8% to $22.79 billion. Minimum tax bonds increased 49.2% to $64 million.

Bond insurance started off the year on the right foot, as the volume of deals wrapped with insurance improved 52.5% to $1.66 billion in 113 deals from $1.09 billion in 111 deals.

Only two sectors saw year over year increases, as education jumped up 17% to $9.46 billion in 382 issues from $8.09 billion in 405 issues and electric power more than doubled to $1.05 billion from $398 million.

With one month done and 11 to go, Texas finds itself with the most issuance among states. Rounding out the top five are California, Illinois, Florida and Michigan.

The Lone Star State has issued $3.75 billion so far in 2016 and also led the way after the first month of last year. The Golden State is second with $2.85 billion, while the Prairie State is third with $1.52 billion. The Sunshine State captured the fourth spot with $1.41 billion and the Wolverine State is very close behind with $1.35 billion.

The Federal Open Market Committee did what most economists had expected by holding rates steady in January, and volume may depend on when and how much the committee decides to raise rates in future meetings.

"They have to leave the door open to rate increases. I feel as though they effectively addressed the capital markets volatility and the open door gives them flexibility, which I believe is key," said Heckman.

Heckman said strong economic data in wage gains and employment reports as the year goes on would leave the FOMC will with little choice but to raise rates.

"It's been the same band playing the same song and that is a lack of supply and lots of cash inflows. A lot of managers and individuals have been waiting on Fed actions hoping we would get higher rates, which leaves a lot of cash on the sidelines," said Heckman.

Investors have decided to re-allocate money to fixed income portfolios, he said, but there are too few bonds to meet the demand.

"A lot of people are under-exposed to the muni bond market, as right now spreads are more attractive in other markets."

THE BOND BUYER

BY AARON WEITZMAN

JAN 29, 2016 2:53pm ET

TAX - VERMONT

Adams v. Town of Sudbury

Supreme Court of Vermont - January 22, 2016 - A.3d - 2016 WL 275303 - 2016 VT 11

Taxpayer, who owned three units in a condominium community located in two towns, sought judicial review of town's property tax assessment of portion of common lands within its boundaries. Following a bench trial, the Superior Court upheld the assessment. Taxpayer appealed.

The Supreme Court of Vermont held that:

- Statute providing how to tax common lands whose condominium units lie entirely in another town was constitutionally valid;
- Appraisal method used by town to value portion of taxpayer's land located within its boundary was accurate; and
- Town's apportionment of property tax burden among condominium unit owners in relation to their percentage interest in condominium community was reasonable.

Statute that expressly created two different property tax classifications, one for common elements of condominium community located entirely in one town and another for common elements located in two towns, created a tax regime that was not only reasonable but also resulted in fair and uniform tax treatment if implemented properly, and did not violate equal protection clause of federal constitution, nor proportional contribution clause of state constitution. Pursuant to the statute, towns were prevented from taxing lands located outside their boundaries, but were free to raise funds in accordance with the amount and value of land located within their boundaries.

Appraisal method used by town to value portion of taxpayer's land located within its boundary conformed to proportional contribution clause's fair market value requirement. Method began with general land schedule provided by state based on actual sales in the town over previous three years, it then made adjustments based on factors including terrain, accessibility, septic systems, and quality of structures, and its assessed values were very comparable to actual sales.

Town's apportionment of property tax burden among condominium unit owners in relation to their percentage interest in condominium community comported with statute prohibiting taxing common areas as a separate parcel only if those common areas lie in the same town as the community's units. None of the condominium community's units were within the town, so town could tax portion of common lands lying within its boundaries.

Moody's RFC: Green Bonds Assessment - Proposed Approach and Methodology.

We are seeking feedback in response to our proposed Green Bond Assessment (GBA) methodology. Our GBA would provide an evaluation of the bond issuer's management, administration, allocation of proceeds to and reporting on environmental projects financed with the proceeds derived from green bond offerings.

Our assessment process will score each bond issue on five key factors (along with their respective sub-factors), weighted to reflect their relative importance, to arrive at a composite grade. The composite grade, in turn, will inform an overall assessment that runs from 5 (Excellent) to 1 (Poor). After a GBA is initially assigned, it may be refreshed periodically, based on information provided in the issuer's subsequently issued annual reports.

After the transaction comes to market, we may periodically refresh the GBA.

We invite market participants to comment on the Request for Comment by February 12, 2016 by submitting their comments on the Request for Comment page on www.moody's.com.

Download the RFC.

Financial Crisis Rule May be Relaxed.

Congress appears to be on the cusp of ordering regulators to relax some of the rules that were put in place after the financial crisis.

The House next week will vote on a bill from Reps. Luke Messer (R-Ind.) and Carolyn Maloney (D-N.Y.) that would change the rules that stipulate what constitutes a safe investment for banks.

If it passes, the legislation would be a big win for state and local governments, as well as the banking industry.

"Making common-sense tweaks to help states and municipalities access the credit market is clearly something that appeals to members on both sides of the aisle," said James Ballentine of the American Bankers Association.

"We're pleased that Republicans and Democrats have recognized that there are problems … that are fixable and we support their efforts to address them."

The bill is already attracting attention in the Senate from key players.

Sen. Charles Schumer (D-N.Y.), who is expected to ascend to Democratic leader next year, has said through a spokesman that either he or a fellow Democrat will be offering companion legislation and will "get it done in the Senate."

If the bill passes and is signed by President Obama, it would represent a rare break from the partisan warfare that has surrounded financial rules.

Ever since the Dodd-Frank financial reform law was enacted in 2010, the debate around regulating Wall Street has been characterized by fierce partisanship.

Republicans have lined up dozens of bills tweaking or scrapping regulations on the financial system, while Democrats have mostly rallied against them. The White House, when necessary, has chimed in with veto threats, arguing Dodd-Frank needs to be given time to work before it is changed.

The bill coming up for a vote in the House would tweak a set of rules that banking regulators put in place after the financial crisis.

In an effort to ensure banks can muster up enough cash to stay afloat during tough times, regulators established a "liquidity coverage ratio" in 2014, requiring banks to hold a certain amount of safe, easily sold assets that could easily be turned into cash.

The rules stemmed from the international Basel III banking accord.

The major concern for banks, as well as state and local governments looking to sell their debt, is that municipal bonds were generally not included in the high-quality debt category.

State and local government officials say that exclusion could make it harder for them to sell bonds to finance projects. That's unfair, they say, since state and local debt has long been considered among the safest investments available.

A host of government groups, including the National Governors Association and the National League of Cities, called on Speaker Paul Ryan (R-Wis.) to move on legislation changing the rule December.

They argued that regulators missed the mark in certifying debt from some foreign nations as safe, while failing to do the same for top-ranked debt back home. They added that with massive infrastructure needs coming down the pike, carving out municipal debt would make it that much harder to raise the funds needed.

The financial industry has also thrown its support behind the effort, arguing the debt would be right at home with other high security investments.

In November, the House Financial Services Committee cleared the bill by a vote of 56 to 1. And top Democrats in the Senate, who have stood in the way of regulatory rollbacks in the past, have indicated they are interested as well.

The Federal Reserve already revisited the rule in May, proposing that some municipal debt be considered high quality. However, the other two regulators behind the rule, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency, have not followed suit.

So lawmakers want to force the issue, by passing legislation that would require regulators to include highly rated municipal debt under the rule.

Not everyone is on board with the changes. The Wall Street reform group Better Markets is not specifically lobbying on the bill, but is broadly concerned about giving municipal debt the implicit seal of approval.

While municipal bonds have an extremely low default rate, Better Markets argues that if times turn tough, it might be difficult to actually sell the bonds and raise the cash as intended.

“Most of them don’t trade that often, they are by definition not liquid,” said Frank Medina, the group’s senior counsel. “People should be concerned that it’s undermining the regulation.

And municipal debt is not a guarantee, as places like Detroit and Puerto Rico have faced significant trouble paying back bondholders after budget troubles.

“If you’ve got stuff on your books that you can’t sell, and you can’t borrow against, you might as well not hold it at all,” added Medina.

The Hill

By Peter Schroeder – 01/31/16 07:00 AM EST

NABL: SEC Announces Final Round of MCDC Underwriter Enforcement Actions.

The SEC announced today the completion of enforcement actions against municipal underwriters under the MCDC initiative. The enforcement actions are against 14 underwriters with settlement amounts ranging from $20,000 to $500,000.

The SEC’s press release announcing the enforcement actions is available here.

The orders are available here.

MSRB to Seek Public Comments On Prevailing Market Price, Bank Loans.

WASHINGTON – The Municipal Securities Rulemaking Board will seek public comment on both how dealers should calculate the prevailing market price under its proposal requiring dealer disclosure of markups to retail customers and how it can get more issuers to disclose bank loans.

The MSRB will move with "all due speed" on its request for comment on calculating the prevailing market price. She said the MSRB hopes to put out a concept release with questions about how to improve private placement disclosure during the next three to four months, MSRB executive director Lynnette Kelly said during a call with reporters after the MSRB's Jan. 27 and 28 meeting here.

The board's decision to request public input on the prevailing market price come after dealers asked the MSRB for more guidance on the correct way to make the calculations. Kelly said the MSRB recognizes there are "a complex set of factors" that determine the prevailing price and added the MSRB wants to make sure it is "asking the right questions" in its request for comments.

Nat Singer, the MSRB's chair, did not participate in the call but said in an MSRB release that the "step is critical to establishing prevailing market price guidance that is appropriately tailored for the municipal market."

Dealer groups have criticized the markup proposal for not being in line with similar confirmation rule amendments proposed by the Financial Industry Regulatory Authority. FINRA's changes would require dealers to disclose the differential between the price to the customer and the dealer's reference price. The proposed rule changes also diverge in the timing of trades they would require dealers to consider, with the MSRB mandating dealers include trades occurring within two hours of the transaction and the FINRA rule spanning a full day of trading.

The dealer groups also complained the MSRB's proposal will impose substantial costs on dealers.

Kelly said before the meeting that private placements, especially bank loans, have been "a rallying cry" for the organization. The MSRB does not have jurisdiction over issuers though and has instead decided to find alternate ways to "get at the issue," she said.

So far, the board has urged issuers to voluntarily disclose bank loans and adjusted its EMMA system to make it easier for issuers to disclose the loans on their homepages.

Despite its efforts, Kelly said there have only been 138 filings in the special category created on EMMA, which "certainly does not represent any material amount."

"We are taking our call for improved voluntary disclosure to the next level," Singer said in the release. "We want input from the public on the ways we might address this very important issue."

The MSRB also tackled a number of other issues in its meeting, including deciding to file a rule change with the Securities and Exchange Commission to support a two-day settlement cycle, move forward with an academic product that would use anonymous dealer identifiers, and pursue enhancements to EMMA.

The move to a two-instead of three-day settlement cycle has industry-wide support and the MSRB has made it clear that its changes are predicated on the SEC amending its own rules to establish a T+2 cycle for equity and corporate markets.

In addition to the T+2 discussions, the board decided to file with the SEC its July 16 proposal that would give academics muni trade and pricing data that use anonymous dealer identifiers. The proposal would prohibit academics from reverse engineering and redistributing the data and would also require them to disclose their specific intentions for requesting the information. The data would only be available to academics with institutions of higher education and would have to be more than two years old to be eligible for release.

Researchers who commented on the proposal said the identifiers would improve liquidity and market transparency but dealer groups said they were afraid their identities, trading strategies, and inventories would be discovered through reverse engineering.

"It's often been a challenge to do research in the muni market given the size of the market, the complexity, the number of individual bonds but we're hopeful that with this additional data product specifically for academics will make research in the market easier," Kelly said.

As part of the MSRB's continuing goal of improving EMMA for market participants, it approved the addition of an economic calendar so that issuers, investors and others can easily access federal economic data releases in the same place where they can find muni information. Kelly added the board is still discussing adding yield curves and a new issue calendar to EMMA.

The board also discussed its decision to issue a request for comment on adding exceptions to its minimum denomination rule and whether it has jurisdiction over newly created savings programs for individuals with disabilities.

The addition of minimum denomination exceptions is part of an ongoing effort to revisit rules and update or change them to keep them consistent with current market trends. The proposed changes to MSRB Rule G-15 on confirmation, clearance, settlement and other uniform practice requirements for dealers would seek to include transactions involving people who have less than a minimum denomination of bonds because of a divorce or inheritance.

The savings accounts, called ABLE accounts after the Achieving a Better Life Experience Act of 2015 that Congress passed to create them, are tax-advantaged and could resemble 529 College Savings Plans, which the MSRB have jurisdiction over. The board agreed that if the MSRB has jurisdiction over the ABLE accounts too, it would review its rules to see what new rules or changes would need to be made. It said that it expects to get a sense of its jurisdiction over the accounts in the next three to six months.

THE BOND BUYER

BY JACK CASEY

FEB 1, 2016 2:04pm ET

[GASB Seeks Participants for Field Test of the Exposure Draft, Certain Asset Retirement Obligations.]()

The Governmental Accounting Standards Board invites you to participate in a field test of the Exposure Draft, *Certain Asset Retirement Obligations*, issued in December 2015 and available for public comment until March 31, 2016. The Exposure Draft can be found here. The GASB would like to gather feedback from preparers of governmental financial statements on (1) potential implementation difficulties, (2) the costs associated with the initial and ongoing implementation of the proposed standard, and (3) whether any provisions of the proposed standard are unclear.

Field tests are a part of the GASB's due process activities and help the GASB to establish effective standards. Participating entities volunteer to go through the exercise of "implementing" the proposal as if it were in place and then provide feedback to the GASB regarding that process. A fact sheet describing the benefits of participating in a field test and what participation involves is available on the GASB website and can be found here. The feedback that you provide will be considered by the Board in development of a final Statement. Participants would be expected to complete and return the field test results to GASB by **March 31, 2016**.

If you are willing to participate or have any questions, please contact project team member Brett Riley at bjriley@gasb.org or 203-956-5216, or lead project manager, Jialan Su at jsu@gasb.org or 203-956-5339, by Friday, February 5, 2016.

Bond Advisors Behaving Badly re: Tax-exempt Bonds.

We all know that the federal tax rules and regulations applicable to tax-exempt bonds are very complex. So are the federal and state securities laws. At times this is frustrating for bond advisors. However, we should remember that the federal and state securities laws are intended to protect investors/bondholders by requiring that all material facts be disclosed fully and accurately, thus allowing the investors/bondholders to make informed decisions regarding their investments.

All bond advisors likely make small mistakes at times over the course of their careers that violate the complex securities laws, or that cause their issuer clients to inadvertently violate the federal tax rules. We oftentimes refer to these small, inadvertent mistakes as "foot faults". More aggressive bond advisors sometimes commit more serious violations that result in civil penalties. The bond advisors that commit fraud may end up under the supervision of the Federal Bureau of Prisons, rather than the Securities and Exchange Commission ("SEC").

Assuming you are like me (an advisor that tries to comply with all of the rules and regulations) you may have the same morbid curiosity I do about what actions bond advisors take that result in civil or criminal penalties and/or even jail time. (I think it basically makes me feel good about myself and what a law-abiding bond advisor I am.) Below is a list of some actions that recently resulted in charges, fines, settlements and/or incarceration for bond advisors during the last several months. This list includes only a few of the more interesting cases. Unfortunately, there are many more.

(1) Christopher Brogdon has recently been charged by the SEC with fraud. Mr. Brogdon allegedly misrepresented in offering documents what types of projects the potential bondholders would be investing in. For example, many of the bond offering documents he gave potential investors discussed funding nursing homes, assisted living facilities and retirement communities. However, instead of using all of the bond proceeds for such stated purposes, Mr. Brogdon used some of the proceeds for other business ventures he was involved in, and to pay debt service on other bond issues that he had been involved with (a sort of Ponzi Scheme). Mr. Brogdon, being a devoted spouse, even transferred some of the bond proceeds to his wife's personal bank accounts.

(2) Douglas MacFaddin and Charles LeCroy recently settled with the SEC. Both were investment bankers that the SEC had accused of improperly making payments to certain broker-dealers associated with one or more commissioners of Jefferson County, Alabama. According to the SEC, all

parties involved knew that the broker-dealers would be doing little or no work to earn the money. In exchange for these generous payments, the two former investment bankers secured very large bond and swap deals for their employer. As part of the settlement reached with the SEC, each agreed to disgorge the profits he earned personally during the process. Given the relatively minor fine for MacFaddin's and LeCroy's alleged criminal actions, I am guessing that they provided evidence to be used against bigger fish up the food chain (who were criminally prosecuted for taking bribes).

(3) Investors in a failed sucralose plant recently agreed to settle their suit against the former Morgan Keegan for $8.5 million. There are several other pending lawsuits related to the failed project. The bondholders, other investors and the Missouri Secretary of State all claim that Morgan Keegan committed securities fraud. First, the plaintiffs argued that Morgan Keegan did not do adequate due diligence. If it had, the plaintiffs allege, it would have discovered that the company that was to operate the sucralose plant was not currently operating a similar facility in China. (In other words, the subject company did not have the experience that Morgan Keegan purported it had). Second, the plaintiffs claim that Morgan Keegan made false statements. For example, the plaintiffs allege that Morgan Keegan said that the bonds were secured by company patents, when in fact, the patents had been denied. Seems like a pretty material misstatement to me.

(4) As you probably remember, the SEC charged Edward Jones with pricing-related fraud a few months ago. Instead of selling municipal bonds to its customers at the initial offering price, Edward Jones bought the bonds for its own inventory at the initial offering price. Later, Edward Jones sold the municipal bonds to its clients at prices exceeding the initial offering price, thus making an unauthorized profit. The SEC imposed a significant fine on Edward Jones and is requiring Edward Jones to make restitution to its customers (or more likely former customers).

In closing, the four instances above should serve as a reminder as to why we need rules and regulations governing municipal bonds – because some bond advisors do behave very badly.

Cynthia Mog, Finance Attorney, Squire Patton Boggs Law Firm

Cynthia Mog focuses her practice on federal income tax matters. She has experience working on corporate, partnership and real estate transactions including acquisitions, reorganizations, restructurings and tax-free exchanges. She has also been involved with IRS audits and tax-exempt financing transactions.

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Growth Expected for Tax Allocation Districts, But Redevelopment Concerns Remain, Study Says.

ATLANTA–Revenues from Atlanta's 10 tax allocation districts (TADs), districts where incremental growth in property tax revenues is used to finance economic development projects, are expected to be up significantly in the current tax year, according to a new Georgia State University report.

The report finds Atlanta's TADs are expected to post strong growth in 2016 with a projected revenue increase of nearly 30 percent, or $21.5 million overall, based on preliminary assessment data for tax year 2015. The highest projected increase of nearly 43 percent is in the Atlanta BeltLine district. Popular destination Atlantic Station is expecting an increase of about 27 percent. The new projections are the first glimmer of progress following years of lackluster growth blamed on the Great Recession.

"Despite the Great Recession's effects on redevelopment activity in Atlanta's TADs, the city's use of tax increment financing has created nearly $2.5 billion in new taxable value, a better than 10 percent increase," said Dick Layton, an expert in Georgia municipal finance and author of the report, released by the Center for State and Local Finance.

The study shows that several of Atlanta's 10 self-financing districts have been quite successful despite recent troubling times. Assessed values have more than doubled in six of the districts, including an increase from $7 million to $538 million at Atlantic Station. Still, the Great Recession created hurdles that may have a lasting impact on Atlanta's future use of these districts, Layton said.

Tax collections peaked in fiscal years (FY) 2010 and 2011, but then declined nearly across the board. Atlantic Station saw a 21 percent decline from FY 2011 to FY 2012; Atlanta BeltLine, a 30 percent drop; and Eastside, a 36 percent drop. In one example of economic fallout, developers at Atlantic Station converted newly constructed condos into lower-valued apartments when available space went unused.

The study also discusses concerns raised about management over the years of Atlanta's redevelopment program, including the accumulation of unused funds in certain TADs, high administrative costs for some TADs, the overcommitment of Atlanta BeltLine funds to Atlanta Public Schools, as well as issues associated with the ongoing evaluation of TAD progress in meeting economic development goals.

"It should be noted that many, if not all, of these concerns originated as and when the TADs were being created, leaving subsequent city administrations to deal with them," Layton said.

The report notes that Atlanta has been one of the most active users in the country of this form of financing. Outside of California cities, Atlanta is second only to Denver. With the economy picking up, self-financing districts will likely regain some of their popularity. As Atlanta considers new uses for tax increment financing, the report suggests the city should pursue more aggressive oversight and evaluation of each TAD's progress toward meeting goals and objectives.

Download a copy of the report.

January 27, 2016

Andrew Young School of Policy Studies, Center for State and Local Finance

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NABL: GASB Seeks Input on Revenue from Exchange Transactions.

GASB is conducting pre-agenda research on reporting revenue from exchange transactions. Common examples of exchange transactions that produce revenue for governments include user charges for water, sewer, and electricity and fees for parking lots and street meters. The project team has designed an online survey to assess the information regarding revenue from exchange transactions that is essential to meeting user needs.

Access the survey.

The objective of this research is to gather feedback on these broad questions:

- What information regarding revenue from exchange transactions is essential for decision-making and assessing government accountability?
- How important is information regarding revenue from exchange transactions to the analysis of the financial statements of governments?
- How do the perceptions of the benefits of the information in financial reports compare with the costs of applying the relevant accounting standards?

The survey need not be completed in one session. If you save your responses, you will be provided an individualized link to return to your survey at a later date to complete it. If you would like to respond to the survey by phone or have any questions, please feel free to contact Amy Shreck of the GASB project team at ashreck@gasb.org.

The deadline for completing the survey is Friday, February 19, 2016.

Municipal Bond Sales Poised to Accelerate as Redemptions Rise.

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

States and localities plan to issue $11.9 billion of bonds over the next 30 days, according to data compiled by Bloomberg. A week ago, the calendar showed $10.1 billion planned for the coming month. Supply figures exclude derivatives and variable-rate debt. Some municipalities set their deals less than a month before borrowing.

Dallas Area Rapid Transit Authority plans to sell $483 million of bonds, King County, Washington, Sewer Revenue has scheduled $279 million, Metropolitan Atlanta Rapid Transit Authority will offer $247 million and Hawaii County, Hawaii, will bring $235 million to market.

Municipalities have announced $7.9 billion of redemptions and an additional $12.4 billion of debt matures in the next 30 days, compared with the $20.2 billion total that was scheduled a week ago.

Issuers from Texas have the most debt coming due with $3.5 billion, followed by New York at $1.34 billion and Minnesota with $1.11 billion. California has the biggest amount of securities maturing, with $396 million.

Investors added $1 billion to mutual funds that target municipal securities in the week ended January 20, compared with an increase of $1.3 billion in the previous period, according to Investment Company Institute data compiled by Bloomberg.

Taxable Equivalent

Exchange-traded funds that buy municipal debt increased by $259 million last week, boosting the value of the ETFs 1.31 percent to $19.9 billion.

State and local debt maturing in 10 years now yields 90.219 percent of Treasuries, compared with

89.793 percent in the previous session and the 200-day moving average of 98.678 percent, Bloomberg data show.

Bonds of Illinois and Maryland had the best performance over the past year compared with the average yield of AAA rated 10-year securities, the data shows. Yields on Illinois's securities narrowed 11 basis points to 3.35 percent while Maryland's declined 6 basis points to 1.80 percent. Puerto Rico and New Jersey handed investors the worst results. The yield gap on Puerto Rico bonds widened 149 to 11.82 percent and New Jersey's rose 6 basis points to 2.69 percent.

Bloomberg Data News

February 1, 2016 — 4:24 AM PST

This story was produced by the Bloomberg Automated News Generator.

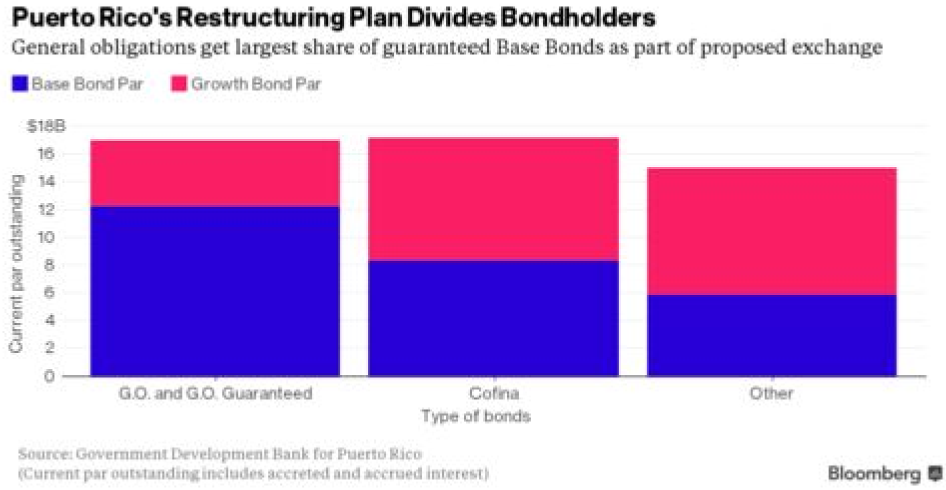
Puerto Rico Proposes 46% Reduction of Debt in Restructuring.

Puerto Rico is seeking to cut its debt load by 46 percent in its first offer to investors, a proposal that may face revisions as bondholders fight to get the most repayment.

The commonwealth unveiled its plan on Monday to reduce the island's obligations and help restart an economy that's failed to grow in the past decade. The proposal for a voluntary exchange would cut the island's debt to $26.5 billion from $49.2 billion, put off all interest payments until the 2018 fiscal year and affect even general-obligation bonds, which have the strongest repayment pledge, according to a restructuring proposal posted on the Government Development Bank website.

The plan may pit the commonwealth's investor groups against each other. In the proposal, general-obligation bonds get more money back than sales-tax debt, called Cofinas by their Spanish acronym. Cofina investors may take issue with that, said Lyle Fitterer, head of tax-exempt debt in Menomonee Falls, Wisconsin, at Wells Capital Management, which oversees $39 billion of municipal bonds, including Puerto Rico securities. The island, which doesn't have access to municipal bankruptcy, may need a legal framework to bring all of the island's creditors together, Fitterer said.

"I'm sure they're not going to outright agree to this," Fitterer said. "What happens to all the retail bondholders if they don't consent to it? They're probably going to need to have some legal means of getting this accomplished rather than some sort of consensual agreement, because I would think there's going to be a lot of arguing amongst bondholders."



Puerto Rico and its agencies racked up $70 billion in debt by borrowing for years to fill budget deficits.
Governor Alejandro Garcia Padilla in June said the commonwealth would seek to reduce its obligations by asking investors to accept losses on their securities and wait longer to get repaid. Two agencies already have defaulted on payments, and the island faces a $2 billion principal and interest payment due July 1.

Puerto Rico warned that it may place a moratorium on debt payments if the parties cannot agree on a restructuring plan by May 1, when a $422 million GDB payment is due.

Garcia Padilla has asked that the commonwealth and its agencies be given access to bankruptcy protection so officials may reorganize its debt. Republicans in the U.S. House of Representatives are holding a hearing Tuesday to explore the case for setting up a Puerto Rico financial-control authority.

Almost all of Puerto Rico’s debt would be affected by the reduction, including general obligations, sales-tax bonds, GDB debt, pension bonds and debt sold by the island’s highway authority.

‘Sustainable Solution’

“This proposal is a reflection of our commitment to work with our creditors on a sustainable solution that does not place the burden on one stakeholder group alone,” Victor Suarez, Puerto Rico’s secretary of state, said in a statement. “A crisis of this magnitude must be addressed in concert, otherwise we risk our ability and the opportunity to escape the spiral of a stagnating economy, endless deficits and increasing debt.”

Puerto Rico general obligation bonds with lower coupons traded up in price Monday, while a GO with an 8 percent coupon dropped in value: One with a 5.75 percent coupon and maturing 2041 changed hands at an average 61.8 cents on the dollar, up from 60.5 cents on Friday, data compiled by Bloomberg show. The one with the 8 percent coupon and maturing 2035 traded as low as 70 cents, down from an average 72.1 cents.

Principal-Recovery Opportunity

The plan caps annual debt payments at 15 percent of government revenue. Creditors also would get the opportunity to recover the principal amount of their investments. Investors and the commonwealth now will negotiate the proposed terms and potentially alter the plan, said Matt Dalton, chief executive officer of Rye Brook, New York-based Belle Haven Investments, which oversees $3.8 billion of municipal bonds, including Puerto Rico securities.

“Ultimately you’ve got to believe that there’s compromise somewhere between 46 percent and something less than that,” Dalton said. “They’ve put the offer out there, now it’s time to work it up from there.”

If history is any guide, a distressed government’s initial plan often doesn’t resemble the final deal.

Detroit proposed paying as little as 15 cents on the dollar to holders of unlimited-tax general obligations during the city’s bankruptcy, yet agreed to a 74 percent recovery rate after negotiations.

Restructuring Proposal

Puerto Rico’s restructuring proposal asks that creditors exchange existing securities for two new securities: a “Base Bond,” with a fixed rate of interest and amortization schedule through 2035, and a “Growth Bond,” which is payable only if the commonwealth’s revenue exceeds certain levels. The new securities also would provide creditors with enhanced credit protections, such as a commonwealth guarantee and statutory liens and pledges with respect to certain revenue.

A basic way to calculate an approximate recovery rate would be evaluating what investors would get — in what’s known at Base Bonds — relative to the par value of their securities. General-obligation investors would recover about 72 percent, as they exchange about $17 billion of debt for $12.24 billion in Base Bonds.

Holders of sales-tax debt, known by the Spanish acronym Cofina, would recover about 49 percent, with $17.2 billion outstanding obligations exchanged for $8.4 billion of Base Bonds. Other investors, with $15 billion of debt, would have a 39 percent recovery. The new bonds would be repaid with revenue already backing the existing bonds as well as $325 million of annual oil-tax revenue.

The $49.2 billion of tax-supported debt would be swapped into $26.5 billion of Base Bonds and $22.7 billion of Growth Bonds. Interest payments on the Base Bonds would begin in January 2018, rising to 5 percent per year by 2021, when principal payments would begin. The Growth Bonds would be payable only if Puerto Rico’s revenue collection exceeds projections.

Growth Bonds

By sharing in the island’s economic recovery, creditors would have the opportunity to recoup the principal amount of their investments through the growth bonds, according to the proposal. The first payments, if any, would be made beginning in the 10th year after the close of the exchange offer.

“We don’t know what the revenue potential is for Puerto Rico simply because the tax collections are so terrible and public policy and governorship has been so bad,” Fitterer said.

The exchange offer assumes creditor groups will participate at “very high” levels and the federal government will maintain its current percentage of support for the commonwealth. If not enough investors participate in the debt swap or if the federal government materially reduces its support, then the terms of the exchange offer will have to be revisited and creditor recoveries adjusted accordingly, the commonwealth said.

Bloomberg Business

by Michelle Kaske and Brian Chappatta

February 1, 2016 — 5:39 AM PST Updated on February 1, 2016 — 11:03 AM PST

S&P: Looking Toward U.S. Public Finance Ratings and Markets in 2016.

U.S. public finance (USPF) enters 2016 after year of growing credit strength and higher volume in 2015. It is likely that ratings in the sector will continue their upward movement, but volume should decline after a year of heavy refunding drove the first eight months of 2015 to a record pace that dissipated in the last third of the year. Data from Thomson-Reuters indicate that volume increased to $398 billion in 2015 from $334 billion in 2014, growing 19%. Throughout 2015, Standard & Poor's upgraded about 1,100 ratings while downgrading approximately 570. This trend was consistent, as upgrades outpaced downgrades in each quarter of 2015. That trend should continue, although it is likely Puerto Rico will cause the number of defaults in U.S. Public Finance (USPF) to spike, perhaps to record numbers.

Continue reading.

27-Jan-2016

S&P Video: A Big Picture Look at What Lies Ahead for U.S. Public Finance.

We believe it's likely that U.S. public finance ratings will continue their upward movement this year, but volume could well decline. Upgrades outpaced downgrades in each quarter of 2015. That trend should continue, although it is likely Puerto Rico will cause the number of defaults in the sector to spike. In this CreditMatters TV segment, Senior Director Larry Witte explains what lies ahead.

Watch Video.

Jan. 27, 2016

S&P Webcast Replay: Not-For-Profit Public and Private Colleges and Universities Criteria Release.

Standard & Poor's Ratings Services held an interactive, live Webcast and Q&A on Thursday, January 14, 2016 at 2:00 p.m. Eastern Time for a discussion regarding our updated methodology for assigning stand-alone credit profiles (SACPs), issuer credit ratings (ICRs), and issue credit ratings to not-for-profit public and private colleges and universities globally.

Listen to the replay.

Jan. 29, 2016

TAX - INDIANA

In re 2014 Johnson County Tax Sale

Court of Appeals of Indiana - December 22, 2015 - N.E.3d - 2015 WL 9306974

Following tax sale, town brought petition seeking issuance of tax deed. The Superior Court denied issuance of tax deed, ruling that the property owner had redeemed the property. Town appealed, arguing that property owner was not entitled to equitable relief because he did not file an objection to the Town's petition for a tax deed.

The Court of Appeals held that:

- Trial court's findings were not clearly erroneous, and
- Trial court was not prevented from exercising its equitable power in favor of property owner by denying town's petition.

Trial court, in granting equitable relief to property owner by denying town's petition for issuance of tax deed, did not clearly err in finding that he went to auditor's office to determine amount due to redeem property and paid amount he was provided, that he did not have unclean hands, and that he relied upon information provided by auditor.

Trial court was not prevented from exercising its equitable power in favor of property owner by denying town's petition for issuance of tax deed, by property owner's failure to file objection and request hearing pursuant to statute governing petitions for issuance of tax deed, where court did hold hearing and town did not object to hearing.

Illinois 'Inland Port' Capitalizing on PAB Program.

CHICAGO – The only intermodal freight facility to ever take advantage of a special 11-year-old federal private activity bond program is back for a third round of financing.

The CenterPoint Joliet Terminal Railroad LLC in Illinois hopes to close as soon as this week on a $100 million private placement to help fund its ongoing expansion, according to Tim Lippert, CenterPoint's vice president of finance.

Conduit issuer Illinois Finance Authority recently approved the transaction for the "inland port," which smooths the flow of freight among trains and trucks.

The private activity bond financing is CenterPoint's third, following its $80 million issue of surface freight facilities tax-exempt revenue bonds in 2012 and its first sale in 2010 for $150 million.

The project has an allocation under the U.S. Department of Transportation's freight transfer facility revenue bond program established in 2005 in the SAFETEA-LU federal transportation authorization, which authorized an initial $15 billion of PABs for qualified projects.

The program seeks to promote private investment in highway, bridge and intermodal freight-transfer facility projects of regional or national importance with tax-exempt PABs. Such projects aren't subject to state PAB volume caps.

The facility is the only intermodal facility financed to date under the U.S. Department of Transportation's private activity bond program, IFA executive director Chris Meister said in his board message.

"All other US DOT Private Activity Bond projects issued to date have financed privately-owned toll road, toll bridge, or commuter rail projects," he said.

CenterPoint's developers have another facility that had qualified for the program but ended up using private financing, and other intermodal projects that also initially qualified either used private financing or have stalled.

A total of 15 projects have used nearly $5.9 billion in approved PAB financing and another six, including CenterPoint, have allocations to use another $5.7 billion, according to USDOT.

Projects also must receive Title 23 Highway Funds or Title 49 railroad grant funds. The IFA said CenterPoint has a commitment from Title 23 satisfying both US DOT requirements to qualify for the tax-exempt issuance for the project. Those funds have gone to improve local bridges and highways that benefit the project.

"The program has lowered our cost of borrowing and having the support of the Illinois Finance Authority and the federal government helps the park in its marketing and in attracting tenants," Lippert said.

The project initially won a $1.2 billion allocation that was later scaled down because pieces of the build-out were slower to come to fruition than initially planned.

The project has a $400 million allocation remaining and can return to USDOT for more in the coming years.

"It was slow going due to the recession but has really been picking up," Lippert said.

Proceeds will finance the acquisition of land, and construction and equipping of various capital improvements at the rail-to-truck and truck-to-rail intermodal facility.

The CenterPoint Intermodal Center is housed on a 4,000-acre Joliet site with distribution centers, container storage yards, and export facilities all in one campus.

The intermodal facility allows for the direct transfer of goods between and among trains and trucks, allowing customers to smooth the process of shipping goods from the U.S. coasts inland by rail for distribution by truck.

The overall project calls for rail improvements and the construction of between 15 million and 20 million square feet of related warehousing and distribution facilities as well as infrastructure improvements.

The conduit issuer is highlighting the thousands of temporary construction and permanent jobs created by the project and traffic relief it promises by helping to break the logjam that develops in Chicago as inland freight traffic travels across the country.

When finished, the campus will include an 835-acre Class I railroad intermodal facility, 450 acres of onsite container/equipment management and approximately 15 to 20 million square feet of industrial facilities.

"The project will provide critical transportation capacity for the region and distribution efficiencies for customers, while meeting local community, county and state interests through the creation of approximately 16,600 jobs and millions in new tax revenues," IFA documents say.

CenterPoint plans a private placement with a syndicate of banks that currently finance line of credit and other credit facilities.

SunTrust Robinson Humphrey is placing the bond with a syndicate led by SunTrust Bank. Members of CenterPoint's lending syndicate include Bank of America, BB&T, PNC Bank, Regions Bank, US Bank, JPMorgan Chase; and Wells Fargo Bank.

Interest rates are estimated to be in the range of 2% to 5% depending on their maturity which can go out 40 years, but the final terms are confidential on the unrated debt.

General counsel on the deal is Latham & Watkins LLP, bond counsel is Perkins Coie LLP and bank counsel is Dentons. IFA counsel is Kutak Rock LLP and IFA's financial advisor is Acacia Financial Group Inc.

CenterPoint anticipates the total cost of the built-out facility to hit $1.26 billion with another $812 million being raised from future issuance through the IFA and the rest covered by an equity contribution.

Future issuance will be dictated by the project's buildout needs over the next five to 10 years.

Lippert said it may return within the next 12 to 18 months for a fourth financing.

CenterPoint has 5 years to spend bond proceeds under the US DOT bond program, but it has typically privately financed its projects and then turned to the long-term tax-exempt allocation as needed to reimburse itself.

CenterPoint LLC is a real estate development company set up in 2007 to build and manage the facility. The borrower is primarily owned by CalEast Global Logistics LLC, a leading investor in logistics warehouse and related real estate; it's a joint venture of the California Public Employees Retirement System and GI Partners.

The Chicago region is a top spot for inland port/freight transfer centers in the country due its location. All six North American Class I railroads intersect in the region: Burlington Northern Santa Fe, Canadian National, Canadian Pacific, CSX, Norfolk Southern, and the Union Pacific.

Officials say 60% of freight traveling inland from the coasts either stops in Chicago, or travels through Chicago to other markets and supporters of such inland ports have long stressed the need for relief.

"Although it takes only two days for freight to be shipped from the coasts, it can take four days for this rail traffic to move through the city of Chicago," IFA documents said.

"Development of intermodal facilities around the outer suburbs of Chicago will help reduce rail bottlenecks, reduce truck traffic in the city of Chicago as well as create a more efficient supply chain for goods traveling inland from the coasts," the documents said.

The project completed its first on site building for the Stepan Co. as well as a 12-acre grain facility for The De Long Co. in 2010.

Other construction on the site has included an 18-acre container storage facility for Mediterranean Shipping Co., a 36-acre container storage facility for APL, construction of Home Depot's campus, an eight-acre container storage facility for Central States Trucking, Home Depot's Joliet campus, and a 485,000 square foot joint-venture speculative facility that's leased to International Transload

Logistics.

Also, construction was completed on a 400,000-square-foot warehouse facility for Neovia Logistics, and construction began last year on a 1.1-millionsquare-foot building for Saddle Creek Logistics Services and a 1.4 million-square-foot-building for an undisclosed food manufacturer.

The Bond Buyer

by Yvette Shields

JAN 26, 2016 1:20pm ET

Stock Market Volatility Is A Factor In California's Budget, Report Says.

SAN FRANCISCO (Standard & Poor's) Jan. 25, 2016–It's budget time for California, a state that has always had an outsized reliance on capital gains tax receipts. But the stock market has been volatile lately, and history suggests that in a market correction, state revenues will follow stock prices lower, according to a report, "California Initiates Budget Process Amid Rising Stock Market Volatility," published today by Standard & Poor's Ratings Services.

"Similar to the equity markets, the broader economic recovery, now in its seventh year, has already outlasted most expansions," notes credit analyst Gabriel Petek. "Although Standard & Poor's forecasts another year of economic growth and modest stock market appreciation, we cannot rule out the possibility that financial markets and the economy have peaked."

California's recent success in shoring up its finances has come about not just from higher revenues brought about by an improved economy and a higher stock market, but notably from getting its spending under control.

Lawmakers in Sacramento are beginning budget negotiations with more open-ended discretion over general fund spending than they have had in years. "This gives rise to the potential that the state could ramp up its recurring spending commitments just as its revenue trends reach a plateau—or worse, begin to falter, thereby putting the state's fiscal alignment in jeopardy," notes Mr. Petek.

"In our view, the future direction of California's credit quality is closely linked to its ability to maintain balanced fiscal operations. Even without a recession, the escalating schedule for pension contributions and rapidly growing unfunded liability for retiree health care already account for an increasing share of future budget capacity. The stronger revenue performance and much-improved budgetary position of recent years therefore belie somewhat how fragile California's fiscal balance remains."

We have determined, based solely on the developments described herein, that no rating actions are currently warranted. Only a rating committee may determine a rating action and, as these developments were not viewed as material to the ratings, neither they nor this report were reviewed by a rating committee.

The report is available to subscribers of RatingsDirect at www.globalcreditportal.com and at www.spcapitaliq.com. If you are not a RatingsDirect subscriber, you may purchase a copy of the report by calling (1) 212-438-7280 or sending an e-mail to research_request@standardandpoors.com.

Ratings information can also be found on Standard & Poor's public Web site by using the Ratings search box located in the left column at www.standardandpoors.com. Members of the media may request a copy of this
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Survey Reveals Obstacles Mayors May Face to Using P3s to Maintain, Improve Infrastructure.

Public-private partnerships could make up for a lack of state and federal funding and support for cities that seek to improve aging infrastructure, but a national survey of mayors indicates city leaders may face obstacles to using this procurement method.

The types of infrastructure projects most mayors are likely to spend new sources of funding on are mass transit, roads, water, wastewater and stormwater, followed by public buildings and other facilities, reported the Initiative on Cities at Boston University. The research group based its findings on an analysis of responses provided by 89 city leaders in the research group's second annual Menino Survey of Mayors. Almost half of those surveyed singled out infrastructure as the top priority and nearly all expressed concern over a lack of funding for maintenance and improvements for these projects.

However, most mayors indicated that they are more likely to seek to partner with the business community on economic development and education projects than on road, transit or water projects, even though many expressed dissatisfaction with the level of financial support they receive from federal and, especially, state governments.

Many of those surveyed also expressed frustration with what they view as the onerous impact of state and federal regulations on their activities, which could impede efforts they might otherwise make to explore P3s for infrastructure projects. For example, 19 mayors expressed the desire to repeal or alter laws that affect local revenue-raising options and eight other want changes to laws that affect how revenues are distributed.

Requirements that force city governments to conduct some types of partnerships with other governments rather than with private developers may limit cities' options as well. "This may be because of funding sources, regulatory laws, or a function of overlapping jurisdictions, as with a water district," the study says. In assessing the number and types of partnerships cities conduct "mayors revealed that their much maligned state government is actually their most frequent partner across a wide array of policy areas, from roads to the environment to economic development. …There are no areas in which state government is an infrequent partner." the study points out.

A combination of regulatory restrictions on revenue sources and expenditures, coupled with the fact that private financing for projects is not free money but is subject to repayment may discourage city leaders from pursuing P3s for expensive infrastructure projects. The report quotes the mayor of a large city as saying “Public-private partnerships are great if you want something built with somebody else’s up-front capital. But you still have to pay the bill. … They’re not a solution to everything.”

Despite these expressed misgivings, many cities have been quite successful in overcoming perceived financial and other barriers to procuring key infrastructure projects through P3s. Examples include New York City, Gresham, Ore., San Antonio, Texas, Bayonne, N.J., Rialto, Calif., Westfield, Ind. and Allentown, Pa. And many other city-based P3a are in development or are being planned.

By NCPPP

January 28, 2016

S&P Webcast Replay: U.S. Municipal Utilities, Water & Power 2016 Outlook

Standard & Poor’s Ratings Services held an interactive, live Webcast and Q&A on Tuesday, January 19, 2016 at 2:00 p.m. Eastern Time where we discussed our sector outlooks for 2016, along with hot topics such as impacts of the Clean Power Plan, the California drought and rate affordability.

Listen to the webcast.

Jan. 29, 2016

Kentucky's Cautionary Tale About Underfunding Pensions.

With the worst-funded pension system in the country, Kentucky offers a glimpse of what could be in store for other states.

Pensions will be a contentious topic again this year, with many states still struggling to find an affordable way to fund these promises to retirees. In Kentucky, which has the worst-funded state pension in the country, some officials are worried the plan has already reached the point of no return.

Kentucky’s largest retirement plan has been in slow and steady decline for years. Lately, it’s faced poor stock market returns and an increasing need to cash out investments or move money into low-risk, low-return bonds in order to make retiree payments. All that has led to an increase in the pension system’s unfunded liabilities to just over $10 billion.

The state legislature has passed several laws over the years aimed at reining in skyrocketing bills. But despite their efforts, the situation is getting worse.

The debate in Kentucky about what to do next offers a glimpse of what could be in store for other state pension systems that have a history of poor government funding.

In 2013, a new law created a hybrid cash balance plan for new employees, which is similar to a defined-benefit plan but carries less risk for the state. It also essentially eliminated retiree cost-o--living increases and required the state to make its full actuarial payments immediately — something it hadn’t done regularly since the 1990s.

But some are worried the changes came too late.

Over the past year, the plan lost nearly a third of its assets, dropping to $2.3 billion in 2015 from $3.1 billion in 2014. It now has just 19 percent of the assets it needs to meet its total pension liabilities over the next three decades.

“We understood that there was going to be several years of decline even after the latest reforms,” said Jim Carroll, cofounder of Kentucky Government Retirees, an advocacy group. “What [lawmakers] haven’t realized now is how deep and fast that trough has occurred.”

As in many states, lawmakers have tried to reverse the plan’s downward course for years. They cut retirees’ health benefits in 2004 and eliminated pension spiking, which offered higher benefits for workers whose earnings increased at the tail end of their career, in 2008. But it was only the most recent legislation in 2013 that forced the state to make its full pension payments. As a result, Kentucky’s employer contribution (which comes from money from the state’s General Fund, among other places) leapt to $521 million last year. That represents more than twice what it contributed in 2012 and one-third of the total payroll costs for state employees.

Kentucky’s not alone.

Both Illinois and New Jersey have repeatedly failed to make their full pension payments because of budget constraints. This year, at least Connecticut and Pennsylvania lawmakers are debating major overhauls of their pension systems. All of these states — plus Kentucky– have been slapped with credit rating downgrades in the last few years, either as a result of inaction on pensions or because of the financial pressures that unfunded liabilities are putting on their budgets. But none have yet reached the cash flow situation that Kentucky is facing.

Gov. Matt Bevin, just over a month into his new job, said this week in his State of the State address that he’ll order independent audits of every state pension system so he can propose “substantive structural changes” next year. He’s already called for eventually replacing the current system with a 401(k) retirement plan for new employees and letting current public employees transfer their traditional pensions to a 401(k) if they want. Until then, his latest budget would put $130.7 million from the General Fund toward the state employees’ pension, which is slightly more than what’s required.

Carroll said his organization was still vetting the governor’s full proposal but called it “encouraging” that Bevin was making funding a priority. The 401(k) aspect of his proposal, however, has already incurred opposition from pension advocates.

The situation calls for negotiation and creativity, pension consultants say, but most of the ideas have been tried before. Some have proposed issuing bonds instead of using more General Fund money to infuse cash into the pension fund over time. But a similar bond proposal for the Kentucky Teachers’ Retirement System failed last year, and neither the legislature nor Bevin have shown much of an appetite for bonds.

Without decisive action, Kentucky will likely face even tougher budget choices down the line.

The struggling territory of Puerto Rico, for example, has recently started defaulting on some of its debt in order to pay its legally required obligations, including pensions. Some cities have been able to file for bankruptcy to overhaul their pensions, but territories and states can’t go that far.

“States can become structurally bankrupt where it’s very difficult — if not impossible — to make up the gap,” said Daniel Liljenquist, a former Utah lawmaker and a board member of the Retirement Security Initiative, a newly-formed group promoting sustainable retirement policies. “I think at that point you do have to go back and renegotiate with your retirees.”

That option isn’t palatable yet in Kentucky. Pension advocates are quick to point out that retirees have already given up some of their health benefits and their cost-of-living raises.

“My advice to [retirees] has been don’t spend any more money,” said Carroll. “This is a [pension] plan that will fail if nobody acts.”

*This story has been updated.

GOVERNING.COM

BY LIZ FARMER | JANUARY 27, 2016

Having a Rainy Day Fund, But Not Knowing How to Spend It.

Some states have millions in savings that they don’t know when or how to use. A new report suggests ways to better manage their money.

As state lawmakers head into the budget-writing season, some will face the unpleasant task of figuring out how to fill projected shortfalls. In most cases, that conversation will include a debate on whether to withdraw cash from the state’s rainy day fund.

Some states count on their rainy day savings during recessions to limit budget cuts, while others strive to put away enough savings to avoid cuts altogether. But many states lack clear guidance about when to take money out of rainy day accounts, for what purposes and how much.

Rainy day funds have been around for decades. Among the 46 states that have them, only half have laws that clearly express what they’re seeking to achieve with them, according to a recent Pew Charitable Trusts report. Two states — Wyoming and Kentucky — lack any statutory or constitutional direction about their purpose or proper use.

In Wyoming, for example, the state is facing a projected $300 million shortfall due to declining energy revenues. Tapping the $1.8 billion rainy day fund is a potential solution, but some lawmakers are wary about relying on a one-time infusion to plug a revenue hole that could remain a problem for years to come. With no set policies in place, the discussion about whether to take money out or tap other funds first will take up a considerable amount of time.

“There is no consensus on financing the deficit cash flow of the state for the next three years,” said state Rep. Michael Madden, who co-chairs the Revenue Committee.

In Texas, lawmakers have been arguing about how best to use the $7.5 billion rainy day fund, an amount equivalent to 15 percent of the state’s general fund expenditures. With lawmakers also looking to take on issues such as improving water and transportation infrastructure and reducing the state’s total amount of outstanding debt, they’ve been divided over whether the current level of reserves is sufficient or excessive.

“It’s become a surprisingly emotional issue in the political debate,” Dale Craymer, a former legislative aide who was involved in establishing the Texas fund in 1987, told Pew. “The last two sessions, the rainy day fund has taken on this sacred nature that was never really intended. It was intended as a management tool.”

Many states’ statutes say rainy day funds should help stabilize revenue during economic recessions; a few are more explicit. Virginia’s Constitution, for example, says state leaders can use the fund to cover no more than 50 percent of a shortfall in a fiscal year. Thus, the policy also requires lawmakers to make spending cuts or tax changes to balance the budget during periods of revenue decline.

The rules that do guide the use of rainy day funds are sometimes seemingly arbitrary. In particular, savings targets for the funds have typically been a percentage of the state’s spending that’s politically palatable. During the growth years of the mid-2000s, 21 states hit their savings targets and then stopped putting money away. That resulted “in most of those states relying more heavily on spending cuts and tax increases to balance their budgets during and after the Great Recession,” according to Pew.

Pew recommends that states define the purposes of their rainy day funds more clearly and suggests that policymakers study their state’s patterns of financial volatility to anticipate how much revenues could drop in a downturn. Such information would help them determine how much they’ll want to rely on rainy day accounts to offset shortfalls.

Minnesota’s rainy day fund policy, according to the report, is a model worth replicating. It’s one of just four states that requires periodic evaluations to make sure its savings targets actually reflect the state’s revenue volatility. It’s also the only state to determine its risk tolerance — that is, the tolerance policymakers have for not fully covering a potential shortfall, which affects how much the state should save. Minnesota’s current savings target is the amount deemed necessary to cover 90 percent of all possible downturn scenarios.

Establishing this type of policy is difficult and will still require compromise.

Connecticut, for example, established new rules for its rainy day fund last year to require automatic deposits whenever the most volatile tax streams — personal and corporate income — produce revenue above historic norms. It will also raise the fund’s target to 15 percent of net general fund appropriations. But in order for the bill to get through the legislature, implementation was put off until 2020.

Still, helping a state institutionalize its own buffer against downturns is time well-spent, says Brenna Erford, co-author of the Pew study.

“Of course it’s not easy to agree on a purpose for the fund,” she said. “But once you have an agreed-upon purpose, the question isn’t, ‘Should we or shouldn’t we?’ The debate then becomes, ‘Are we now in a scenario where the fund is in play?'”

GOVERNING.COM

BY LIZ FARMER | JANUARY 28, 2016

Climate Change and Credit Ratings.

The growing intensity of natural disasters is a threat to state and local governments' fiscal stability. How can they protect their finances and the environment?

Patricia, the strongest hurricane ever recorded in the Western Hemisphere, slammed into the town of Emiliano Zapata in southern Mexico in October. Peak winds were 165 miles per hour. The National Oceanic and Atmospheric Administration predicts that the 2015/2016 El Niño — a causal factor in the ferocity of Patricia — could foreshadow an indeterminate frequency, number and intensity of such storms in the Northern Hemisphere.

Wildfires in the U.S. West — California, Colorado, Montana, New Mexico, Oregon and Washington — were more severe and widespread this summer than in the past, burning or threatening millions of acres of land and thousands of homes. As wildfires increasingly imperil urban areas, they are putting more homes, lives and infrastructure at risk.

Whatever the debate about climate change may be in Congress or on the presidential campaign trail, it is clear that natural disasters — from hurricanes and wildfires to snowstorms and tornados — are becoming more commonplace and severe throughout the country. For state and local leaders, this intensification is not only a threat to lives and personal property but also to the fiscal stability of their communities.

It should not come as a surprise that the credit rating agencies have taken notice, adding "resiliency" to their rating criteria. In a recent statement, Standard & Poor's noted that it regularly publishes extensive research on the implications of environmental and climate-related risks and that its evaluation of environmental, social and governance risks is a key part of its ratings methodology. "We continue to review," S&P stated in a note, "the relevance of climate risk for creditworthiness and how we assess and present it as a risk factor in our analysis."

When it comes to natural disasters, the task of protecting lives, property and the fiscal stability of a community falls disproportionately on states and localities — especially the latter because of the responsibilities they have, including zoning, emergency planning and the need to find the funding to undertake protective measures. In that regard, there are lessons to be learned from past events. Some regions or states that have suffered losses have taken relatively simple steps to protect against future destruction, such as changing building codes or rebuilding on higher ground.

A case in point is the Biloxi-Gulfport area in Mississippi. Ten years ago, the destructive winds of Hurricane Katrina hit the coastal region with full force, destroying everything from residential homes to the offshore gambling industry. Concerned that Biloxi's economic lifeblood — tourists — would not return, the Mississippi legislature mandated that casinos had to build up to 800 feet inland instead of along the coast. Local communities banded together to rebuild, and today the casinos and golf courses that relocated or built inland have paved the way for a surprising and vibrant growth in the area, as well as an overall improved resilience for the economic lifeblood of the local communities.

Some unharmed communities are forward-looking, too. In Virginia's Hampton Roads region, coastal cities are investing in research and planning ways to diminish the negative effects of rising seas. Norfolk, which is home to the world's largest naval base, has been developing initiatives to learn about the impact of recurrent flooding in coastal cities around the globe.

On a recent visit to Norfolk, Secretary of State John Kerry noted that these initiatives were not just critical to the city's economic and physical future but also to what he deemed "the importance of addressing resilience and national security." Kerry announced the formation of a task force to incorporate climate change into decision-making at every level of government. That is, city leaders' experiences in Norfolk could not only help keep its fiscal house in order but have applications for cities across America on the Gulf, Pacific and Atlantic coasts, as well as for others worldwide.

GOVERNING.COM

BY FRANK SHAFROTH | JANUARY 2016

Chicago Schools in Fiscal Limbo as Clash Builds Before Bond Sale.

Chicago's public schools are under fiscal siege as the political clash between the state's top Republicans and the city's Democratic mayor escalates, rattling investors as the nation's third-largest district struggles to avert insolvency.

The conflict over the fate of the school system threatens to force the Chicago Board of Education to pay a steep premium when it sells $875 million of bonds on Wednesday. The deal comes a week after Republican Governor Bruce Rauner called for the state to take over the district and potentially authorize bankruptcy.

That idea was immediately rejected by Democrats in control of the legislature and Chicago Mayor Rahm Emanuel, who have unsuccessfully pushed for an influx of state aid.

The offering, one of the lowest-rated municipal bond sales in recent history, would have refinanced debt to put off interest payments. The pressure has been building on the school system, with Moody's Investors Service, Standard & Poor's and Fitch Ratings cutting its rating deeper into junk, the teachers union threatening to strike and a deficit that's projected to reach $1 billion a year through 2020.

Securities due in 2044, the longest-dated tax-exempt portion of the deal, are being marketed at yields of 7.75 percent, according to four people familiar with the sale who requested anonymity before pricing. That's 5 percentage points above benchmark debt that matures in 29 years, according to Bloomberg data.

"All of this negativity ahead of the bond sale could increase the cost that the Chicago public school system has to pay to borrow money — and, in a worst case, they may not be able to issue all the debt that they had hoped to," said Paul Mansour, the head of municipal research at Conning, which oversees $11 billion of state and local debt, including some of the board's securities. "They're getting hit on all sides as they're trying to bring this large deal to market, which is critical."

Chicago's schools are running out of cash after years of raiding reserves and shortchanging its pensions, which caused its annual payment to soar. An effort to rescue the schools has been caught in the financial and political crosscurrents of the city and Illinois, both of which are contending with their own fiscal strains.

Rauner, who is locked in an impasse with legislative Democrats that's left the state without a budget since the year started in July, has said he'll only help if Emanuel supports changes that the governor is pushing for, such as limits on unions. Emanuel has said Rauner's holding the schools hostage to the state budget stalemate, noting that Chicago's is the only district that pays the vast majority of its own pension costs. The board must pay $676 million to its teachers' retirement fund by June 30.

Faced with such pressure, the district has suffered a slew of downgrades from Wall Street credit-rating companies. Moody's cut the district on Dec. 21 to B1, four steps below investment grade, because of its dwindling cash. S&P dropped it to an equivalent B+ on Jan. 15. Four days later, Fitch lowered it to the same rank.

"This is a rescue financing," said Matt Fabian, a partner at Concord, Massachusetts-based Municipal Market Analytics. "This is a restructuring of its debt. So absent this bond issue, there's a serious chance that CPS could default."

The sale of $796 million of tax-exempt securities and $79 million of taxable debt will fund capital projects, refinance variable-rate debt and pay off short-term loans used to cover fees on derivative trades that banks had the right to cancel after the district's credit rating tumbled. The city was hit by the same penalties after Moody's cut it to junk last year.

'Breaking Point'

Forrest Claypool, the board's chief executive officer, has faulted what he calls an inequitable school-funding system that's helped push the district to the "financial breaking point." While Illinois contributes about $2,266 per student to teacher pensions in districts outside of Chicago, the city gets only $31 per student, bond documents show. Chicago's pension system was only 52 percent funded as of June 30.

Investors are demanding high yields to lend to the district. When it sold $65 million of 3-month notes last month, it paid 3.25 percent, more than 10 times what's demanded of top-rated borrowers.

The interest rates may be a draw for some, said Lyle Fitterer, head of tax-exempt fixed income at Wells Capital Management, which oversees $39 billion of munis. He's considering purchasing some Wednesday because he views the probability of bankruptcy as "almost zero."

Illinois doesn't allow localities to file for Chapter 9, and a proposal last year to allow that hasn't advanced. The securities are backed by state aid revenue and a direct deposit of pledged taxes if that's not enough, bond documents show.

"You have an entity that cannot file bankruptcy, does not want to file bankruptcy, and you've got a good management team in there," said Fitterer, who holds some Chicago school debt. "For the right investors, it's probably going to be a pretty attractive opportunity."

Only the most speculative of buyers should consider the bonds, said Triet Nguyen, a managing director at New York-based NewOak Capital LLC.

"It feels so much worse, particularly against the backdrop of what's going on at the state level," Nguyen said. "A year ago, we certainly didn't expect we were going to have this kind of gridlock at the state level. If it goes on much longer, it's just going to make CPS's problems that much worse."

Bloomberg Business

by Elizabeth Campbell

January 26, 2016 — 9:01 PM PST Updated on January 27, 2016 — 7:26 AM PST

[Chicago Schools in Fiscal Limbo as Turmoil Delays Bond Sale.]

Chicago's public schools delayed an $875 million bond sale after a clash between the state's top Republicans and the city's Democratic mayor escalated, adding to the pressure on the nation's third-largest district as it struggles to avert insolvency.

The Chicago Board of Education postponed the deal Wednesday after offering yields of as much as 7.75 percent, about 5 percentage points more than top-rated tax-exempt bonds. The planned debt issuance came a week after Republican Governor Bruce Rauner called for the state to take over the district and potentially authorize bankruptcy. That idea was immediately rejected by Democrats in control of the legislature and Chicago Mayor Rahm Emanuel, who have unsuccessfully pushed for an influx of state aid.

The offering, one of the lowest-rated municipal sales in recent history, would have refinanced debt and allowed the district to put off interest payments. The strain has been building on the school system, with Moody's Investors Service, Standard & Poor's and Fitch Ratings cutting their grades on its $6 billion of debt deeper into junk, the teachers union threatening to strike and a deficit that's projected to reach $1 billion a year through 2020.

The district said in a statement that it moved the deal to day-to-day status, indicating that it will be issued when conditions warrant. Officials said they still expect the deal to go through in the next few days, and noted that the district won't miss any obligations because of the delay.

"There definitely is uncertainty now about how they proceed from here," said Dan Solender, head of municipals at in Jersey City, New Jersey for Lord Abbett & Co., which manages $17 billion of the debt, including Illinois bonds. "Maybe this can help them feel some pressure to reach some agreements so that they can try to bring a deal with a better credit situation."

Chicago's schools are running out of cash after years of raiding reserves and shortchanging its pensions, which caused its annual payment to soar. An effort to rescue the schools has been caught in the financial and political crosscurrents of the city and Illinois, both of which are contending with their own fiscal strains.

Rauner, who is locked in an impasse with legislative Democrats that's left the state without a budget since the year started in July, has said he'll only help if Emanuel supports changes that the governor is pushing for, such as limits on unions. Emanuel has said Rauner's holding the schools hostage to the budget stalemate.

The sale of $796 million of tax-exempt securities and $79 million of taxable debt was to fund capital projects, refinance variable-rate debt and pay off short-term loans used to cover fees on derivative trades that banks had the right to cancel after the district's credit rating tumbled.

Some investors have said they're still weighing how to value the bonds and had asked for more time, Carole Brown, Chicago's chief financial officer, and Ron DeNard, the schools' head of finance, told reporters during a conference call. Brown said the decision was made Wednesday morning.

"We thought it was in the best interest of CPS and in the best interest of the deal to do that," Brown said. "There's been no fail. We didn't pull the deal. CPS is still on course to issue its bonds."

Making Commitments

The board doesn't expect to "materially change" the closing date, DeNard said.

“We do expect to make all of our cash flow commitments,” he said.

The district has suffered a slew of downgrades from Wall Street credit-rating companies. Moody’s cut the district on Dec. 21 to B1, four steps below investment grade, because of its dwindling cash. S&P dropped it to an equivalent B+ on Jan. 15. Four days later, Fitch lowered it to the same rank.

Strained finances aren’t new for the schools. In 1980, lawmakers created the Chicago School Finance Authority to promote “the financial integrity” of the system, according to the Civic Federation. The Chicago mayor and Illinois governor appointed the board, and it could issue bonds and levy property tax for debt service. The state gave the Chicago mayor control of the schools in 1995, and the board was officially dissolved in 2010.

Forrest Claypool, the board’s chief executive officer, has faulted what he calls an inequitable school-funding system that’s helped push the district to the “financial breaking point.” While Illinois contributes about $2,266 per student to teacher pensions in districts outside of Chicago, the city gets only $31 per student, bond documents show. Chicago’s pension system was only 52 percent funded as of June 30.

Before the Wednesday offering, investors had already been penalizing the district by demanding high yields to to buy its securities. When it sold $65 million of 3-month notes last month, it paid 3.25 percent, more than 10 times what’s demanded of top-rated borrowers.

Bloomberg Business

by Elizabeth Campbell

January 27, 2016 — 9:39 AM PST Updated on January 27, 2016 — 1:18 PM PST

Derivatives Mean U.S. Cities Get No Free Pass From Crisis Legacy.

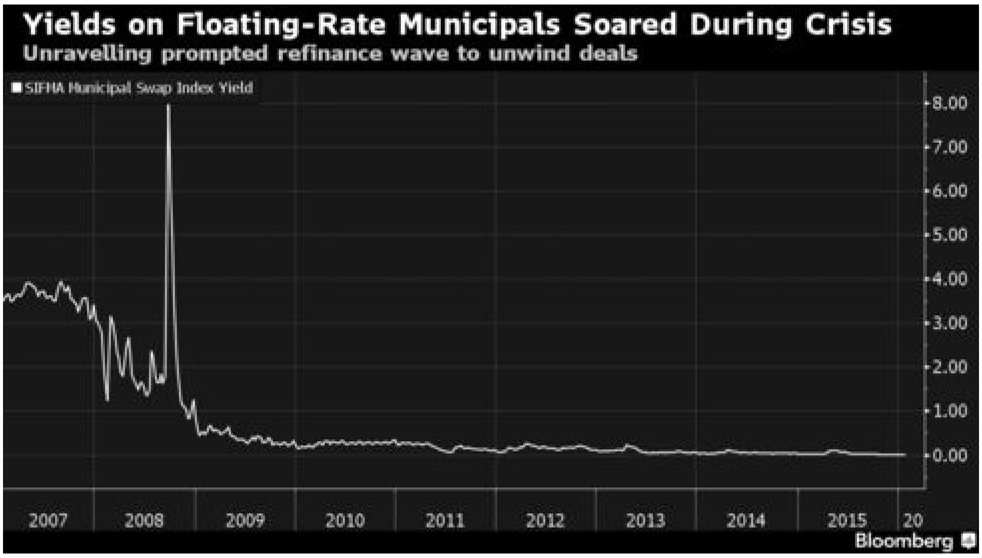
When Chicago’s city council this month delayed voting on a bond sale sought by Mayor Rahm Emanuel, the elected leaders questioned whether they should go deeper in debt to pay about $100 million to unwind derivative trades.

“My fear is that these products designed to offer savings are going to saddle us with two decades of payments,” said Chicago Alderman John Arena, who joined with others to hold up consideration of the deal. “Is borrowing to pay the termination payment with more debt the way to buy our way out?”

Even in Chicago, a city contending with soaring pension bills and a school system that’s veering toward insolvency, there’s little other option. States, cities and counties across the U.S. haven’t found a way to skirt the fees they still face from interest-rate swap deals that cost them billions since credit markets unraveled in 2008. Chicago alone has paid $250 million to break the contracts, which banks had the right to cancel after its credit rating was cut to junk by Moody’s Investors Service in May. That’s enough money to cover more than two months of payroll for the city’s police department.

The derivatives were intended to protect governments that sold variable-rate bonds from the risk that interest costs would rise. They agreed to pay a fixed rate to banks in return for those that fluctuated with market indexes. Those adjustable payments were supposed to cover the interest due on the debt, leaving governments effectively paying the fixed rate. It could be cheaper than borrowing by selling traditional securities.

When the Federal Reserve cut interest rates to near zero in late 2008, the trades became valuable assets to banks, and governments had to pay the market value if they wanted to break them. Some unwound them because the deals backfired, resulting in higher debt bills, while others opted out so they could refinance after borrowing costs dropped to a half-century low.



Public officials have no recourse but to honor the contracts, absent unusual legal circumstances: Detroit reduced its obligation only because of its bankruptcy, while JPMorgan Chase & Co. forgave Jefferson County, Alabama's $647 million of fees to settle Securities and Exchange Commission charges of fraud.

"They see it as a piece of paper that is a contract, they don't think they have to negotiate," said Robert Fuller, a principal at Capital Markets Management, a Hopewell, New Jersey-based swaps adviser.

Chicago has had some success. The city estimates that it has saved about $20 million by negotiating with banks over the market value of the derivatives contracts it has already canceled, according to Carole Brown, its chief financial officer.

Molly Poppe, a Chicago spokeswoman, said Royal Bank of Canada and Barclays Plc are counterparties on the derivatives the council considered this month. Elisa Barsotti, a spokewoman for RBC in New York, and Mark Lane, a spokesman for Barclays, declined to comment.

Officials in Harris County, Texas, and Los Angeles explored ways to reduce what they owed to banks, only to later abandon the efforts without success.

Political Push

In Chicago, labor unions facing pension-benefit cuts have pushed for officials to challenge the fees, saying the city wasn't fully apprised of the risk.

"If you pay now the taxpayers will end up paying for them for the next 30 years," said Saqib Bhatti, the director of ReFund America, which has been working with unions and other groups on the swaps. It's backed in part by the Roosevelt Institute, a think tank that looks for ways to restructure government. "It doesn't put the deal behind you, it puts it on the books so you're paying it for the next 30 years."

In 2014, Chicago's lawyers looked into whether there were grounds for a legal challenge by interviewing current and former employees and pouring through thousands of pages of documents. They didn't find any basis to sue.

"If we thought there was a valid claim that we could pursue against the swap counterparties — please be assured we would vigorously pursue it," Jim McDonald, a city attorney, told reporters on a conference call this month. "We had a very thorough review done, and we did not find a legal basis for pursuing any such claim."

On January 13, Chicago's city council held off on authorizing a $200 million bond issue that would cover the derivative-cancellation fee. Brown, the CFO, will discuss the deal with city council members at a meeting again next month.

The financing would finish Emanuel's plan to eliminate the risks tied to such deals, which have triggers that give banks the right to demand that bonds be paid off early and the derivatives canceled if the city's ratings fall below a certain threshold.

Poppe, the city spokeswoman, referred to Brown's previous remarks when asked to comment. In a Jan. 21 letter to aldermen, the CFO said the city continues to "aggressively negotiate the water swap termination payments to ensure the smallest payment possible." Barclays, which took over part of a water-bond swap from UBS AG, lowered the rating threshold, which prevented Chicago from facing an immediate demand to pay it off.

Officials probably never should have entered the agreements in the first place, said Richard Ciccarone, who follows municipal finance as president of Merritt Research Services in Chicago.

"They should have turned them down because they involved betting the public's money on interest rates," said Ciccarone.

Bloomberg Business

by Darrell Preston and Elizabeth Campbell

January 28, 2016 — 9:01 PM PST Updated on January 29, 2016 — 5:35 AM PST

Morgan Stanley Paid New Jersey Widow Over Puerto Rico Losses.

Morgan Stanley paid a New Jersey widow $95,632 to compensate for her losses on Puerto Rico securities, in what may be the first case of its kind involving mainland investors and commonwealth debt.

A Financial Industry Regulatory Authority arbitration panel decided in October that the bank must pay Morrisa Schiffman for compensatory damages. She asked for $157,267.17 for unsuitable recommendations, failure to disclose and negligent supervision, according to the case document. Seth Lipner, a lawyer at Deutsch & Lipner in Garden City, New York, who represented Schiffman, said that he knows of no other case where a mainland investor won compensation for Puerto Rico bond losses.

"She's a widow who was using the income to supplement her retirement," Lipner said in a telephone interview Thursday. "I do anticipate seeing more people complaining as they come to realize that these bonds are not coming back to par."

Commonwealth securities, which attracted investors because they're tax-exempt in all U.S. states, lost about 19 percent since the start of 2013, while the broader municipal-bond market gained nearly 11 percent, according to S&P Dow Jones Indices. Puerto Rico bonds fell in value and began trading at distressed levels in 2013 on investor concern that the island wouldn't be able to repay all of its obligations on time and in full. The commonwealth and its agencies racked up $70 billion by borrowing for years to fix budget shortfalls.

UBS Settlement

"Morgan Stanley is disappointed with the panel's decision, but has paid the award," Christy Jockle, a spokeswoman at the bank, said in a statement. "The firm believes it has made appropriate disclosures regarding Puerto Rico. The arbitration involved a bond purchased in 2008."

UBS Group AG agreed in September to pay about $34 million to settle regulatory claims that a Puerto Rico unit allowed a broker to sell risky municipal bond investments to conservative customers.

Ray Pellecchia, a Finra spokesman, was unable to confirm if the Shiffman case is the first of its kind.

Lipner said that he has filed for arbitration in three more cases of individual investors who've lost money on their Puerto Rico securities and involving Bank of America Merrill Lynch, Stifel Nicolaus & Co. and Hennion & Walsh Inc.

Restructuring Talks

Bill Halldin, a spokesman at Bank of America Merrill Lynch, declined to comment. Anne Hveem, a spokeswoman at Hennion & Walsh, didn't have an immediate comment. Sarah Anderson, a spokeswoman at Stifel, didn't immediately respond to an e-mail and phone message.

"People didn't need the investments that they were put into," Lipner said. "Representatives need to know what they're recommending. And what we're finding across the board in the states is that they didn't."

Puerto Rico is seeking to lower its debt stack by asking investors to accept less than the full value on their holdings or waiting longer to be repaid. The commonwealth is expected to present Friday its first debt-restructuring proposal to advisers and lawyers for creditors.

Bloomberg Business

by Michelle Kaske

January 28, 2016 — 2:29 PM PST

The High-Yield Munis That Conquered 2015 Seen Overpriced in 2016.

For investors in high-yield municipal bonds, the downside of making money in 2015 while other risky-debt buyers suffered losses is they'll be hard-pressed to do it again in 2016.

Junk-rated munis returned 1.8 percent last year, in contrast to declines of 0.8 percent, 4.5 percent and 22 percent for U.S. high-yield loans, corporate securities and floating-rate notes, respectively, Barclays Plc data show. Energy companies dragged down returns as oil prices continued to slide, raising the risk of defaults. Taxable company debt is down another 2.2 percent this month through Jan. 27, while tax-exempt bonds gained an added 0.1 percent.

The divergence can't last, say Standish Mellon Asset Management and Wells Capital Management. State and local bonds benefit from stronger credit quality than their corporate counterparts, leaving investors more willing to lend to lower-rated borrowers to pick up extra yield with interest rates near generational lows.

Only 7.5 percent of tax-exempt debt rated junk by Moody's Investors Service defaults within 10 years, compared with 32.4 percent of corporate securities. Yet this year may come down to what's cheap and what's not.

"We're at a crossroads," said Lyle Fitterer, head of tax-exempt debt in Menomonee Falls, Wisconsin, at Wells Capital, which oversees $39 billion of munis. "If you go back five years, there's been fairly substantial underperformance of high-yield taxable versus high-yield munis. We'd argue that valuations within the high-yield taxable market look pretty attractive and you're going to get excess performance."

Mutual fund investors aren't getting the message. U.S. corporate high-yield funds saw outflows of more than $4 billion in the past two weeks, Lipper US Fund Flows data show. By contrast, individuals have poured $1.5 billion into high-yield muni funds over the past five weeks, the biggest wave of cash since June 2014.

So-called crossover buyers, who don't benefit from the tax-exempt interest on municipal bonds yet sometimes buy it anyway when it gets too cheap, are in the best position to capitalize and add high-yield corporate debt, Fitterer said.

That could come at the expense of individual investors, who hold the majority of munis through private accounts or mutual funds. They have shown signs of chasing performance by pouring money into the market when it's rallying and yanking it during routs.

That's particularly risky when it comes to the high-yield muni market. Apart from bonds backed by tobacco settlement money, many of the securities were issued for small, stand-alone projects. On some occasions, a few investors own the entire deal.

"We are at rich valuations in muni high-yield and we're more likely to revert to the mean to look more like corporate high-yield, so it wouldn't be the time in the cycle to buy," said Christine Todd, head of tax-sensitive strategies at Standish Mellon, which oversees about $30 billion in munis. "When you own municipal high-yield, you do have a danger of finding yourself owning illiquid securities that can't be traded."

That risk came to fruition in 2013, during what became known as the Taper Tantrum. The $1.9 billion Market Vectors High Yield Municipal Index exchange-traded fund, used as a proxy for the market, tumbled 14.3 percent in a month from its near-record high. It still hasn't recouped the price decline.

Other investors, including Nuveen Asset Management, aren't as quick to call an end to the current rally.
While the bonds appear expensive relative to alternative assets, so does the municipal market as a whole: The ratio of benchmark 10-year AAA yields to U.S. Treasuries tumbled this month to the

lowest since 2011, signaling that state and local debt is relatively pricey. That means high-yield securities, with larger interest payments to offset any price declines, could still fare best among tax-exempt obligations.

“The relative value versus corporate high-yield really represents the blowing out of spreads in corporate high-yield,” said John Miller, who runs Nuveen’s $11.8 billion high-yield muni fund, the largest of its kind. Riskier tax-exempt bonds are still attractive because “defaults are running below average and AAA yields are also running below average, but tax obligations for the highest income brackets are the highest since 1986.”

While the high-yield muni market is alluring for wealthy investors after adjusting for taxes, the low-hanging fruit is gone and few segments are worth the risk at current prices, Pacific Investment Management Co. portfolio managers David Hammer and Sean McCarthy wrote in a Jan. 24 report. The company’s $626 million high-yield muni fund outperformed 99 percent of peers over the past year. They’re adding debt with stronger credit ratings.

“Increased volatility can present great opportunities for investors who are well-positioned, but it also can be a land mine for those who aren’t,” Hammer and McCarthy wrote. High-yield municipal debt investors should be “equipped to play defense if conditions warrant.”

Bloomberg Business

by Brian Chappatta

January 27, 2016 — 9:00 PM PST Updated on January 28, 2016 — 5:58 AM PST

California Muni Dealers Can't Fund Bond Campaigns to Get Hired.

Promising municipal bond underwriters in California that they will be hired to sell debt if they provide election services that get voters to approve new authorizations is a violation of the law, state Attorney General Kamala Harris said in a ruling this week.

California law bans local officials from using public money to promote passage of bond issues. While they can provide basic information about what a proposed bond issue is for and how much it will cost, they can’t take steps to actively persuade voters to approve the authorizations. Harris’ Jan. 26 ruling also says schools can’t inflate underwriting fees to cover the cost of campaigns.

Former Treasurer Bill Lockyer, who sought the opinion in 2013, praised the ruling, and said it could open up school districts and vendors to prosecution.

“It makes it clear that prior practices of this sort are illegal,” Lockyer said in a telephone interview Thursday.

Lockyer sought the opinion after finding school districts in the state entered agreements with underwriting firms in which the districts award the dealers the right to sell the bonds in return for providing services to pass an initiative. He said at the time the agreements raise “substantive questions” about whether school officials broke the law by using public money to advocate passage.

“A school or community college district violates California law concerning the use of bond proceeds if the district reimburses the municipal finance firm for the cost of providing pre-election services from the fees the district pays to the firm in connection with the bond sale," Harris said in the opinion.

Mark Paxon, general counsel for current Treasurer John Chiang, declined comment on the opinion because it is still being reviewed. A spokesperson for Harris didn't respond to a request for comment.

Bloomberg Business

by Darrell Preston

January 28, 2016 — 10:57 AM PST

Bloomberg Brief Weekly Video - 01/28

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

Watch the video.

January 28, 2016

Fitch Rating Criteria for Variable-Rate Demand Obligations and Commercial Paper Issued with External Liquidity Support.

Read the Criteria.

January 28, 2015

Puerto Rico to Hold Debt-Restructuring Talks Jan. 29.

Puerto Rico has scheduled meetings Friday with representatives of several bondholder groups to discuss a possible restructuring of $70 billion of municipal bonds, people familiar with the matter say.

The meetings come as Puerto Rico struggles to make progress on two tracks, striking deals with bondholders and persuading U.S. legislators that the island merits relief from the U.S. government. Further complicating the process, the U.S. territory has more than a dozen types of bonds and is negotiating simultaneously with several creditor groups that have competing claims.

Puerto Rico missed about $37 million of debt payments in January, while a tentative agreement expired between bondholders and the Puerto Rico Electric Power Authority. The government raised estimates of its financing gap by 15% last week, which investors expect will increase the losses Puerto Rico will push them to accept in a restructuring.

Some investors are skeptical about Puerto Rico's willingness to commit to restructuring talks and believe Governor Alejandro García Padilla is waiting for action from Congress or the Supreme Court first that may improve the U.S. commonwealth's position. Hedge-fund bondholders have been trying to broker such a deal for more than a year but Puerto Rico has rebuffed their offers so far, people familiar with the talks say.

"Who doesn't think it's better for Puerto Rico to wait?" said Matt Fabian, partner at the research firm Municipal Market Analytics.

A spokeswoman for Puerto Rico's Government Development Bank declined to comment.

Democrats and the Obama administration have sought legislation that would give Puerto Rico the authority to restructure its debts and proposed bills that would temporarily stay lawsuits against the commonwealth. House Speaker Paul Ryan (R., Wis.) has called on lawmakers to deliver a "responsible solution" by the end of March.

The Supreme Court has also agreed to review Puerto Rico's efforts to write its own law aimed at restructuring debt from its public utilities.

Even in bankruptcy court Puerto Rico would need to negotiate with bondholders over how much of a debt reduction they would accept. Owners of different types of debt are jostling to reach deals with Puerto Rico that will minimize their own losses.

Owners of general-obligations bonds and some bonds that are paid off by sales taxes—known by their Spanish acronym, Cofina—will have the upper hand in negotiations because they have stronger legal claims, lawyers and investors said. Holders of subordinate Cofina bonds and bonds issue by the Government Development Bank of Puerto Rico are expected to recover less, they said.

A committee of general-obligation bondholders including Davidson Kempner Capital Management and Monarch Alternative Capital and advised by law firm Paul, Weiss, Rifkind, Wharton & Garrison LLP is cooperating with a committee of Cofina senior bondholders represented by Quinn Emanuel Urquhart & Sullivan to craft a restructuring proposal, according to people familiar with the matter. A separate group of hedge funds that owns GDB bonds includes Avenue Capital Management, Brigade Capital Management and Fir Tree Partners and is working with law firm Davis Polk & Wardwell LLP.

Puerto Rico must also negotiate terms with other creditors. OppenheimerFunds Inc. and Franklin Advisers Inc. own billions of dollars of subordinated Cofina bonds and general-obligation bonds in mutual funds they operate. Bond insurers Ambac Financial Group Inc. and Assured Guaranty Ltd., back about $8 billion of Puerto Rico bonds, placing them among the island's largest creditors.

THE WALL STREET JOURNAL

By MATT WIRZ and AARON KURILOFF

Updated Jan. 26, 2016 9:46 p.m. ET

Write to Matt Wirz at matthieu.wirz@wsj.com and Aaron Kuriloff at aaron.kuriloff@wsj.com

Puerto Rico Plans Debt-Exchange Offer Friday.

Puerto Rico plans to propose a debt exchange to investors Friday, offering to swap existing bonds for two new types of securities to help the U.S. commonwealth alleviate its debt burden.

Both classes of debt would delay payments, allowing Puerto Rico time to make fiscal adjustments and spur economic growth, said a person briefed in the matter. One would eventually pay interest at 5%, while the other would carry a value determined by the island's fiscal health.

Bondholders would be offered the first class of debt in amounts based on the relative legal priority of their holdings, the person said. Investors would then receive enough of the second class to make up the difference between that amount and the face value of their bonds.

The new securities would be safer and more easily traded than existing Puerto Rico bonds, the person said. The first class would have interest payments beginning in 2018, rising to 5% in 2021, and principal due starting in five years. Payments on the second class could begin in 10 years, with creditors receiving up to 25% annually of commonwealth revenue that exceeds current projections.

Such an exchange would help the commonwealth find room to implement fiscal changes outlined in a revised economic plan released last week, which could allow creditors to eventually make their principal investment back, the person said.

Puerto Rico Governor Alejandro Garcia Padilla said in a statement the commonwealth had taken measures to reduce expenses and increase revenue and needed help from creditors.

"I have instructed our team and our advisors to present to our creditors' advisors tomorrow the Commonwealth's proposal for a voluntary debt exchange," he said. "It is our every intent to protect the integrity of the process, and as such, we do not plan to negotiate the terms of our proposal publicly."

Puerto Rico owes investors about $70 billion and is struggling with a decade of economic stagnation and a steep population decline that last year led Gov. Alejandro Garcia Padilla to declare its debts unpayable. The commonwealth began defaulting on bonds with its weakest legal pledge in August and missed about $37 million in bond payments earlier this month after diverting money to pay some investors at the expense of others. That move prompted lawsuits from bond insurers.

The proposal comes as officials work to stave off additional litigation and seek aid from the U.S. Congress, including access to municipal bankruptcy protections currently denied the commonwealth. Democrats and the Obama administration have sought legislation that would allow Puerto Rico to restructure its debt and proposed bills to temporarily stay lawsuits against the island. House Speaker Paul Ryan (R., Wis.) has called for lawmakers to find a "responsible solution" to Puerto Rico's crisis by the end of March.

Puerto Rico last week said new estimates show the commonwealth about $16 billion short of the money it needs to cover debt payments over the next five years, even with significant fiscal adjustments. The commonwealth says it is getting along by differing tax refunds, stretching payments to suppliers and other extraordinary measures.

"Continuation of these measures is neither sustainable nor in the interest of any stakeholder, as they will only deepen the financial gaps that the Commonwealth and its creditors will need to resolve, while at the same time placing the full burden of the crisis on the residents of Puerto Rico," Victor Suarez, the commonwealth's secretary of state, said in a news release at the time.

The exchange offer is being made to investors holding debt backed by the island's taxes and not those with revenue bonds from some agencies such as the Puerto Rico Aqueduct and Sewer Authority, the person said. The Puerto Rico Electric Power Authority Thursday renewed a tentative restructuring deal with creditors.

Some benchmark Puerto Rico bonds maturing in 2035 traded Thursday at about 71.75 cents on the dollar, up from about 70.75 cents the previous day, according to the Electronic Municipal Market Access website.

THE WALL STREET JOURNAL

By AARON KURILOFF

Updated Jan. 28, 2016 9:53 p.m. ET

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

SIFMA U.S. Municipal VRDO Update, December 2015.

A brief historical stat sheet to the municipal ARS, FRN, and VRDO market ending December 2015. In Excel format only.

Download.

January 27, 2016

GFOA Executive Board Approves New Best Practices and Advisories.

On January 22 the GFOA's Executive Board approved five best practices and an advisory to provide guidance to government finance officers in the areas of budgeting, accounting, retirement benefits administration and debt issuance. A summary of each is provided below.

Budget Consolidation

This new best practice was developed by the GFOA Budget Committee to help finance officers ensure that entity-wide budget totals do not contain double-counting. While accounting standards require items to be recorded in separate funds, interfund activity is eliminated from government-wide consolidated budget totals in financial statements. As budget consolidation occurs, finance officers need to safeguard against double-counting, yet there is limited guidance on how best to accomplish this. This new best practice offers specific guidance to finance officers on how to ensure that government-wide financial statements do not contain double-counting.

Incorporating the Capital Budget into the Budget Document

In developing this best practice the GFOA Budget Committee and Committee on Capital Planning and Economic Development merged and revised the two existing GFOA best practices Presenting the Capital Budget in the Operating Budget Document and Incorporating a Capital Project Budget in the Budget Process. The new document recommends that finance officers adopt a formal capital budget as part of their annual or biennial budget process and provides guidelines to finance officers on incorporating information from the capital budget within the budget document.

Sustainable Funding Practices for Defined Benefit Pensions and Other Postemployment Benefits

The GFOA Committees on Budget; Accounting, Auditing, and Financial Reporting; and Retirement and Benefits Administration collaborated to revise this best practice, which recommends that state and local government officials ensure that the costs of defined benefit (DB) pensions and other post-employment benefits (OPEB) are appropriately measured and reported. The best practice was updated to (1) provide guidance on how to ensure sustainability of DB pension plans and OPEB, (2) outline what to include in funding policies related to DB pension plans and OPEB and (3) provide recommendations on how to reduce volatility of annual contributions to DB pension plans and OPEB.

Ensuring Other Postemployment Benefits (OPEB) Sustainability

The GFOA Committees on Budget; Accounting, Auditing, and Financial Reporting; and Retirement and Benefits Administration also collaborated to revise this best practice, which recommends that governments ensure OPEB sustainability by evaluating key items specifically related to OPEB, including the structure of benefits offered, the associated benefit cost-drivers, and clear communication to stakeholders. The best practice was primarily revised to focus on sustainability measures specific to OPEB, particularly as related to structure and managing costs of benefits offered.

Framework for Internal Control: The Control Environment

The GFOA Committee Accounting, Auditing, and Financial Reporting developed this new best practice as a follow-up to the 2015 best practice Establishing a Comprehensive Framework for Internal Control, which recommends that state and local governments adopt the Committee of Sponsoring Organizations' (COSO) Internal Control—Integrated Framework (2013) as their conceptual basis for designing, implementing, operating, and evaluating internal control. The Best Practice said that this would provide governments with reasonable assurance that they are achieving their operational, reporting, and compliance objectives. To support governments' efforts in this area, the GFOA is developing Best Practices that explain how to implement each of the five components of that Framework. This Best Practice focuses on the first of those five components, the Control Environment, which the COSO has defined as a set of standards, processes, and structures, that provide the basis for carrying out internal control.

Enhancing Tax Abatement Transparency

The GFOA Committee on Accounting, Auditing, and Financial Reporting organized this new best practice to provide recommendations to government finance officers about disclosing tax abatements to comply with GASB Statement No. 77, Tax Abatement Disclosures. The GASB statement requires the disclosure in the notes to the financial statements of only a portion of the information necessary toward understanding the complete justifications and implications of providing tax abatements. GFOA recommends that governments enhance tax abatement transparency and provide a description of the policies governing tax abatements, including what the government is hoping to achieve by utilizing them, and the methodologies used to determine the entity's return on investment from them.

OPEB Bonds

The GFOA's Committee on Retirement and Benefits Administration and Committee on Governmental

Debt Management collaborated to revise this best practice to advise governments against issuing OPEB bonds, and provides a summary of the risks associated with issuing these products.

Wednesday, January 27, 2016

- MSRB to Discuss Bank Loans, Markup Disclosure at Meeting.
- Dealer, Advisor Groups Ask for Revisions to MSRB Pay-to-Play Rule.
- BDA Submits Letter to SEC on MSRB Pay-to-Play Rule.
- An Overview of Standard & Poor's Updated Methodology for Rating U.S. Public Finance Waterworks, Sanitary Sewer, and Drainage Utility Systems.
- Cities' Pension Liabilities Are About to Look a Lot Worse.
- *Nichols v. City of RehoBoth Beach* – District court holds that city resident lacked standing to challenge city charter provisions governing voting procedures for special elections to authorize the borrowing of money (i.e. $53 million of general obligation bonds), as resident had the right to vote in the special election and thus lacked the concrete personal injury necessary to bring suit.
- *Metropolitan St. Louis Sewer District v. City of Bellefontaine Neighbors* – Supreme Court of Missouri holds, as a matter of first impression, that a public entity (sewer district) was not entitled to sue another public entity (city) for inverse condemnation.
- And finally, BCB's Department of Misplaced Priorities this week brings you *Estate of Glasoe v. Williams County, N.D.*, in which the Glasoe children lost the family homestead via tax sale. The kids brought suit, alleging that they were shocked, shocked, by the foreclosure and sale. Uh, despite the fact that Leanne Glasoe – who resided at the property – had been personally served by a deputy sheriff while she was working at her hair salon. "The deputy testified that when he gave the envelope to LeAnne Glasoe he told her 'it was very important that she pay attention to the contents because it was a Foreclosure Notice.' LeAnne Glasoe testified, 'I didn't even open it, I went right back to work.'" While we commend your commitment to the beautification of the ladies of the greater Williston area, Leanne, maybe shoulda taken the time to open the envelope. Bet you wish you could Curl Up & Dye.

BONDS - DELAWARE

Nichols v. City of RehoBoth Beach

United States District Court, D. Delaware - December 14, 2015 - Slip Copy - 2015 WL 8751180

Resident Jackie Nichols ("Nichols") brought suit against the City of Rehoboth Beach ("Rehoboth"), alleging federal and state constitutional violations arising from a special election to authorize the issuance $52,500,000 of general obligation bonds of Rehoboth to finance an ocean outfall project.

Specifically, Nichols challenged the constitutionality of the residency requirements contained in the section of the Rehoboth Charter that governs voting procedures for Special Elections to authorize the borrowing of money.

The District Court ruled in favor of the Rehoboth, finding that Nichols lacked standing to maintain her suit.

"The court agrees with Defendants that Nichols lacks standing. Initially, the court agrees with

Defendants that Nichols is not contesting the expenditure of tax funds, but the legality of the Special Election. Second, the court notes that Nichols suffered no particularized injury as a result of the Special Election. Nichols is a property owner in the city and had the right to vote in the Special Referenda Election. Thus, she lacks the concrete personal injury necessary to bring suit. As a result, the court lacks the subject matter jurisdiction to hear this action. Therefore, the complaint must be dismissed."

PUBLIC MEETINGS - MAINE

Hughes Bros., Inc. v. Town of Eddington

Supreme Judicial Court of Maine - January 14, 2016 - A.3d - 2016 WL 159296 - 2016 ME 13

Requester filed a complaint seeking an injunction directing town to cease and desist from holding a public vote on proposed moratorium on quarries, and a declaration that any moratorium that might be approved was void because town violated open meeting requirements of Freedom of Access Act (FOAA) during a joint executive session it held with board of selectmen. The Superior Court entered judgment for town. Requester appealed.

The Supreme Judicial Court of Maine held that the boards conducted a valid executive session, invoked for purpose of consulting with legal counsel regarding wording in proposed moratorium ordinance.

Joint executive session of town planning board and board of selectmen, invoked for purpose of consulting with legal counsel concerning the boards' legal rights and duties to establish a moratorium ordinance on quarries, did not violate open meeting requirements of Freedom of Access Act (FOAA) and, therefore, moratorium ordinance ultimately approved in open town vote was not null and void. Town met its burden to show that the executive session was held for, and limited to, the authorized purpose of consulting with counsel to draft a legally sound ordinance amendment for proposal at a later public meeting.

ANNEXATION - MISSOURI

City of DeSoto v. Nixon

Supreme Court of Missouri, en banc - January 12, 2016 - S.W.3d - 2016 WL 142676

City and city resident brought action against state for declaration that statute's section that excluded any city that met six specific criteria from statute's procedures for making post-annexation payments to a fire protection district after the city annexed part of the fire protection district violated the constitutional prohibition against local or special laws. The Circuit Court entered summary judgment in favor of state. City and resident appealed.

The Supreme Court of Missouri held that law was a special law in violation of constitution.

Statute describing how a third-class city with a population between 6,000 and 7,000 inhabitants, located in a charter county with between 200,000 and 350,000 inhabitants, entirely surrounded by a single fire-protection district and which operated a fire department was to make post-annexation payments to a fire protection district after it annexed part of the district was a special law and thus violated constitutional prohibition against local or special laws. No other city met both population requirements, and while there were many cities with 6,000 to 7,000 residents, those either were not third-class cities, not in charter counties, or were not surrounded by a single fire protection district.

INVERSE CONDEMNATION - MISSOURI

Metropolitan St. Louis Sewer District v. City of Bellefontaine Neighbors

Supreme Court of Missouri, en banc - January 12, 2016 - S.W.3d - 2016 WL 142767

Sewer district sued city alleging inverse condemnation, trespass and negligence for damage to sewer lines allegedly caused in the course of a city street improvement project. The Circuit Court granted city's motion to dismiss for failure to state a claim. District appealed.

The Supreme Court of Missouri held that:

- As a matter of first impression, as another public entity, district was not entitled to sue city for inverse condemnation, and
- Sovereign immunity barred district's tort claims against city.

Missouri Constitution and Missouri statutes governing condemnation and inverse condemnation, providing for just compensation only for the taking of private property, did not entitle sewer district to sue city for inverse condemnation, for city's alleged damage done to sewer lines in the course of city street improvement project, where sewer district was seeking compensation for the unintentional taking of public property.

In the absence of an express statutory exception to sovereign immunity, or a recognized common law exception such as the proprietary function and consent exceptions, sovereign immunity is the rule and applies to all suits against public entities, including suits against them by another public entity.

BALLOT INITIATIVES - OHIO

State ex rel. Carrier v. Hilliard City Council

Supreme Court of Ohio - January 19, 2016 - N.E.3d - 2016 WL 259410 - 2016 -Ohio- 155

Petitioners sought writ of mandamus to compel city council to approve an ordinance placing a proposed city-charter amendment on the ballot that would, a) subject all zoning ordinances to referendum, and b) prohibit the creation of tax increment financing incentive districts for dwelling unit improvements.

The Supreme Court of Ohio held that:

- Laches did not bar action, and
- Initiative petition to amend city charter did not violate statute requiring that each part-petition contain a full and correct copy of the title and text of the proposed measure.

Laches did not bar action in which petitioners sought writ of mandamus to compel city council to approve an ordinance placing a proposed city-charter amendment on the ballot, although delay resulted in case becoming subject to an expedited election briefing schedule, where eight days elapsed between the city council's vote rejecting an ordinance to place the proposed charter amendment on the ballot and, to have avoided having the expedited schedule apply, suit would have needed to be filed within 24 hours of the city council's decision.

Initiative petition to amend city charter did not violate statute requiring that each part-petition contain a full and correct copy of the title and text of the proposed measure, where amendment consisted of merely two provisions, the text of which comprised four brief paragraphs, and the entire amendment, including explanatory captions, fit easily on a single page, and, thus, there was no risk that the captioning format would interfere with the petition's ability to fairly and substantially present the issue or mislead electors.

IMMUNITY - OHIO

Citizens in Charge, Inc. v. Husted

United States Court of Appeals, Sixth Circuit - January 19, 2016 - F.3d - 2016 WL 210313

Three non-profit organizations brought action against Ohio Secretary of State, seeking declaration that Ohio's statutory petition-circulator residency requirement violated the First and Fourteenth Amendments, an injunction prohibiting its enforcement, and damages against the Secretary.

The United States District Court declared the statute unconstitutional, enjoined enforcement of it, and denied Secretary's qualified immunity defense. Secretary appealed the qualified immunity ruling.

The Court of Appeals held that Secretary did not violate clearly established law or otherwise act unreasonably by enforcing statute requiring circulators of initiative-petitions to be Ohio residents, and thus Secretary was entitled to qualified immunity from money-damages liability in action challenging the residency requirement on First Amendment grounds.

Other circuits issued conflicting decisions on constitutionality of residency requirements for circulators, when Secretary enforced statute no court had held it to be unconstitutional, and although prior version of statute was held unconstitutional, the new statute was more narrowly tailored and differed from the prior statute in several ways.

REFERENDUM - OKLAHOMA

In re Initiative Petition No. 403

Supreme Court of Oklahoma - January 12, 2016 - P.3d - 2016 WL 147145 - 2016 OK 1

Contestants filed original proceeding to determine legal sufficiency of initiative petition that sought to add new constitutional article creating Oklahoma Education Improvement Fund.

The Supreme Court of Oklahoma held that petition did not violate "one general subject rule" for constitutional amendments.

"One general subject rule" applicable to constitutional amendments was not violated by initiative petition that sought to add new article creating Oklahoma Education Improvement Fund. Each section of proposed article was germane to creating and implementing Fund, including creation of Fund, levying of additional sales tax, distributing monies to both higher education and common education, and providing increase in teacher salaries.

LIABILITY - TEXAS

East Texas Medical Center Gilmer v. Porter

Court of Appeals of Texas, Tyler - January 13, 2016 - S.W.3d - 2016 WL 145825

Patron, who slipped and fell while walking into the emergency room "walk area" seeking treatment, brought action against hospital, alleging negligence in hospital's failure to keep "walk area" clean and safe. Hospital filed a motion to dismiss, alleging that patron's claim was a health care liability claim (HCLC) requiring an expert report. The District Court denied the motion. Hospital filed interlocutory appeal.

The Court of Appeals held that patron's claim against hospital was not an HCLC.

To qualify as health care liability claim (HCLC), a claim alleging departure from safety standards need not be directly related to health care, but it must have a substantive relationship with the providing of medical or health care; that is, there must be a substantive nexus between the safety standards allegedly violated and the provision of health care.

Claim brought by patron, who slipped and fell while walking into hospital's emergency room "walk area" seeking treatment, alleging negligence in hospital's failure to keep "walk area" clean and safe, was not a health care liability claim (HCLC) requiring an expert report. Patron was not yet a patient at the time she fell, she had not yet received any treatment, and her injury did not occur in an area where patients might be while receiving care, and, furthermore, the record did not support the conclusion that the regulatory standards asserted by hospital established a substantive nexus between the provision of health care and the underlying facts of patron's claim.

ZONING - WASHINGTON

Snohomish County v. Pollution Control Hearings Bd.

Court of Appeals of Washington, Division 2 - January 19, 2016 - P.3d - 2016 WL 225256

Counties and building industry association appealed Pollution Control Hearings Board's order holding that Department of Ecology's permit condition, which required counties to apply new stormwater regulations to certain property development applications, did not violate vested rights of property developers. The Superior Court consolidated the appeals, and counties and association sought direct review, which the Court of Appeals granted.

The Court of Appeals held that:

- Stormwater regulations conflicted with vested rights doctrine and were invalid, and
- Clean Water Act (CWA) did not preempt vested rights doctrine.

Department of Ecology's stormwater permit condition, which required counties to apply new stormwater drainage regulations to previously submitted development applications if construction was not started by future deadline, conflicted with statutory vested rights doctrine, and therefore permit condition was invalid. Development rights vested upon filing completed building or land division application, and permit condition could have required counties to enforce land use control ordinances and development standards or regulations adopted after development rights had vested.

Federal Clean Water Act (CWA) did not preempt state's statutory vested rights doctrine, which required that certain land development applications be processed under land use regulations in effect when application was submitted, based on Department of Ecology's requirement, issued under CWA's delegation of permit authority, that counties apply new stormwater regulations to previously submitted applications. Even though vested rights doctrine may have delayed application of Department's requirements, nothing in CWA directly conflicted with vested rights statutes, CWA only required pollutant discharge controls to maximum extent practicable, and statutes did not prevent accomplishment of Congress's broad purposes and objectives.

S&P: Management is Key for U.S. Water Utilities to Align Operations and Finances.

In 2002 Standard & Poor's Ratings Services published the "Top 10 Ways To Improve Or Maintain A Municipal Credit Rating." The article notes that "In addition to quantitative factors, qualitative information factors heavily into credit analysis." Simply, some factors that are important to credit quality are difficult to measure. In that regard, municipal waterworks and sanitary sewer utilities are not unlike any other rated issuer: there is a strong correlation between leadership and ratings. And the decentralized and autonomous nature of U.S. local governments creates an even stronger link between management and credit quality.

In 2007, the American Water Works Assn. (AWWA), the U.S. Environmental Protection Agency, and others in the sector identified attributes of effective utility management. In addition, we observe that highly rated utilities generally — but not always — have an alignment among operational, financial, and strategic goals that recognize that the organization has not only external, but also internal, stakeholders. Strong management alone can lend itself to operational and fiscal continuity and can serve as a stabilizing factor for more than just the rating. Strong management combined with favorable assessments in other rating factors can even be buoy credit quality. For example, liquidity and reserves provide working capital, fund unexpected operational problems, and enhance general budgetary flexibility. If management acts to make liquidity likely to be consistently robust, then, if contingent liabilities become actual liabilities, liquidity and management strength can together moderate or even free a utility from distress. Conversely, the absence of liquidity and management strength together creates a limiting factor and often leads to rapid credit deterioration.

Overview

- Because most water utilities are small and local, strong management is especially important in this sector.
- Water utilities function best when operations and finances are aligned with strategic goals, and good management is needed to ensure this occurs.
- If liquidity is tight and management has not aligned finances and operations, a credit decline can occur quickly.

Continue reading.

19-Jan-2016

S&P: Affordability as a Component of U.S. Water and Sewer Utility Ratings.

Despite its capital intensity, the U.S. water utility sector is generally an efficient one, in Standard & Poor’s Ratings Services’ view. We have seen utilities and their representatives employ public education campaigns to help gain buy-in of critical proposed rate adjustments by noting that a typical household water and sewer bill is still less expensive in absolute dollars than a mobile phone or cable or satellite television bill even after a much larger rate change for the water and sewer bill (see chart). In the U.S., for every gallon of gasoline, a residential customer could receive between 500 to 1,000 gallons of drinking water, depending on current gasoline prices.

Overview

- Affordability is incorporated as a factor in our water and sewer utility analysis to determine how much flexibility a utility has to raise rates.
- We look at both the average bill as a percentage of household effective buying income and the poverty rate of the area the utility serves.
- This does give advantages to those utilities located in affluent areas, but other factors can offset this.

Continue reading.

19-Jan-2016

An Overview of Standard & Poor's Updated Methodology for Rating U.S. Public Finance Waterworks, Sanitary Sewer, and Drainage Utility Systems.

On Jan. 19, 2016, Standard & Poor’s Ratings Services published its updated criteria for rating waterworks, sanitary sewer, and drainage utility systems in the U.S. The update is part of our regular criteria review process, and its goal is to provide additional transparency and comparability to help market participants better understand our approach in assigning ratings to U.S. public finance waterworks, sanitary sewer, and drainage utility systems, to enhance the forward-looking nature of these ratings, and to enhance the global comparability of our ratings through a clear, comprehensive, and globally consistent criteria framework.

Continue reading.

19-Jan-2016

S&P RFC Process Summary: Rating Methodology and Assumptions for U.S. Municipal Waterworks and Sanitary Sewer Utility Revenue Bonds.

On Dec. 10, 2014, Standard & Poor’s Ratings Services published a request for comment (RFC) on its proposed approach to analyzing bonds supported by municipally-owned water and sewer utilities in the U.S. Following feedback from the market, we finalized and today published our criteria “U.S. Public Finance Waterworks, Sanitary Sewer, And Drainage Utility Systems: Rating Methodology And Assumptions”.

Standard & Poor’s received comments from participants representing the utility, banking and underwriting, municipal financial advisory, and academic communities. Based on feedback, we have revised certain factors for the purposes of further clarity and transparency.

This RFC process summary provides an overview of the substantive changes between the RFC and the final criteria. We considered all comments, made many changes in response, but did not make all changes suggested. Since the original RFC, we also made some stylistic and wording changes to ensure consistency among other criteria published by Standard & Poor's. We have added references to related criteria already published by Standard & Poor's with details on how these criteria apply to municipally-owned water and sewer utilities. We also corrected a few very minor technical errors in the publication. The changes outlined below summarize the material changes made based on market feedback and further refinements of the methodology based on extensive testing of its application to municipally-owned water and sewer utilities. All paragraph citations are in reference to the final criteria unless otherwise noted.

Continue reading.

19-Jan-2016

S&P Credit Rating Model: Water/Sewer Credit Scoring.

Standard & Poor's Ratings Services uses the results of its Water/Sewer Credit Scoring Model to perform standardized credit analysis for assigning water and sewer ratings based on its criteria methodology.

Purpose Of The Model

Standard & Poor's criteria, " U.S. Public Finance Waterworks, Sanitary Sewer, And Drainage Utility Systems: Rating Methodology And Assumptions", published Jan. 19, 2016, explains our methodology for assigning issue credit ratings, issuer credit ratings (ICRs), and ratings derived from stand-alone credit profiles (SACPs), based on waterworks, sanitary sewer, and drainage utility revenue pledges of local and regional governments (LRG) in the U.S. The Water/Sewer Credit Scoring Model applies the criteria methodology. By standardizing the calculations and inputs used in our analysis, the model provides for the consistent application of the referenced criteria.

The model is used to perform credit analysis for new issuance and surveillance of ratings assigned to waterworks, sanitary sewer, and drainage utility systems of a U.S. municipality or comparable political subdivision, and whose debt is secured by revenues derived chiefly from user charges for the ongoing operations of drinking and/or raw-water sales, sanitary sewer collection, and/or treatment, and/or storm drainage systems, or some combination thereof, directly to the end (retail) customer.

Use of the model is intended to enhance comparability across sectors and improve transparency and consistency in deriving ratings. The model is also used whenever analysis is needed to derive credit assessments or credit estimates.

Continue reading.

19-Jan-2016

S&P Credit FAQ: All-In Coverage, Transfer Payments, and Credit Quality.

U.S. local and regional governments commonly have some kind of financial interplay between the general government and other affiliated enterprises, such as municipally owned utilities. In fact, it is uncommon for there not to be some kind of transfer payment. As Standard & Poor's Ratings Services noted in "Methodology: Definitions And Related Analytic Practices for Covenant And Payment Provisions In U.S. Public Finance Revenue Obligations," published Nov. 29, 2011, transfers are based on an open flow of funds, meaning that after all operating expenses have been paid and other covenanted funds are filled, surplus net revenues can be used for any lawful purpose, including movement to another governmental fund, department, or component unit.

Just as there are many different labels for these transfer payments — payment in lieu of taxes (PILOT), franchise fees, and the like — so are there many perfectly reasonable justifications for these payments to take place. Most often, the general government considers its capital and credit quality to be at risk based on its ownership and operation of an enterprise, such as a utility, and the general government deems the transfer payment as a return on the investment for taking that risk. Other very common reasons for transfer payments from the utility to the general government include:

- Reimbursements for direct or indirect costs, such as the use of city easements for a utility line or a portion of the city manager's time allocated to supporting utility operations;
- Covering the utility's share of pension and/or postemployment benefit obligations paid by the general government on behalf of all municipal workers, including the utility's employees;
- Supporting debt that perhaps is legally secured by general obligation taxes but in practice is paid from surplus net revenues of utility operations; or
- Plugging a budget gap in the general fund or otherwise subsidizing general government operations.

To provide additional transparency and clarity about Standard & Poor's view of transfer payments, we have provided answers to questions that we commonly are asked.

Frequently Asked Questions

To what extent do transfers from the utility fund to the general fund affect credit quality?
The mere existence of transfers is so commonplace that the analyst will look to what logic, if any, is behind the transfer. Some transfers are driven by a formula, such as a percentage of gross operating revenues, the net depreciable value of the utility system's assets, or the number of units sold of a utility's services. Predictability and discipline lend themselves to being credit-neutral. Open-ended transfer payments are usually a credit negative.

What are open-ended transfers?
Open-ended transfers occur when a general government can take as much of the utility's surplus cash as it deems necessary. We would usually view this as a credit negative to both the general and utility funds. Open-ended transfers imply that the general fund is structurally imbalanced, is being subsidized (probably materially) by ongoing utility operations, and is vulnerable to fluctuations and negative budget variances in the utility fund. It is also harmful to the utility because it is an impediment to the utility accumulating and maintaining cash reserves that might otherwise be available for ongoing utility needs, unbudgeted emergencies, or debt-free system reinvestments.

How does Standard & Poor's determine if, in its opinion, there is an over-reliance on utility

transfers?
Standard & Poor’s core coverage metric is all-in coverage, also known as fixed-charge coverage, which we view as the best way to track the use of every dollar of utility operating revenues. This metric is our adjusted debt service coverage metric that treats certain debt-like obligations as if they were the actual debt of the utility, even if legally they are treated as an operating expense, such as contractual take-or-pay minimums or capacity charges. This metric also treats transfer payments as an operating expense. While we understand that under most bond indentures transfers are considered a use of surplus net revenues, we view them as recurring obligations of utility operating revenues and, therefore, include them. Weak all-in coverage, usually near or even below 1.0x, could indicate that transfer payments are relatively large, among other risks.

What is the formula for all-in coverage?
[(Revenues – Expenses – Total Net Transfers Out) + Fixed Costs] /(All Revenue Bond Debt Service + Fixed Costs + Self Supporting Debt Service)

Total net transfers out are defined as transfers from the utility fund minus transfers into the utility fund, including but not limited to:

- Transfers that are viewed as general fund resources, such as a payment in lieu of taxes, indirect cost reimbursements, and open-ended transfers;
- Transfers that reimburse the general fund for pension and other postemployment benefit (OPEB) payments the general fund made on behalf of utility employees and retirees;
- Transfers that fund pay-as-you-go capital expenditures in another governmental fund; and
- Transfers to support any other governmental operations regardless of the destination fund.

We deem net transfers out that legally or by practice support debt service of another governmental fund as part of the denominator’s self-supporting debt. Cash that does not truly leave the utility, such as a set-aside into a rate stabilization reserve or pay-as-you-go fund are not included as transfers out. Similarly, the application of a rate stabilization fund (RSF) or other cash on hand as a transfer in would not be included in the all-in coverage calculation

We have determined, based solely on the developments described herein, that no rating actions are currently warranted. Only a rating committee may determine a rating action and, as these developments were not viewed as material to the ratings, neither they nor this report were reviewed by a rating committee.

19-Jan-2016

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SEC's Report of Nationally Recognized Statistical Rating Organization 2015.

Read the report.

[S&P: U.S. Higher Education Was Stable Overall in 2015, Despite Rating Changes Reaching an All-Time High.]

The U.S. higher education sector's credit quality remained predominantly stable in 2015 despite a record number of rating changes. Standard & Poor's Ratings Services took 51 rating actions last year, 41 downgrades and 10 upgrades, and affirmed the approximately 80% of remaining ratings.

Continue reading.

Jan. 19, 2016

TAX - OHIO

Cuyahoga Cty. v. Testa

Supreme Court of Ohio - January 19, 2016 - N.E.3d - 2016 WL 259380 - 2016 -Ohio- 134

County appealed decision of the Board of Tax Appeals (BTA) affirming tax commissioner's denial of exemption of marina/restaurant portion of real property acquired by county.

The Supreme Court of Ohio held that:

- County failed to preserve for appeal its claim that tax-exempt status of portion of property containing marina and restaurant should not have been considered separately from tax-exempt status of portion containing park, and
- Evidence supported BTA's decision that marina and restaurant were not used exclusively for a public purpose.

On appeal to Board of Tax Appeals (BTA) from tax commissioner's denial of tax exemption to county-owned marina/restaurant portion of real property that also included park, county failed to preserve its claim that tax-exempt status of marina/restaurant portion should not have been considered separately from tax-exempt status of park portion, where county's notice of appeal to BTA failed to specify the separate treatment of the two uses as error.

Evidence supported decision of Board of Tax Appeals (BTA) that county-owned marina and restaurant were not used exclusively for a public purpose by county, but were instead operated with a view to profit, and thus county was not entitled to tax exemption for portion of property containing marina and restaurant. Marina was operated by a for-profit entity, marina served as a revenue source for developing county-owned park on another portion of the property, and marina used long-term leases that limited general public's access.

Long Island's Nassau County Can't Catch Break from Bond Analysts.

Long Island's Nassau County has cut 1,600 jobs, reduced its borrowing to pay for tax appeals and renegotiated labor contracts. That's still not enough to restore the faith of some bond analysts.

Nassau, which is refinancing $270 million of debt Tuesday with borrowing costs at the lowest since 2013, had its credit- rating outlook changed to negative by Standard & Poor's last week, indicating it could be downgraded from A+, the fifth- highest investment grade. The company said Nassau exhausted reserves even after the economy recovered from the Great Recession.

The 15th wealthiest county in the United States gets almost 40 percent of its revenue from sales taxes, leaving it vulnerable to a slowing economy, said Ted Molin, senior credit analyst at Wilmington Trust Co., a unit of M&T Bank Corp. that oversees $4 billion of municipal bonds. The company sold its Nassau holdings three years ago.

“Most municipalities that we’ve looked at have built up reserves, and now seem in a better position than a few years ago to withstand an economic downturn,” Molin said. “If a county hasn’t gotten its act together by now, when will it ever?”

Nassau, which borders the New York City borough of Queens to the east, is home to wealthy enclaves like Sands Point and Brookville, as well as middle and working class towns like Massapequa and Roosevelt. More than 1.3 million people live in the county, which has the highest median household income among New York’s 62 counties at $99,035.

While most local governments have boosted reserves as the economy grew during the last six years, the county is still contending with the legacy of the recession. Its property-tax base has declined 20 percent since 2009, according to Standard & Poor’s, as residents and businesses appealed their assessments after real estate prices tumbled. In 2011, a state oversight board imposed a wage freeze after the county failed to balance its budget.

Last year, the county’s sales taxes fell below projections by $42 million, equal to about 4 percent of the total annual collections. To be conservative, Nassau estimates the tax will grow just 1.5 percent this year.

County Executive Edward Mangano, a Republican, has worked down the county’s backlog of refunds for successful property assessment appeals. Next year, it plans to phase out the annual borrowing that it’s been using to pay for them. The county expects that to save $950 million in debt-service costs over 20 years.

Nassau is one of two New York counties responsible for paying the whole tax refund even though property revenue is split between the county, towns and school districts. In other counties, school districts and cities are responsible for their portion of the tax bill that’s contested. For decades, Nassau borrowed as much as $100 million annually to pay the appeals.

Nassau has taken “significant steps” to reduce borrowing, but it has to do more to raise revenue and cut spending, said S&P analysts.

Last week, the rating company revised its outlook on Nassau’s $2 billion general-obligation debt to negative because the county had exhausted a $23 million fund balance. S&P rates the county one level higher than Moody’s Investors Service and Fitch Ratings.

“We’re concerned that even during the recovery following the Great Recession, the county has been unable to build reserves to higher levels,” said S&P analyst Ruth Ducret.

The county, which has the third-highest median property taxes in New York, raised them by about $30 million last year.

Eric Naughton, Nassau’s deputy county executive for finance brushed off S&P’s outlook change, saying the company didn’t lower its rating on the county’s debt. He expects strong demand for the securities being sold Tuesday, which will save the county $14 million.

"Our first goal is to keep expenses down," Naughton said. The county increased recurring revenue by $46 million for 2016, mostly through real estate and drivers' fees.

The spread, or risk premium, on frequently traded Nassau bonds maturing in 2039 in block sizes between $500,000 and $1 million have declined to 1.38 percentage point over top-rated debt from 1.65 percentage point over the last four months, according to data compiled by Bloomberg.

"We understand their concerns, but the county, we're able to manage even with the narrow reserves," Naughton said of S&P. "We have very proactive management and we're doing many things to improve our structural balance."

Martin Z. Braun, (c) 2016, Bloomberg

MSRB to Offer Continuing Professional Education Credit for Webinars and Events.

Washington, DC – Participants in educational webinars hosted by the Municipal Securities Rulemaking Board (MSRB) are now eligible to receive continuing professional education (CPE) credit. The MSRB is a registered sponsor of CPE in accordance with the requirements of the National Association of State Boards of Accountancy (NASBA). The CPE credit applies to both live and on-demand events.

"Joining the ranks of the National Registry of CPE Sponsors affirms the MSRB's ability to provide high-quality educational content that supports market knowledge and compliance with municipal market regulations," said MSRB Executive Director Lynnette Kelly. "The designation is another step in the development of the MSRB's educational offerings."

Certified public accountants and many other professionals that work in the municipal market must earn CPE credit to maintain professional licenses or comply with internal training requirements. The MSRB will provide webinar participants with certificates of attendance for its events upon completing the CPE requirements.

The MSRB's educational offerings include its online Education Center, where investors, state and local governments and others can access free resources about the municipal market, outreach events and live and on-demand webinars covering new and developing regulations.

Visit the MSRB's new on-demand webinar portal to access all MSRB's webinars currently available for CPE credit.

Date: January 26, 2016

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MSRB to Discuss Bank Loans, Markup Disclosure at Meeting.

WASHINGTON – The Municipal Securities Rulemaking Board plans to discuss bank loans and dealer disclosure of markups to retail customers during its board meeting here next week.

At the meeting on Jan. 27 and 28, the board also will consider academic use of MSRB data, shortening the trade settlement cycle, savings accounts for individuals with disabilities and financial abuse of the elderly, according to an MSRB release.

The MSRB is expected to consider whether it should take action on bank loans. It has focused on bank loans so far by encouraging issuers to voluntarily disclose them. The self-regulator also made adjustments to its EMMA system last August to make it easier for issuers to disclose the loans on their homepages.

"Bank loans have certainly been a rallying cry for this organization," said MSRB executive director Lynnette Kelly. "We'll continue to talk about bank loan issues, what board members are seeing in the market, and any observations that people want to make."

While the board only plans to have a discussion on the topic, Kelly said there is nothing stopping the 21 board members from choosing to go out and solicit comments from the industry or ask the Securities and Exchange Commission for more information.

The board's discussion on markup disclosure in confirmations sent to retail customers will center on the criticisms and other comments market groups made in letters sent to the MRSB about the proposed changes to Rule G-15 on uniform practices.

Dealer groups criticized the proposal for not aligning with similar confirmation rule amendments proposed by the Financial Industry Regulatory Authority. FINRA's changes would require dealers to disclose the differential between the price to the customer and the dealer's reference price. The proposed rule changes also diverge in the timing of trades they would require dealers to consider, with the MSRB rule mandating dealers include trades occurring within two hours of the transaction and the FINRA rule spanning a full day of trading.

The groups also said the MSRB's rule will impose substantial costs on dealers if it is adopted.

No action item is scheduled on confirmation disclosure during the board hearing but Kelly said the next step for the board is to meet with FINRA to see if there can be a "meeting of the minds" on the type of proposal to pursue.

The MSRB board will also discuss a set of comment letters the self-regulator received in September about a proposal to give academics muni trade and pricing data that use anonymous dealer identifiers.

The July 16 proposal would prohibit academics from reverse engineering and redistributing the data. It also would require them to disclose their specific intentions for requesting the information. The data would only be available to academics with institutions of higher education and would have to be more than two years old to be eligible for release.

Researchers who commented on the proposal said the addition of anonymous dealer identifiers would improve liquidity and enhance transparency in the market.

But dealer groups said they were afraid the identifiers would open their members up to having their identities, trading strategies, and inventories discovered through reverse engineering. The groups instead advised the MSRB to release data that combines dealers with similar characteristics and excludes all primary trades.

The board is also planning to talk about several other initiatives the MSRB has focused on in the past, including improving EMMA such as by adding yield curves, and helping facilitate a market transition to a T+2 settlement cycle.

The MSRB’s proposal to change muni trade settlements to two days from three after execution has general support from market groups and is tied to the SEC making similar changes as part of an industry migration that would be completed by the end of the third quarter of 2017.

The MSRB will additionally revisit its Rule G-15 on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers. A portion of that rule prohibits dealers from trading bonds in amounts below the minimum denominations set by issuers. The minimum denomination is usually set at $5,000 but can be as high as $100,000 if the issuer determines the bonds are unsuitable for retail investors.

The board’s discussion will center on a possible request for comment on amendments that would allow more exceptions from the minimum denomination requirement in certain circumstances, such as beneficiaries of a will receiving set portions of an individual’s bond holdings or parties in a divorce splitting investments.

The goal of any change would be to keep the rule as strong as possible while providing for exceptions that may not meet the rule exactly, but follow the spirit of it, Kelly said. She added a parallel goal would be to never create a situation where a trade creates more people holding a position below a minimum denomination than before.

For example, if an individual were to come into possession of $75,000 of bonds that have a $100,000 minimum denomination, the updated rule may allow the individual’s dealer to sell bonds in an amount below the minimum denomination to individuals who already hold at least $100,000 of the bonds.

The re-evaluation of the rule is part of the MSRB’s larger effort to update its rulebook to reflect current market conditions, Kelly said. Additionally, the MSRB is discussing its possible jurisdiction over tax-advantaged savings programs that help support individuals with disabilities maintain health, independence, and quality of life. The programs are a result of the Achieving a Better Life Experience Act of 2015 and may resemble 529 College Savings Plans in potentially falling under the MSRB’s jurisdiction.

The agenda also includes plans to discuss efforts by state agencies, other self-regulatory organizations, and policy makers to protect elderly investors from the risk of, or actual, fraud. The MSRB does not have a specific rule that applies to the effort, but the board is fully engaged in monitoring the other agencies’ activities, Kelly said.

THE BOND BUYER

BY JACK CASEY

JAN 20, 2016 1:32pm ET

Bond Math Bootcamp.

March 14-15, 2016 – New York City

14 CPE Credits

See Full Agenda

Register

The Bond Math Boot Camp program is a two-day training program delivered via interactive lecture format. The BootCamp is facilitated in a fashion that encourages group participation with numerous leading/rhetorical questions to draw the audience into focused discussions. The course concepts and methodologies discussion will be supplemented by in-class hands-on exercises as well as optional homework. This seminar will provide an in-depth exposure to yield, pricing and interest rate conventions for fixed income securities. The session begins with an introduction to such fundamental concepts as time value of money, interest/discount rates as well as the compounding and day count conventions upon which market measures are based.

The balance of the class will be devoted to exploring how these concepts are applied to the determination of price, yield, interest/discount rates, rates of return, accrued interest, etc. The presentation will incorporate the mechanics of the calculation: formula or methodology for determining a numeric value; source and nature of inputs into formula; implicit or explicit assumptions being used. This discussion of conventional calculations will be augmented by an introduction to the interpretation and application of the numbers – how market participants use the numbers for investment/market insights. We strongly recommend that you bring an HP12c calculator or a similar model to ensure you get the benefit of the hands-on activities during this two-day class.

Concepts and measures will be addressed in a pertinent fixed income market context, illustrating these ideas with a discussion of their use by bond traders and portfolio managers when assessing risk and return. The approach taken to address each of the major topics:

First, explain the concept and the related market intuition, what does the concept/number attempt to quantify and how do market participants interpret the number regarding any insight into market conditions/securities valuation

Second, review the specific methodology by which the measure/concept is quantified, what is the structure of the computation or process by which the number is determined, what are the inputs for the computation/process and how are they obtained as well as any implicit assumptions used in the calculation
Third, illustrate the computation/process using current market data, taking values/rates/contract details of treasury, corporate and mortgage-backed securities. To the extent possible the presentation will be guided by participant questions.

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Non Callable Bonds

Price behavior
Modified duration and convexity
Callable Bonds
Price behavior
Effective duration and convexity
Applications of duration
Portfolio management
Hedging

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Registration Fee: The price for this two-day seminar is $1,695. Group discounts are available.
To Register: Please register online. Call 973-615-8967 or e-mail our registrar with registration questions.

All That Glitters Is Not Gold: An Analysis of U.S. Public Pension Investments in Hedge Funds.

Hedge funds have aggressively pursued U.S. public pension dollars, maintaining that they offer pension funds absolute return and volatility reduction in exchange for the high management and performance fees that they charge. And many public pension systems, with encouragement from their investment consultants, have made significant allocations to hedge funds, chasing the promise of superior returns and downside protection. These pension funds now have sufficient experience to evaluate whether hedge funds have delivered on their promise, and whether the purported benefits are worth the high fees.

This report by Elizabeth Parisian of the American Federation of Teachers and Roosevelt Institute Fellow Saqib Bhatti examines whether hedge funds have, in fact, provided U.S. pension funds better and less correlated returns, and whether hedge fund fees are adequately disclosed and as disproportionately high as critics suggest. In other words, they seek to answer the question: “Would public pension funds have fared better if they had never invested in hedge funds at all?”

To answer this question, the authors analyzed 11 U.S. public pension funds’ experience with investing pensioners’ savings in hedge funds. Using publicly available data and information provided directly by the pension funds, they conducted a simple year-by-year comparison of hedge fund net returns and total fund net returns for each pension fund. They also compared these rates of return to fixed income net returns for each pension fund to determine whether hedge funds delivered on the promise of uncorrelated returns and whether less expensive fixed income strategies do better. Because hedge fund fees are almost never reported or fully accounted for, Parisian and Bhatti used industry standard fee structures like management and incentive fees then projected actual fees captured by hedge fund mangers based on readily available statements of net return to investors. These calculations, while not precise due to lack of transparency with respect to fees, allow them to draw general conclusions about the performance of pension funds’ hedge fund investments.

Read the Report.

Roosevelt Institute | 11.06.15

S&P Live Webcast: State & Local Government 2016 Outlook.

Please join Standard & Poor's Ratings Services on Thursday, January 28, 2015, at 2:00 p.m. Eastern Time for a live Webcast and Q&A on our 2016 outlooks for U.S. states and local governments.

Register for the Complimentary Webcast.

S&P: Collapsing Oil Prices Seep Into State Credit Profiles.

In its recent state sector outlook, Standard & Poor's Ratings Services identified 11 states as coming under negative fiscal pressure at the start of 2016. Low and declining oil prices explain much of the pressure in at least five of these states. Not all states with significant oil producing sectors are faced with fiscal pressure to the same degree, however. There are several variables that explain why some oil producing states are more immediately affected in their budgets by falling oil prices than others. These include:

- What oil price did the state assume in its budget?
- How much does the state's operating budget rely on oil-related tax revenue?
- Did the state accumulate reserves while oil prices were high?

In short, the more aggressive a state was with regard to its assumptions and use of oil-related revenues during the oil boom, the more acute its fiscal pressure now, in the oil price bust. For states with greater budgetary reliance on oil-related revenue, the unrelenting decline in prices places a larger burden on state lawmakers to identify and enact corrective fiscal measures. Short of something not easily forecasted, such as a supply shock stemming from turmoil in the Middle East, it's unlikely that state policymakers will be bailed out by a sharp rebound in oil prices. On the contrary, as of early 2016, and with sanctions on Iran being lifted, oil prices have continued to fall and are now well below what the states had forecasted. At this point, all of the states in our survey still have a higher price forecast for 2016 than does Standard & Poor's ($40 per barrel). For fiscal 2017, only one state (North Dakota) forecasts a price range in line with our forecast price ($45 per barrel); the other states still have a more bullish outlook. This suggests that as they head into budget season, fiscal pressures in these states could be more intense than what their official forecasts currently anticipate. (See "S&P Lowers Its Hydrocarbon Price Deck Assumptions On Market Oversupply; Recovery Price Deck Assumptions Also Lowered," published Jan. 12, 2016 on RatingsDirect.)

Some oil producing states have partially mitigated the effect of commodity market volatility on their budgets by segregating the oil-related revenue, putting most of it in reserves or special funds. But with producers reining in their operations, economic losses are not confined to just the energy sectors in these states. Overall job growth from among the oil producing states in our survey is now materially lower than for the nation as a whole. According to the Bureau of Labor Statistics, whereas total nonfarm payroll jobs increased 1.9% during the 12-month period through November 2015, the eight states in our survey saw job growth of just 0.9%. Not surprisingly, lower than expected job and economic growth is showing up in the recent revenue data reported by Texas, North Dakota, Louisiana, and Oklahoma, where collections have fallen short of the budget forecast. There are also signs of expenditure side pressure where job losses translate to higher demand for social services. For example, public assistance expenditures in Texas are running ahead of budget in fiscal 2016 while tax collections are lagging fiscal 2015 receipts through the same date. This environment contributes to our belief there is potential for an uptick in rating volatility in the state sector during 2016.

[Continue reading.](#)

21-Jan-2016

IRS Examining Arborwood CDD Board, Land Purchase.

WASHINGTON – The Internal Revenue Service is stepping up its audit of $80 million of Arborwood Community Development District's 2006 bonds and appears to be focusing in part on the Florida CDD's board and land
possibly purchased at too high a price.

IRS tax-exempt bond revenue agent Debbie Arceneaux asked for nine items from the CDD last month, including whether any members of the board of supervisors have been elected by CDD residents as well as a list of landowners along with the number of acres they owned and voting units they held when the bonds were issued.

She also asked for the status of the bonds, including how many are outstanding and if any defaulted or were refunded. Arceneaux wanted the sources and amounts of revenues being used to pay debt service and copies of sales or acquisition agreements between the CDD and developers for any transfer of assets using the bond proceeds.

She made the requests in a Dec. 8, 2015 letter that was included in documents recently posted on the Municipal Securities Rulemaking Board's EMMA website. The letter asked for the information to be provided by Dec. 31.

The Arborwood CDD, located near Fort Myers, has been under audit since 2012. This is the IRS' fourth request for information, according to Michael McElligott, who works in finance at Special District Services, Inc., which manages the CDD. The audit is one of a number IRS investigations of CDDs in Florida, one in particular of which is being closely watched by the bond law community. The IRS has claimed the Village Center Community Development District, in Lady Lake, Fla., is not a political subdivision and therefore can't issue tax-exempt bonds because its board is tied to the developer and isn't made up of any elected CDD residents.

Bond lawyers have complained the agency is trying to set new standards for political subdivisions through enforcement cases rather than rulemaking. They typically have defined a political subdivision as one that has been delegated the right to exercise sovereign powers, such as eminent domain or taxation. As a result of the controversy, the Treasury Department and IRS are working on new rules for defining a political subdivision that they say will be subject to public comment and will be prospectively effective.

Wes Habor, a shareholder at Hopping Green & Sams, counsel to the Arborwood CDD, said it differs from the Village Center CDD in that it has more than 250 residents and its board is elected by residents.

But the website of the Arborwood Homeowners Association, Inc. showed 151 units at the end of 2015, with each charged $115.50 per month for a total of $17,440.50 per month and $209,286 per year. Association officials could not be reached for comment.

Kathleen Dailey, who joined SDS last year and manages the CDD, said the board has been made up entirely of residents since 2014. She didn't have information on the number of residents but said it could be obtained from the homeowners association.

Dailey said the CDD only oversees the lakes and stormwater system, the acquisition of which was financed with the bonds. The CDD oversees the assessments on property owners used to pay the bonds and obtains permits for the preserved lands and wetlands. Those include a panther reserve and a bat habitat, she said.

There is very little descriptive information about the Arborwood CDD on its website, though its key officials and financial documents are posted. A 2004 engineer's report provided to the CDD and posted on its website said Arborwood was a proposed 2,467 acre master planned community in Fort Myers, Fla. that was to be approved for 4,050 single family homes, 2,450 multi-family units, 36 holes of golf, commercial space, wetland preserves infrastructure, landscaped roadways and gated entries. Dailey doesn't know if that's changed.

McElligott said at least three major developers are currently building homes in the CDD, including PulteGroup, which acquired Centex in 2009. The documents posted on EMMA show the IRS is particularly interested in roughly 561 acres of preserves and wetlands, which the CDD acquired from the developer (under contract at that time to Centex Homes) with proceeds from $67.34 million of bond anticipation notes issued in 2005. The land was used as collateral for $80 million of capital improvement revenue bonds issued in 2006 to refund the 2005 notes.

The documents posted on EMMA include an assessment of the value of the land by senior IRS appraiser Howard Kanter that was sent to IRS officials in September. Kantor said the 561 acres were part of 1,826 acre parcel that was purchased at $67,167 per acre for a total purchase price of $122.65 million in 2003. Kanter said the 561 acres can't be commercially developed. He estimated their value at $2,500 per acre or $1.4 million.

Vanessa Albert Lowry, a shareholder at Greenberg Traurig in Philadelphia who appears to be representing the CDD in the IRS audit, could not be reached for comment.

The Bond Buyer

by Lynn Hume

JAN 20, 2016 3:32pm ET

TAX SALE - NORTH DAKOTA

Estate of Glasoe v. Williams County, N.D.

Supreme Court of North Dakota - January 19, 2016 - N.W.2d - 2016 WL 225224 - 2016 ND 18

Heirs of property owner brought action to recover and quiet title to property that was sold at public auction following tax lien foreclosure. Following a trial, the District Court dismissed action. Heirs appealed.

The Supreme Court of North Dakota held that:

- Service of notice of foreclosure by certified mail on deceased property owner and by personal

service on resident complied with statutory requirements;
- Service of notice of foreclosure on non-resident constituted valid personal service;
- Auditor was not statutorily required to provide final notice of expiration of redemption period; and
- Purchaser's successful bid and county's acceptance of down payment precluded redemption.

TAX - RHODE ISLAND

[DePasqual v. Cwiek]

Supreme Court of Rhode Island - January 14, 2016 - A.3d - 2016 WL 166477

Taxpayers who allowed installation of wind turbine on their property filed suit challenging decision of Tax Board of Review that denied taxpayers' appeal from local property tax bill based on assessment of wind turbine. The Superior Court entered summary judgment for taxpayers, and assessor appealed.

The Supreme Court of Rhode Island affirmed the decision of the Superior Court, holding that:

- Taxpayers were manufacturers, within meaning of exemption from property tax for manufacturer who used premises primarily for purpose of transforming raw materials into finished product for trade;
- Wind turbine did not come within statutory exception to definition of "manufacturer"; and
- Statute granting municipality authority to enact ordinance exempting from property tax any renewable energy system located in municipality did not impose any qualification on taxpayers' entitlement to exemption from property tax as "manufacturer" of electricity.

Taxpayers who owned property where wind turbine was built were "manufacturers," within meaning of statute granting exemption from tax for manufacturer who used any premises primarily for purpose of transforming raw materials into finished product for trade, where turbine was used exclusively for purpose of transforming raw materials—namely, wind—into finished product—namely, electricity.

Wind turbine that converted wind to electricity, which product was not sold to public but instead was sold directly to National Grid pursuant to standard power purchase agreement, did not come within statutory exception to definition of "manufacturer" exempt from property tax for non-regulated power producer that commenced commercial operation by selling electricity at retail or taking title to generating facilities as of designated date.

Statute granting municipality authority to enact ordinance exempting from property tax any renewable energy system located in municipality did not impose any qualification on existing statutory right of wind turbine owner to exemption from property tax as "manufacturer" of electricity from raw materials, namely, wind, based on use of "any premises, room, or place in it primarily for the purpose of transforming raw materials into a finished product for trade."

TAX - NEVADA

[City of Fernley v. State, Dep't of Tax]

Supreme Court of Nevada - January 14, 2016 - P.3d - 2016 WL 166087 - 132 Nev. Adv. Op. 4

City filed complaint against state, challenging constitutionality of Local Government Tax Distribution

Account and seeking declaratory and injunctive relief and damages for violations of state constitutional prohibition on special or local legislation.

The First Judicial District Court granted state summary judgment and awarded state costs. City appealed.

The Supreme Court of Nevada affirmed, holding that:

- City knew or had reason to know of its claim for retrospective relief against state on date of it’s incorporation;
- Failure to file claim within default statute of limitations did not bar claim for injunctive and declaratory relief;
- Local Government Tax Distribution Account was a general law; and
- Distribution classifications applied uniformly and legislature had legitimate purpose for enacting different classifications.

Trial court did not abuse its discretion in awarding costs to state in city’s suit against state challenging constitutionality of Local Government Tax Distribution Account and seeking declaratory and injunctive relief and damages for violations of state constitutional prohibition on special or local legislation. Even though city’s lawsuit involved a good-faith challenge to tax distribution legislation, state was prevailing party in action for recovery of money damages where city sought to recover more than $2,500.

City knew or had reason to know of its claim for retrospective relief against state that Local Government Tax Distribution Account was unconstitutional under constitutional provision prohibiting legislature from passing local or special laws for assessment and collection of taxes, triggering default statute of limitations of four years, on date of its incorporation as city, since city was aware that its base distributions under Local Government Tax Distribution Account would be calculated as of that date.

City’s failure to file claim within default four-year statute of limitations that Local Government Tax Distribution Account was unconstitutional under state constitutional provision prohibiting legislature from passing local or special laws for assessment and collection of taxes did not bar city’s claims for injunctive and declaratory relief from allegedly unconstitutional statute. City retained right to prevent future violations of constitutional rights.

Local Government Tax Distribution Account was general law, as required to defeat city’s claim that tax distribution legislation was unconstitutional under state constitutional provision prohibiting legislature from passing local or special laws for assessment and collection of taxes. City was not singled out in legislation, but rather was classified with similarly situated local governments.

Distribution classifications under Local Government Tax Distribution Account applied uniformly to all entities that were similarly situated and legislature had legitimate government purpose for enacting different classifications, as required to defeat city’s claim that tax distribution legislation was unconstitutional under state constitutional provision prohibiting legislature from passing local or special laws for assessment and collection of taxes. Tax distribution legislation did not specify recipients, but rather had different formulas it used for any entity that fell within that classification, and classifications that legislature used when enacting legislation were rationally related to achieve its legitimate government interests of promoting general-purpose governments.

Chicago School Bond Sale May Attract Unusual Investors.

Chicago's struggling public school district could lure hedge funds and other investors with an unusual opportunity to buy high-yield municipal assets while pivoting attention away from Puerto Rico's distressed debts.

The Chicago Board of Education's $875 million bond issue next week comes as the nation's third-largest public school system struggles with a structural budget deficit of at least $1 billion.

Rated below investment-grade, the Chicago Board of Education is likely to attract a new class of investors not typical to the municipal bond market. The new deal may see interest from hedge funds and private equity funds, taxable investors who do not necessarily benefit from tax-exempt paper, said Michael Comes, portfolio manager and vice president research at Cumberland Advisors.

"This is similar to what happened in Puerto Rico, where it shut itself out of the muni market," said Comes. "I think we're at the cusp of that with the Chicago Board of Education deal."

This week, Republican legislators pushed the idea of a state takeover and potential bankruptcy plan, a proposal favored by Illinois Governor Bruce Rauner but quickly shot down by Democrats who control the legislature.

Such distress signs also caught the attention of municipal bond insurers such as Assured Guaranty, MBIA, and Ambac Financial Group, which have until now been focusing intently on developments in Puerto Rico. But news from Illinois served "as a reminder that there are multiple drivers of the insurers' share prices," BTIG Research Group said on Friday.

The district's so-called credit spread widened over Municipal Market Data's benchmark triple-A scale in secondary market trading on Thursday to 464 basis points for bonds due in 19 years from 412 basis points two weeks ago. That signals investors will demand hefty yields for the junk-rated general obligation bonds. Financially stressed Illinois and the city of Chicago were able to sell bonds this month at spreads much narrower than the school district's.

Still, demand for muni bonds is high among investors, as cash saturates the market and supply remains low. Recent trouble in the equity market has intensified investors' interest, as the idea of municipal bonds as a safe haven asset takes hold.

"There is a lot of interest in muni high yield, and there's not much out there," said Alan Schankel, municipal strategist at Janney Fixed Income Strategy. "Munis outperformed other fixed income asset classes last year, and I think they are likely to do the same thing this year."

Chicago Board of Education's issue includes a refunding and restructuring of outstanding debt to convert variable-rate bonds to fixed rate and to push out maturities on other bonds to free up money for the school system's sagging budget. The issue will also raise money to cover fees to terminate interest rate swaps related to the variable-rate debt.

Tax-exempt bonds totaling $795.5 million will be offered in term maturities in 2035, 2040, and 2044, according to the preliminary official statement. Another $79.5 million of taxable bonds are due in 2033.

Reuters

Jan 22, 2016

(Reporting by Robin Respaut in San Francisco and Karen Pierog in Chicago; Editing by Tom Brown)

Dealer, Advisor Groups Ask for Revisions to MSRB Pay-to-Play Rule.

WASHINGTON – Dealer and advisor groups want revisions to a Municipal Securities Rulemaking Board proposal to extend pay-to-play prohibitions to non-dealer municipal advisors.

The MSRB filed its changes to MSRB Rule G-37 on political contributions, as well as MSRB Rules G-8 on books and records and G-9 on preservation of records, with the Securities and Exchange Commission on Dec. 16.

Rule G-37 already applies to dealers and prevents them from engaging in negotiated transactions with an issuer for two years if the dealer, one of its municipal finance professionals, or a political action committee controlled by the dealer or an MFP makes a significant contribution to an issuer official who can influence the award of muni bond business.

The rule includes a de minimis exception to the ban for individuals who give no more than $250 to any candidate for whom they can vote.

The proposed rule changes would extend both the prohibition and exception to non-dealer MAs, with certain differences depending on whether the MA is a third-party solicitor. The updates to the MSRB's two recordkeeping rules would include documentation requirements to assure compliance with the G-37 amendments.

Terri Heaton, president of the National Association of Municipal Advisors, said NAMA supports the MSRB's effort to extend the rule to MAs, but believes that the proposal will not lead to as a strong a rule as it could.

"We believe that rulemakings could be further strengthened to create a true barrier from allowing political donations to influence business being done in the municipal securities sector," Heaton wrote in her letter. She added NAMA would most like to see an outright ban on contributions to bond ballot initiatives instead of continuing to allow them to be made but with proper disclosure.

Heaton also said the rule needs to more clearly identify the responsibilities and disclosure requirements for dealers and MAs.

"Without such clarifications, municipal advisors may inadvertently omit information that should be disclosed," she said.

Bond Dealers of America chief executive officer Mike Nicholas agreed with Heaton, saying BDA supports the goal of the rule but would like to see revisions to eliminate "some unnecessary and duplicative regulatory filings for dealers" who may also act as MAs on other transactions.

"Despite our concerns with the proposal's lack of harmonization with contribution limits and record-keeping requirements applicable to other federal pay-to-play regimes, BDA supports the level playing field that applying MSRB pay-to-play rules to non-dealer municipal advisors will create," Nicholas said.

He recommended the SEC ask the MSRB to give guidance in the form of answers to frequently-asked-questions that allow dealer employees who act as both dealers and MAs to avoid keeping dual records and copies of disclosures for the same contributions.

Nicholas also said BDA would like to see the de minimis exception increased to $350 to harmonize the rule with existing de minimis contribution limits for investment advisors and swap dealers under Commodities Future Trading Commission and SEC investment advisor political contribution rules.

Leslie Norwood, associate general counsel and co-head of the municipal securities division for the Securities Industry and Financial Markets Association, said SIFMA "is looking forward to the SEC's approval of the changes" and echoed BDA's comments about the rule leveling the regulatory playing field.

Under the proposed rule changes, dealer and municipal advisory firms would be divided into two broad categories: dealer firms and their MFPs, and municipal advisor firms and their municipal advisor professionals. MAPs would be defined similarly to MFPs. MA firms would be subdivided into MA firms that act as third-party solicitors and those that do not. An MA third-party solicitor generally would be an MA that solicits, will solicit, or wants to be hired to solicit a municipal issuer or other entity for compensation, even if that MA also provides advice. Under the existing rule, a dealer can only be subject to a ban on muni business if a contribution is made to an official who can influence the selection of a dealer. Similarly, under the rule changes, a non-solicitor municipal advisor can only be subject to a ban on MA business if a contribution is made to an official who can influence the selection of an MA. A ban on MA business would include both a ban on advising the municipal entity on certain matters and soliciting the municipal entity on behalf of third-party dealers, MAs, and investment advisors.

But dealers who are also MAs could be subject to a "cross ban" on business, depending on the type of influence of the official they contribute to. A "cross ban" would treat a dealer-MA firm as a single economic unit. For example, if an MFP or MAP of the firm makes a contribution to an official who can influence the selection of dealers and MAs, the firm is subject to a temporary ban on both types of business. But if an MFP or MAP of the firm makes a contribution to an official who only has influence over the selection of underwriters, for example, the firm would be subject to a temporary ban on underwriting business.

For MA third-party solicitors, the ban on municipal advisory business would apply if the official receiving the contribution has influence over selecting MAs, dealers, or investment advisors. If a dealer hires an MA third-party solicitor, the dealer also may be subject to a temporary ban on negotiated municipal securities business if the solicitor contributed to an official who could influence the selection of dealers. Similarly, if an MA hires an MA third-party solicitor, the MA also may be subject to a ban on municipal advisory business if the solicitor contributed to an official who has influence over selecting MAs.

THE BOND BUYER

BY JACK CASEY

JAN 21, 2016 3:04pm ET

Illinois Budget Crisis: Big Banks Aren't Sharing State Debt Woes.

The state of Illinois has been without an official budget since July, and service providers that rely on state funding have felt the squeeze. Programs that deliver hot food to seniors in southwestern Illinois and outside of Chicago, for example, are preparing to halt operations, and low-income college students have seen promised tuition subsidies vanish.

The western Illinois Child Abuse Council has responded to the frozen state budget by reducing therapy services staffing by 20 percent and home visits by 40 percent. The nonprofit's counseling program, which serves children under 5 years old who have suffered trauma and abuse, has begun turning away families as the waitlist stretches to record length.

"We're the only ones providing these services in the community," said Angie Kendall, the organization's director of development. "We don't have an alternative at this point."

Even as crucial social service programs face deep reductions, one set of institutions has enjoyed an uninterrupted flow of funds from Springfield: banks. Financial service providers continue to pull in nearly $70 million a year in payments on complicated public debt deals from the early 2000s.

With the state's financial woes deepening, banks — including JPMorgan Chase, Goldman Sachs and Citigroup — stand to take in as much as $1.45 billion on interest rate swap payments by 2033. That's the conclusion of a new report from the ReFund America Project, which tabulated the costs stemming from the swaps weighing on the state's books.

"These toxic swaps have been an unmitigated disaster for the state, failing in almost every way," said Saqib Bhatti, a fellow at the Roosevelt Institute and one of the report's co-authors, in a statement Tuesday. "If state officials knew then what we know now, it would have been financially irresponsible for them to have signed these deals."

Illinois is just one of many states and municipalities bitten by interest rate swaps gone awry. The list includes the city of Chicago, which has sought to pay around $300 million in penalties to exit its own bad bets after doling out record debt fees in 2015.

"Hindsight is easy," said Richard Ciccarone, president of Merritt Research Services, which specializes in municipal bonds. "But in this case it just looks like it's a bad deal. The markets did not work out in their favor."

Labor leaders, who fear the state's fiscal difficulties will imperil their members' pension payouts, have pressed Illinois to make banks share in the fiscal pain, asking Republican Gov. Bruce Rauner to "aggressively pursue" means of recovering swaps fees, arguing that banks made misrepresentations when they sold the swaps.

Gov. Rauner, whose contested budget plan calls for limits to collective bargaining, rejected provisions related to the swaps in contract negotiations. "The union is concerned that the Rauner administration is putting big banks first," said James Muhammad, a spokesman for Service Employees International Union Healthcare Illinois.

In a statement to the International Business Times, however, the administration did not rule out seeking a way to limit the damage from the swaps. "The Governor's Office of Management and Budget is doing an in-depth analysis of these swaps in order to reduce the state's payments and minimize its financial exposure," said Catherine Kelly, Rauner's press secretary.

An interest rate swap is type of financial derivative that allows a bond issuer — like the State of Illinois — to limit or manage exposure to fluctuations in interest rates. The issuer pays a fixed interest rate on a floating-rate bond. The bank on the other side of the swap pays the variable rate and pockets the difference between the fixed and floating rates.

When Illinois first entered into the now-costly swap deals in the early 2000s, the intention was to hedge risks and save money on the billions of dollars in variable-interest bonds that state agencies had issued. These bonds, issued under former Gov. Rod Blagojevich, are pegged to fluctuations in the broader interest rate environment.

But in order to lock in what state financiers saw as bargain interest rates, the governor's office entered into swap agreements with 10 major Wall Street banks. Under the deals — which are commonplace in the corporate world — the state would pay the banks a fixed interest rate, while the banks paid bondholders the variable rate. In theory, the maneuver would protect the state from sharp interest rate moves.

The arrangement didn't work that way in practice. When the global financial crisis struck in 2008, the Federal Reserve slashed benchmark interest rates virtually to zero. Unlike mortgage holders other debtors, Illinois wasn't able to refinance at the lower rates. The swaps kept the state locked into rates nearly 4 percent higher than what its bank partners were paying bondholders.

The state has paid $618 million in swap fees since 2003, according to the ReFund America report, with another $832 million yet to come. While Ciccarone noted that those totals include the interest Illinois would have otherwise paid on the variable-interest bonds, they also include tens of millions of dollars in additional costs related to the complex requirements that swaps entail.

Those fees might not be all. Today, with interest rates still scraping historic lows, termination fees totaling $286 million prevent the state from exiting its swap agreements.

The ongoing budget crisis threatens to force a raft of penalties even sooner. Ratings agencies Moody's and Fitch both downgraded Illinois state debt in October. If those ratings drop to junk status — as Chicago's debt did last year — Illinois could suffer automatic terminations written into the agreements. These clauses levy a penalty for exiting the deal early that is based on the present value of future payments on the swaps.

"They'd have to come up with that amount of money right away," said Ciccarone. "It wouldn't be an easy thing to do while they're already so hard-pressed for cash." For their part, the banks would have the option to forgo termination fees in lieu of renegotiating the agreements.

Labor leaders, however, are hoping for a different type of negotiation, one that might recoup past fees from Wall Street. The campaign comes a month after the Chicago Teachers Pension Fund sued dozens of banks over the doomed interest rate swaps that have added to the city's soaring debts.

Bhatti of the Roosevelt Institute said the lawsuit has a chance, noting that while corporate bond issuers generally take out swaps for a relatively safe period of five to seven years, the state agreements last three decades or more. "We believe the banks that pitched these deals to the state misrepresented the risks," Bhatti said.

Ciccarone was skeptical that Illinois could prevail in court, given the apparent financial sophistication of state finance officers. As for the banks that profited off of the state's bad fortune, he said it was luck as much as anything that accounted for the windfalls.

"They made more money than they ever expected," Ciccarone said. "They were on the right side of the trade."

INTERNATIONAL BUSINESS TIMES

BY OWEN DAVIS

01/19/16 AT 3:38 PM

TAX - SOUTH DAKOTA

Flandreau Santee Sioux Tribe v. Gerlach

United States District Court, D. South Dakota, Southern Division - December 18, 2015 - F.Supp.3d - 2015 WL 9273931

Following decision by South Dakota Office of Hearing Examiners that nonmember purchases at casino owned and operated by Indian tribe on tribal lands were subject to state's use tax, brought action in federal court against state and governor, alleging that state lacked authority to impose its use tax scheme on reservation land against nonmember casino patrons. Defendants moved to dismiss.

The District Court held that:

- Under South Dakota law federal claims were not precluded by any res judicata effect of Hearing Examiner's final order;
- Younger abstention and "Our Federalism" doctrine did not preclude federal jurisdiction;
- Tribe adequately pleaded that state taxation of nonmember purchases of goods and services at casino was preempted by IGRA;
- Tribe's complaint that imposition of taxes was unlawfully discriminatory met threshold requirement of plausibility;
- Claim was ripe for judicial determination; and
- Tribe adequately pled that tax remittance was unrelated to alcohol regulation, and thus invalid.

Decision by South Dakota Office of Hearing Examiners, in compelled review of state's alcohol license denial, that nonmember purchases at casino owned and operated by tribe on tribal lands were not subject to state's use tax, did not consider tribe's Ex parte Young federal questions of state taxation on reservation land, federal preemption law, operation of IGRA, and jurisdiction over Indian tribes, and which did not involve § 1983 claim, and thus under South Dakota law federal claims were not precluded by any res judicata effect of Hearing Examiner's final order, which tribe had not appealed to state court, although Hearing Examiner discussed that application of use tax on tribe violated neither IGRA nor Tribal-State Compact.

Younger abstention and "Our Federalism" doctrine did not preclude federal jurisdiction over Indian tribe's federal claims not yet litigated in state court against state and governor, alleging state's taxation on reservation land contravened IGRA, although tribe had initiated state administrative proceeding seeking to compel reissuance of its alcohol license. State proceeding was licensure hearing, not enforcement proceeding, brought by tribe and not state, and thus was not judicial in nature.

Indian tribe, which owned and operated IGRA-sanctioned casino on tribal lands, adequately pleaded that state taxation of nonmember purchases of goods and services at casino was preempted by IGRA. Taxes were result of casino activity, compact existed between tribe and state but did not direct state's authority to tax alcohol sales at tribe's casino, state could have negotiated for taxes on alcohol sales on casino floor depending on use to which those funds were to be put, questions remained regarding whether state waived its right to such tax imposition, and whether sales of alcohol and other services was directly related to gaming, and tax interfered with IGRA's purpose of amplifying tribal development as it related to gaming.

South Dakota's tax imposition on nonmember patrons of casino on reservation land of not only goods presumably purchased by tribe off reservation for resale to casino patrons, but also services provided to patrons on reservation, required weighing of interests of tribe, state, and federal government to determine if taxes were permissible, and thus tribe's complaint that imposition of taxes was unlawfully discriminatory as applied to tribe met threshold requirement of plausibility, as required to adequately plead claim, even though tribe erroneously relied on case involving off-reservation tax.

Indian tribe's claim that South Dakota's use tax and remittance requirements as applied to on reservation patrons and that was necessary to retain alcohol license at tribe's casino were preempted by Indian Commerce Clause of Federal Constitution, federal common law, and infringed on inherent tribal sovereignty was neither hypothetical nor speculative given that state declined to renew tribe's license after tribe failed to collect and remit tax, and thus claim was ripe for judicial determination.

Indian tribe adequately pled that alcohol licenses conditioned on tax remittance was unrelated to alcohol regulation and as such was violative of statute granting state's authority to regulate and control use of alcohol on tribal lands, and thus was invalid as improper exercise of state regulatory authority.

U.Municipal Water Utilities: No News is (Probably) Good News; The Outlook is Stable

As we noted in our recently released criteria, we view the municipal waterworks and sanitary sewer sector as one with very low risk. The sector:

- provides essential services in a monopolistic manner;
- uses proven technology; and
- is characterized by risk-averse management.

It remains a very highly rated sector, and upgrades continue to outnumber downgrades. But that does not mean the sector itself is without risk.

Utilities by nature are extraordinarily capital-intensive, and that capital is generally raised by borrowing; there is no such thing as a municipal initial public offering or equity cushion. Furthermore, the inherent stability does not completely insulate particular issuers from their own unique challenges. We have observed that most of our downgrades in 2015 were associated with weakened finances, not economic deterioration, and we believe that will continue to be the case. Utility managers and elected officials continue to have to manage the "triple bottom line," balancing a utility's revenue requirements and financial commitments versus social policies versus the utility's role as an environmental steward. If at one end of the scale drinking water is viewed by users as a human right that should be free of price, versus being viewed as a commodity, the United States is somewhere in between. We believe that in the U.S. we are moving in the direction of commodity pricing as Americans slowly gain appreciation for the true value of water, usually only if there is temporary scarcity such as a drought. We also view 2016 as a turning point that will potentially mark the beginning of the first wave of new regulations in a number of years.

Overview

- Utility ratings should remain stable for 2016, but the new criteria may introduce some volatility
- Regulatory risks are looming and could be expensive, but are not necessarily imminent.
- The rate of increase of water and sewer bills continues to be larger than comparable services and even the rate of real personal income growth.

Continue reading.

20-Jan-2016

Cities' Pension Liabilities Are About to Look a Lot Worse.

A new GASB rule affecting cities that are part of state cost-sharing retirement plans will be painful, but it's a step forward.

A new rule from the Government Accounting Standards Board (GASB) requiring municipalities that participate in plans in which they share pension costs with states to allocate and disclose their share of unfunded pension liabilities provides states with some much-needed good news when it comes to pension finances, but it comes at the cost of cities' balance sheets. Hopefully the enhanced transparency will prompt cities to take measures to address their long-term liabilities.

The cost-sharing plans affected by the new GASB rule are those in which pension obligations and assets are pooled and the assets can be used to pay benefits for any participating government employer. A new issue brief from the Center for State and Local Government Excellence samples 173 municipalities and finds that 92 of them are affected by the new rule because they either participate exclusively in a state retirement system or both administer their own plan and pay into a state system.

Most of the largest cities administer their own plans exclusively and are therefore unaffected by the rule. But the impact is significant for cities that are subject to it. On average, their unfunded pension liability as a percentage of own-source revenues rose from 37 percent to 70 percent (the brief is largely based on 2012 reports).

There is a great variation in how much individual cities are affected. As a result of the new rule, unfunded pension liability as a percentage of overall revenue rises by less than 20 percentage points in 37 of the 92 cities, but it increases by over 60 points in 25 of them.

For example, Newark, N.J., doesn't administer its own pension plan and has therefore never been included in studies of local systems. But when its portion of unfunded state pension liability is allocated, the amount is a breathtaking 284 percent of city revenues. Cincinnati, Las Vegas and Portland, Ore., are among other cities in which unfunded liabilities are more than 200 percent of revenues.

Why is the new GASB rule good news for states? While it doesn't change overall liabilities, its requirement that they be allocated and reported results in state liabilities falling by the same amount that municipal liabilities rise.

Nobody likes getting bad news, but it still beats ignorance. For that reason, the new rule is a step forward. Almost a decade ago, when new GASB rules required municipalities to disclose their liability for non-pension post-retirement benefits such as health care, the often-huge numbers caused many municipalities to implement mechanisms to pay down that liability over time. If this newest rule has the same impact, that'll be good news for retirees and taxpayers alike.

GOVERNING.COM

BY CHARLES CHIEPPO | JANUARY 22, 2016

Puerto Rico's First Debt Deal Is Running Up Against a Deadline.

The Puerto Rico Electric Power Authority, the island's government-run utility, needs lawmakers to approve legislation by Jan. 22 that would allow it to close an agreement struck with banks, bondholders and insurers to reduce its $9 billion of debt. It would be the largest ever restructuring in the municipal-bond market and could provide a template for how the U.S. territory can escape from burdensome bond payments that have already pushed the government to default.

The creditors have the option to walk away if a needed bill isn't passed by the deadline. Puerto Rico business and consumer advocates have lobbied against the deal, saying it would give the utility too much power to raise the island's already costly electric rates. Senator Ramon Luis Nieves, who chairs the Senate's energy committee and is working on the bill, said he expects lawmakers to pass it in the next few weeks.

"This bill is very complex and there are a few items we need to discuss further," Nieves said Friday in a telephone interview. "We are working together with the House so when the time comes to vote, we will be voting basically on the same bill."

Many others have much at stake in the deal going through. Insurers would dodge the full brunt of a default. The utility would secure investments needed to upgrade its antiquated electricity system, which may eventually allow it reduce power prices. And investors could get 85 cents on the dollar, well above current trading prices: bonds maturing in July 2037 traded Friday at an average 61.4 cents on the dollar, up from about 50 cents a year ago, data compiled by Bloomberg show.

The creditors have agreed repeatedly to extend deadlines during months of negotiations and may do so again if lawmakers delay. Here's a breakdown of who's involved in the deal and what they stand to receive. The utility is known by the acronym Prepa.

The Utility

Unless the agreement is enacted, the utility — which owes $8.1 billion to bondholders and $700 million to banks who finance its fuel purchases — won't be able to pay $1.13 billion to creditors that's due on July 1, Lisa Donahue, Prepa's chief restructuring officer, told a panel of the House Natural Resources Committee last week.

The deal would reduce Prepa's debt by more than $600 million and, by postponing principal payments, provide more than $700 million of relief over five years. Those savings will be used to help modernize a system in which the median plant is 44 years old, more than twice the average age in the U.S., Donahue said. Prepa relies on fuel oil and coal to generate about half of its electricity, which is more costly than using natural gas or renewable sources.

Bondholders Who Signed On

Angelo, Gordon & Co., BlueMountain Capital Management LLC, D.E. Shaw & Co., Knighthead Capital Management LLC, Marathon Asset Management LP, Franklin Advisers Inc., Goldman Sachs Group Inc. and OppenheimerFunds Inc. signed the accord last month. They hold $3 billion of the authority's bonds.

Called the Ad Hoc Group, they've agreed to exchange all of their bonds at 85 cents on the dollar for debt sold by a new authority, the Puerto Rico Electric Power Authority Revitalization Corp. To protect investors from further losses, the new securities will be repaid from a surcharge to Prepa customers that will flow directly to the bond trustee.

Bondholders will have the option of selecting from two different types of securities: bonds with interest of about 4 percent to 4.75 percent, or convertible capital appreciation bonds, which accumulate — but don't pay — interest for the first five years. After that, those bonds would begin paying annual interest of 4.5 percent to 5.5 percent.

To protect against default, MBIA Inc.'s National Public Finance Guarantee Corp. and Assured Guaranty Ltd. will provide a surety bond of as much as $462 million that will guarantee repayment. National will contribute as much as $344 million of that.

The Outside Bondholders

Mutual funds, individuals and others who weren't part of the negotiations hold $2.7 billion of the bonds. For the agreement to be completed, they must agree to exchange at least $2 billion of them for new bonds or a cash payment, the size of which hasn't been determined. Among the holders are UBS Asset Managers of Puerto Rico, Lord Abbett & Co., Waddell & Reed Financial Inc., MassMutual Financial Group, Dreyfus Group and T. Rowe Price Associates Inc., according to data compiled by Bloomberg using the firms' most recent financial filings.

They're a group with divergent interests. Some, who bought the bonds at par, may bristle at selling for a loss. Others who bought after prices tumbled stand to gain. Persuading the group to exchange the needed $2 billion "will be a challenge," Donahue said.

The Bond Insurers

Bond-insurance companies have guaranteed to pay investors if the utility defaults, so it's in their interest to keep that from coming to pass. National Public Finance, which insurers $1.3 billion of its bonds, and Assured Guaranty Ltd., which backs $831 million, have agreed to the plan. Puerto Rico is still negotiating with Syncora Guarantee Inc., which backs $197 million. By avoided an outright default, the deal would reduce the losses they face from Puerto Rico's fiscal crisis.

Prepa's outstanding insured bonds will be paid off as they mature with the proceeds of new securitized debt.

The Energy Bankers

Because of the need to borrow to keep fuel shipments coming into the island, the utility owes $550 million to Scotiabank de Puerto Rico and $146 million to Solus Alternative Asset Management LP. The loans carry an interest rate of 7.25 percent.

The lenders, which signed on to the deal, will have one of two options: convert the current lines of credit into six-year loans with 5.75 percent interest or take the new bonds on offer to investors.

Bloomberg Business

by Michelle Kaske

January 18, 2016 — 9:01 PM PST Updated on January 19, 2016 — 6:48 AM PST

[Illinois GOP Sees Takeover, Bankruptcy for Chicago Schools.]

Chicago's public school system should be taken over by the state and potentially file for bankruptcy to escape from its debts, Illinois Republican leaders said, escalating the partisan political clash over its mounting financial strains.

The Chicago Board of Education, the nation's third-largest district, is under fiscal siege because of soaring pension obligations. Its teachers union is threatening to strike, layoffs are looming, and without changes its operating deficit is projected to reach $1 billion a year through 2020. Christine Radogno and Jim Durkin, the state's top Republicans in the legislature, outlined a proposal Wednesday that would allow the state to take control and even push the system, charged with educating almost 400,000 students, into Chapter 9.
"What we're proposing is a lifeline," state Senator Radogno told reporters in Chicago. "We didn't come to this lightly. The track record of Chicago and its public school system is abysmal."

Chicago's schools have sought the state's help to close a $480 million budget shortfall brought on by bills for employee retirement benefits, which it has failed to adequately fund for years. Illinois Governor Bruce Rauner, a Republican who has been at odds for months with the Democrat-controlled legislature over the state budget, has said he won't bail out the schools unless Mayor Rahm Emanuel supports limits on unions or other proposals he's seeking to enact.

'Reckless Smokescreen'

The Republican proposal, which Rauner endorsed, was immediately dismissed by Emanuel, a Democrat, Senate President John Cullerton and the head of Chicago's schools.

"Instead of offering a reckless smokescreen that distracts from the real financial problems facing CPS, the Governor should pass a state budget that treats CPS students equally with the rest of the state," Forrest Claypool, the chief executive officer of the district, said in an e-mailed statement.

The legislation may be filed within the week, Durkin said. It would allow the state superintendent of schools to appoint as many as seven members to an independent authority to run the district. After the schools' finances steady, the control would be ceded to an elected board, stripping the mayor of his current power to appoint those who oversee the district.

The bill would also allow Chicago and its schools to file for bankruptcy. A proposal introduced last year, which stalled in the legislature, would allow municipalities statewide to file for Chapter 9.

"It would be good, the right thing to do to protect taxpayers and schoolchildren and their parents, to have bankruptcy be an option," Rauner told reporters in Chicago.

Bankruptcy, which could allow the system to seek to cut workers' pension benefits or debts owed to bondholders, is not currently an option for local governments in Illinois. Senator Cullerton said in an e-mailed statement that the Republican plan "is not going to happen."

"Giving control of our children's future to a governor who can't pass his own budget, who is racking up billions in unpaid bills, and who is crippling higher education across the state makes zero sense," Kelley Quinn, a spokeswoman for Emanuel, said in an e-mailed statement.

Chicago's school district bonds have been cut to junk by all three major credit-rating companies. On Tuesday, Fitch Ratings lowered its grade on $6.1 billion of general-obligation debt by three steps to B+, four ranks below investment grade. Bonds due in 2039 traded on Jan. 15 for an average of 88 cents on the dollar to yield 6.5 percent.

The proposed takeover comes as Illinois is in its seventh month without a budget as Rauner, the first Republican to lead the state since 2003, and legislative Democrats remain at an impasse. Without a spending plan in place, Illinois will end the fiscal year as much as $5 billion in the hole.

Bloomberg Business

by Elizabeth Campbell

January 20, 2016 — 8:09 AM PST Updated on January 20, 2016 — 11:22 AM PST

Atlantic City Considering Bankruptcy Filing, Mayor Says.

Atlantic City is considering a bankruptcy filing after New Jersey Governor Chris Christie vetoed legislation aimed at shoring up the finances of the distressed casino resort.

Mayor Don Guardian said he expects to call an emergency meeting for next week to discuss the city's options. He and Council President Marty Small spoke to reporters in Trenton after an hour-long meeting with Assembly Speaker Vincent Prieto. Lawmakers are considering a state takeover of the city as well as ending its four-decade casino monopoly in New Jersey.

Christie, a second-term Republican running for president, didn't sign bills that would have diverted some gambling funds to the city and prevented tax appeals that strain its finances. The rejection came after the Democratic-led legislature complied with changes he suggested. The governor declined to act because the city hasn't dealt with its "structural budget issues and excessive spending," said Kevin Roberts, a Christie spokesman.

"The Governor is not going to ask the taxpayers to continue to be enablers in this waste and abuse," Roberts said Wednesday in an e-mailed statement.

Once the second-largest U.S. gambling market, Atlantic City has seen its key industry crumble as day-trip patrons shift to newer, closer casinos in nearby Pennsylvania and New York. While state aid helped plug a gap this year, the city of 39,000 faces a shortfall of $90 million next year, a third of its budget.

Guardian said bankruptcy would allow the city to emerge with a "clean slate," renegotiate union contracts and write off about $40 million of its debt. The city, which he said has about $240 million of bonds outstanding and owes $161 million in tax appeals, would need state approval to file.

"It would be good from a financial point for Atlantic City," Guardian said. "But it's not good news for the rest of the state and we've said that before. A bankruptcy filing by Atlantic City would mean that every other community could file."

Prieto, after his meeting with city officials, said he’s open to discussions on their next step.

“Everybody wants to avoid bankruptcy,” he told reporters. “When you do that, your bond rating really goes down and your creditors get less money. If you can avoid that, it would be the right thing to do.”

New Jersey, which has some of the most aggressive policies among states to steer local government from financial disaster, hasn’t had a municipal bankruptcy since Fort Lee in 1938, according to the Pew Charitable Trusts. When Camden filed for bankruptcy in 1999, its case was dismissed because the city wasn’t authorized to do so by the state, said James Spiotto, a bankruptcy specialist and managing director at Chicago’s Chapman Strategic Advisors LLC, which advises on financial restructuring.

Lawmakers last week agreed on a plan to ask voters in November to expand gambling to northern New Jersey and share the revenue with Atlantic City. Senate President Steve Sweeney, the highest-ranking Democratic legislator, said the city should declare bankruptcy if the Legislature doesn’t quickly approve a plan he has introduced that would put the state in control of city government for 15 years.

“My goal is to save Atlantic City and to avoid bankruptcy,” Sweeney said Wednesday in a statement. “State intervention is the best way to bring the city’s finances under control.”

Without the measures that were rejected this week, the city will run out of cash in April, according to a report released Friday by Kevin Lavin, the emergency manager appointed by Christie.

“That was like taking a knee in the fourth quarter — he’s running out the clock,” Small said of Christie, promising to fight takeover attempts. “We were counting on that money.”

Bloomberg Business

by Terrence Dopp

January 20, 2016 — 7:36 AM PST Updated on January 20, 2016 — 10:28 AM PST

Pension Funding Fight Nears a Climax in Deficit-Stung New Jersey.

The fight in New Jersey over funding government workers’ pensions is coming to a head — and no one disputes that it’ll be costly to taxpayers.

With the retirement system facing an $83 billion shortfall, Democrats who control the legislature are pushing for a ballot measure that would require the state to pay what it owes each year to end a bipartisan tradition of shortchanging pensions. Governor Chris Chris Christie, a Republican presidential candidate, has called it a “road to ruin.”

The measure promises to add billions of dollars in spending to the budget of New Jersey, whose credit rating has been cut to the second lowest among U.S. states because of the retirement system’s strains. Over the past decade, New Jersey paid about $24 billion less than it should have into the funds, freeing up cash to close budget shortfalls, spend or ease taxes, according to data compiled by Bloomberg.

“They’re in a damned if you do, damned if you don’t situation,” said Carl Thompson, a municipal analyst in Boston at Eaton Vance, which holds $30.7 billion of state and local-government bonds, including New Jersey’s. “They’re probably going to be facing some rating pressure in either situation.”

Christie took office in 2010 vowing to tame ballooning retirement debts. In 2011, he signed legislation requiring the state and its workers to boost their contributions. While Christie has put more aside than his predecessors, he’s continued to fall short as he wrestled with deficits after the recession.

In 2015, he reneged on the 2011 law and paid about $681 million. That was about $3.2 billion less than actuaries estimated it should pay, according to a 2014 report by the New Jersey Pension and Health Benefit Study Commission. By comparison, the state spends about $2.2 billion a year on universities and colleges.

The measure, which has the support of public-employee unions, was introduced by Senate President Steve Sweeney, a Democrat, after state courts upheld Christie’s ability to pay less than called for under the 2011 law. If approved by voters in November, the constitutional change would put the state on track to make full actuarially required payments by 2022, save taxpayer money and cut the unfunded liability by $4.9 billion over three decades, he said.

Fiscal Stability

“The failure to address this problem would only continue the bad budget practices of the past,” said Richard McGrath, spokesman for Sweeney. “Projections show that revenue growth is sufficient to ramp up to full funding by 2022, which will put the state on the road to fiscal stability.”

Asking residents directly is a way to get around Christie, whose signature isn’t needed to place ballot questions before voters. The Democrat-controlled legislature approved the resolution last month. It needs one more vote in each chamber.

Investors say increased payments are necessary to keep the system from going broke. Without a fix, they’ve been demanding a higher yields to buy its debt instead of top-rated municipal securities: New Jersey’s 10-year bonds yield 2.6 percent, about 0.79 percentage point more than benchmark securities, up from as little as 0.19 percentage point in May 2014, according to data compiled by Bloomberg. Only Illinois pays more among the 20 states tracked by Bloomberg.

Ratings companies have cut the state’s grade nine times since Christie took office, a record for one of the state’s governors. Moody’s Investors Service ranks it A2, five steps above junk. In November, the New York-based company warned that the grade “will continue to fall” if it doesn’t get a handle on mounting liabilities, including pensions.

New Jersey has “one of the worst records in the country” for funding its retirement obligations, said Marcy Block, a senior director at Fitch Ratings. In fiscal 2014, the state contributed 18.6 percent of what New Jersey’s pension fund needed, the least of any state, according to Moody’s. It hasn’t made a full payment since 1996, according to figures from the pension commission’s study.

“Something like this is starting to put them on a path of turning things around,” said Thompson, the analyst with Eaton Vance. “I would rather see them to do something than nothing.”

Going Broke

New Jersey has seven plans for workers, teachers and emergency personnel. The primary plan, the

Public Employees' Retirement System, may run out of money by 2024.

The Garden State would join about five others whose constitutions require them to fund their retirement systems, according to Keith Brainard, who tracks pensions at the National Association of State Retirement Administrators.

New Jersey is so far behind, though, that mandated payments in the short term "would significantly reduce the state's budget flexibility and potentially strain their liquidity,"' said Moody's analyst Baye Larsen.

The state would probably cut services and raise taxes to make the obligations, said Rob Amodeo, head of municipals in New York for Western Asset Management Co., which holds $25 billion of the securities. New Jersey's individual income taxes are already the sixth-highest in the U.S., according to the Tax Foundation, a Washington-based group. It's ranked No. 1 for property taxes.

"We don't see a commitment to sound or sincere negotiations," Amodeo said. "This might be the only remedy."

Bloomberg Business

by Romy Varghese

January 19, 2016 — 9:01 PM PST Updated on January 20, 2016 — 5:51 AM PST

[Treasury's Lew Urges Congress to Grant Puerto Rico Bankruptcy.]

Treasury Secretary Jacob J. Lew said that Congress needs to act without delay to help Puerto Rico deal with a worsening fiscal crisis, as he visited the island for the first time to witness the impact on the local economy.

"Only Congress can enact the legislative measures necessary for Puerto Rico to resolve this problem," he said at a press conference in San Juan Wednesday. "The people of Puerto Rico are sacrificing, but unless that sacrifice is shared by creditors in an orderly restructuring, there is no path out of insolvency and back to growth."

Lew reiterated the Obama administration call for bankruptcy powers for Puerto Rico, paired with independent fiscal oversight, additional health care funding and employment incentives. Republicans say they need more information about the island's financial situation before they draft a bill and some investors oppose granting Puerto Rico restructuring powers, saying that would change the rules under which the debt was issued.

"Without congressional action, Puerto Rico will face a long and difficult recovery that could have harmful consequences for the American citizens who call the island home," Lew said. "That is why we have called on Congress to act without delay."

House Speaker Paul Ryan has called for a solution for Puerto Rico by the end of this quarter and Lew described that deadline urgent and meaningful. Puerto Rico's Government Development Bank owes investors $422 million in May. The commonwealth and its agencies owe $2 billion on July 1, on the heels of an anticipated $923 million negative cash balance in June.

Congressional Republicans are calling for a federal control board. If one is enacted, it must respect Puerto Rico's rights and has to be paired with access to bankruptcy, Puerto Rico Governor Alejandro Garcia Padilla said at a separate press conference following a meeting with Lew Wednesday.

Lew is meeting with Puerto Rico officials as the commonwealth says its fiscal crisis is worsening. The island now estimates it will be $16.06 billion short in paying principal and interest during the next five years, up from a $14 billion projection in September, according to a revised fiscal and economic growth plan released Monday. That financing deficit will grow to $23.9 billion through 2025.

Debt Exchange

Island officials are working on a debt-restructuring proposal to offer creditors such as hedge funds, municipal mutual-funds and insurance companies that guarantee repayment of commonwealth's $70 billion debt burden. That plan may involve a debt exchange where investors accept losses on their securities or wait longer to be repaid.

Puerto Rico avoided defaulting on its general-obligation debt at the start of the year by taking revenue originally used to repay agency bonds. That prompted the Infrastructure Finance Authority to miss a $35.9 million interest payment and fueled speculation that other agencies would eventually follow suit.

The commonwealth and its agencies racked up debt after borrowing for years to fix budget gaps as the island's economy has contracted every year but one in the past decade. Its 12.5 percent unemployment rate is higher than any U.S. state and more than double what it is in the U.S. Residents have left the island to seek work on the mainland, resulting in a 9.2 percent population drop since 2004, according to U.S. Census data.

Bloomberg Business

by Kasia Klimasinska and Michelle Kaske

January 20, 2016 — 6:58 AM PST

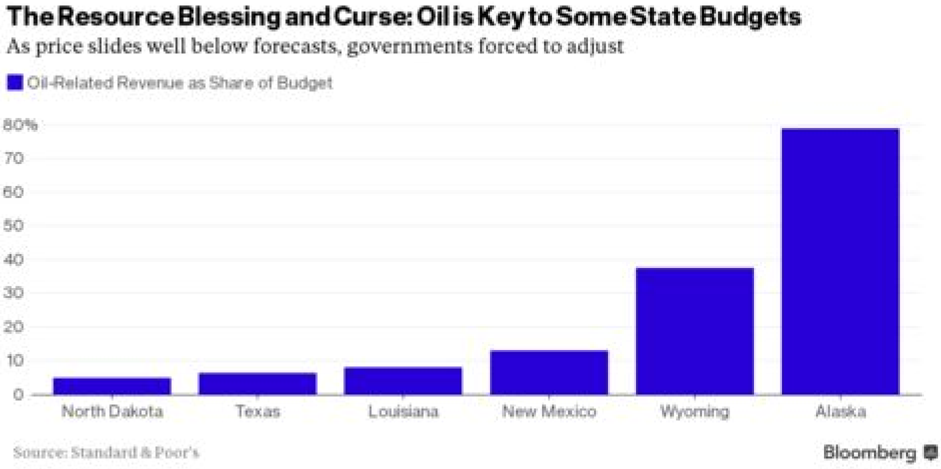
Oil's Collapse Hurting States That Were Counting on $50-a-Barrel.

When Louisiana, one of the nation's biggest energy-producing states, decided how much tax money the government would have to spend this year, it forecast that the price of oil would be almost $50 a barrel. It's since tumbled to below $32, casting economic ripples that helped create a $750 million budget shortfall.

The price of crude, which is recovering from a 12-year low, has emerged as a major source of fiscal strain on the nation's oil-patch states, none of which predicted how swift or deep the drop would be. That's prompted a reversal-of-fortune in capitals that once reaped revenue windfalls from America's energy-industry renaissance and are now racing to adjust.

"They're playing catch-up in getting their estimates in line with what's happening with spot prices," said Gabriel Petek, a municipal-bond analyst in San Francisco for Standard & Poor's who's been tracking the fiscal impacts, speaking of energy states revising price forecasts. "It doesn't look like prices are coming up soon, so if the prices stay low it could pressure their budget positions."

A report released Thursday by S&P said the energy rout is a main culprit in at least five of the 11 states that are facing financial pressure this year as jobs and counted-on tax collections disappear. The price of oil, which traded for more than $100 less than two years ago, has been cut in half since June amid concerns about the slowing pace of overseas economies, even with a rally Friday that pushed it up more than 7 percent.



Besides Louisiana, it's being felt largely in Alaska, New Mexico, Oklahoma, and North Dakota, the credit-rating company said. But it's also cropping up elsewhere: In Texas, the largest producer, the impact has crimped sales-tax collections and increased the cost of public-assistance programs for those out of work. In states with the big energy industries, payrolls expanded by 0.9 percent in the year through November, less than half the rate for the U.S., according to S&P.

Sales-Tax Increase

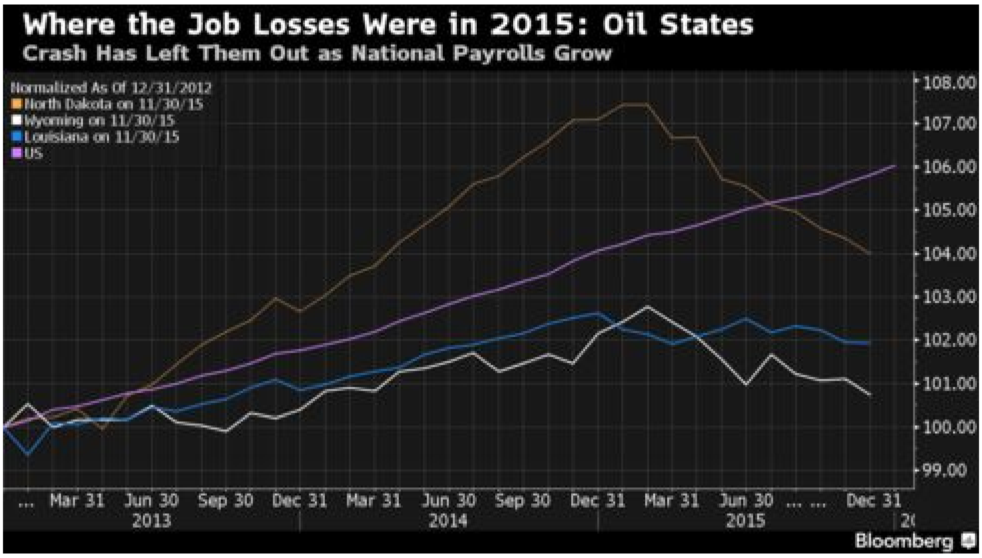
For Louisiana, the lower prices — along with rising health-care costs — are a driver of the projected $1.9 billion deficit for the year that begins in July. With its finances squeezed, investors have demanded higher yields to own some of the state's debt. Fuel-tax backed bonds maturing in 2041 traded Friday for a yield of 3.17 percent, or 1.48 percentage point more than top-rated securities. That gap is up from 0.78 percentage point in May.

To help close the gap, Governor John Bel Edwards, a Democrat in his second week in office, proposed raising the sales tax by 1 percentage point to 5 percent. That would give the Gulf Coast state the highest average state and local sales-tax rate in the country, according to the Tax Foundation in Washington.

Edwards has also proposed tapping reserves, cutting spending by about 10 percent and drawing on compensation Louisiana received for the BP Plc oil spill.

"The decline in oil prices certainly isn't helping us," said Julie Payer, the governor's deputy chief of staff. "It's a factor in layoffs that are affecting industries in the state."

Louisiana may reduce the $48 barrel oil price it used in budget projections in November when it puts out new estimates next month. "It hasn't been getting any better," Payer said.



Oklahoma expects tax collections to fall short of its initial estimates by 7.7 percent in the current budget year and by 13 percent in the next, which led Governor Mary Fallin to implement across-th--board spending cuts, according to S&P. Similar reductions are likely in North Dakota.

Alaska, with 79 percent of its operating revenue drawn from oil, lost its AAA rating from S&P this month after its deficit widened. The state assumed prices of more than $67 a barrel when it passed its budget last year, only to cut it later to about $50. The rating outlook remains negative, indicating another downgrade could come if the state fails to curb its deficit during this year's legislative session. Governor Bill Walker said in a statement this month that the cut "further solidifies the need to address our state's fiscal challenges."

"Alaska stands out as the most exposed," said Petek, the S&P analyst.

Texas Comptroller Glenn Hegar revised his revenue estimate for fiscal 2016 and 2017 down in October to $110.4 billion from $113 billion. Even so, the state's vast and diversified economy has left it better buffered than other states: The revised figure still exceeds the $106 billion in the current two-year budget, said Chris Bryan, spokesman for Hegar.

The drop in Texas's collections of energy-severance taxes will cut contributions to the government's funds that are used to build highways and mitigate the impact of economic slowdowns on the budget. Estimates for contributions to those funds have been cut by half for fiscal 2017. The state's reserves are still expected to be about $10.5 billion in 2017.

"We're still way ahead of where we would have to be for energy prices to have an impact on the state budget," said Bryan.

Bloomberg Business

by Darrell Preston

January 21, 2016 — 9:01 PM PST Updated on January 22, 2016 — 7:26 AM PST

[Washington State Refinancing Adds to $1 Billion Budget Relief.]

State and local governments that routinely borrow by negotiating with investment banks to sell bonds often cite their ability to control the timing of a bond sale as justification. Officials in the state of Washington don’t buy that.

The state sold $673 million of bonds Wednesday through competitive bidding with barely a month to prepare for the sale after the Federal Reserve raised interest rates in December for the first time since 2006. The AA+ state borrowed at 2.02 percent in the 10-year maturity, beating 2.13 percent yield for top-rated debt, according to Municipal Market Analytics Inc. data. JPMorgan Chase & Co. won the bidding.

The state uses competitive bidding for almost all its debt sales except some bonds that rely on unique revenue sources such as so-called Build America Bonds, taxable debt that came with a federal subsidy for two years starting in 2009 to stimulate the economy.

“Washington is a long a way from Wall Street and we want to do everything as transparently as possible, and there’s no better way to demonstrate you got the lowest cost of funds than to put it out for bid,” said Ellen Evans, deputy state treasurer for debt management, in an interview before the bids were awarded. “We get a fantastic cost of funds.”

Historic Lows

Washington state is unique in the $3.7 trillion municipal bond market, where more than three-fourths of all borrowers that sold fixed-rate, long-term debt do so by negotiating with banks. But since 2009 the state has refinanced about $9 billion of debt in more than two dozens sales, cutting annual interest payments by more than $1 billion a year, according to state Treasurer James McIntire.

The state is still benefiting from municipal borrowing costs that remain near historic lows, even after the Fed raised rates. Yields on benchmark 10-year Treasury notes dropped on Wednesday to the lowest level since October as investors sought the safety of sovereign debt as the collapse of oil prices sparked anxiety in markets from stocks to inflation derivatives.

Last year refinancing of outstanding debt accounted for 63 percent of all municipal bonds sold, according to data compiled by Bloomberg. Bank America projected about 60 percent of $450 billion of issuance in 2016 would be to refinance debt to cut borrowing costs.

Escrowed Funds

Washington was planning to sell $530 million of new-money bonds next month after the Fed increased its target rate by 0.25 percentage points Dec. 14. Soon after Evans and her staff realized that while muni rates remained low, the increase in U.S. Treasury rates moved short-term taxable rates high enough the state could fund the escrow needed to advance refund the debt.

In an advance refunding the state borrows to replace existing debt once it is callable by putting the proceeds in escrowed U.S. Treasuries that are redeemed as refinanced debt matures. The escrowed funds must be invested at just the right rate to repay the debt without generating any surplus under U.S. tax law.

“As December started we had no idea we would be in the money to do this at all,” said Evans.

Bloomberg Business

by Darrell Preston

January 20, 2016 — 1:29 PM PST

[The Case for Allowing U.S. States to Declare Bankruptcy.]

States can't seek legal protection from their debts, but there's a move on to change that.

Puerto Rico is trapped in a financial crisis so deep that President Obama says the only way out for the territory is to make it eligible for a bankruptcy-like process to shed some of its debts. None of the 50 states is nearly as bad off as Puerto Rico. But some influential people are arguing that if a state does get into deep financial trouble, some kind of bankruptcy would be the best option—certainly better than a taxpayer bailout.

States, unlike cities and counties, currently can't declare bankruptcy. The case for allowing it is that a well-run proceeding apportions losses fairly and fast. Lenders and bondholders absorb some of the pain, but so do government workers and retirees. Taxes go up and government services are cut back, but ideally not as severely as in an uncontrolled default. The result is a government that's streamlined, not gutted.

"Bankruptcy lets you get ahead of the problem," says David Skeel Jr., a professor at University of Pennsylvania Law School and a leading advocate of giving federal bankruptcy protection to states. Without that option, he says, "what inevitably happens when you're in deep financial distress is that you have to cannibalize other stuff. You cut police, schools, other services. You reinforce the downward spiral."

In another scenario, a state that goes broke and has no recourse to bankruptcy may end up seeking help from the federal government. "We want to cut off the politicians from assuming that at the end of their wild overspending they can just dump the responsibilities on other taxpayers," says former House Speaker Newt Gingrich.

Gingrich and Jeb Bush co-wrote an op-ed in the Los Angeles Times supporting state bankruptcy in 2011, the last time it was seriously debated. At the time, states were reeling from the aftereffects of the financial crisis. During a congressional hearing that year, Senator John Cornyn (R-Texas) raised the issue with then-Federal Reserve Chairman Ben Bernanke. (Bernanke responded that states "have the tools to deal with their fiscal problems and debt.")

Public employee unions and their supporters trashed the bankruptcy option last time around, afraid that it would give states an easy way to slash their pension obligations. State governments said they didn't want to be eligible for bankruptcy, fearing that the very possibility would spook investors in municipal bonds and drive up their borrowing costs. And some analysts worried that it would reduce the pressure for budget action. "If you had this out, it would make it a little bit more difficult to persuade people that they need to raise taxes or cut programs," says Elizabeth McNichol, a senior fellow at the Center on Budget and Policy Priorities.

Treasury Secretary Jacob Lew is seeking to wall off federal relief for Puerto Rico from the explosive question of state bankruptcy. In a letter to House Speaker Paul Ryan on Jan. 15, he pointedly didn't ask Congress to make Puerto Rico eligible for protection under the federal bankruptcy code. Instead, he said Puerto Rico needs “an orderly process to restructure its debts,” coupled with “strong, independent fiscal oversight.” Something like that could be done through the federal law governing Puerto Rico and the other territories, sidestepping the bankruptcy code. Ryan has given lawmakers until March 31 to act.

There are some tricky constitutional issues with state bankruptcy. Juliet Moringiello, a professor at Widener University Commonwealth Law School in Pennsylvania, says it could violate the contracts clause, which prohibits states from interfering with contracts, and the 10th Amendment, which says states are sovereign. (Bankruptcy would put states under the authority of a federal judge.) Penn’s Skeel thinks these objections could be surmounted—for one thing, it would be voluntary for states. But he’s not sure how current Supreme Court justices would rule.

Legalities aside, the strongest argument for state bankruptcy is that it clearly signals to bondholders that they could lose money if a state behaves badly. Knowing that, investors will demand higher yields from states with bad budget problems, thus encouraging the states to get their financial houses in order. With the notion of state bankruptcy in the air again, “municipal investors should no longer assume that state governments themselves will never have access to protection” from creditors in bankruptcy court, Matt Fabian, a partner in the research firm Municipal Market Analytics, wrote to clients in December.

The principle that states are responsible for their own debts goes back to the 1840s, when Congress refused to assume the debts of states that had overborrowed to finance a canal- and railroad-building craze. Chastened by the episode, many states passed balanced-budget amendments and took other steps to keep their debt under strict control. It was “a pivotal moment in the history of U.S. federalism,” Jonathan Rodden, a political scientist at Stanford and the Hoover Institution, wrote in a 2012 paper.

The effects have lasted into the present. A state hasn’t defaulted since Arkansas, in the throes of the Great Depression, in 1933. When states behave badly, their borrowing costs rise. The cost of protection against default by the financially troubled state of Illinois is now three times as high as that of California.

Market discipline may be weakening, however. The federal government relies on the states to carry out some programs, such as Medicaid. Investors and state governments could start to conclude that Washington has an implicit duty to come to their rescue if they get in trouble. If so, states would be tempted to overspend and bond investors to overlend. If Washington were on the hook for the states’ problems, it would naturally want control over their finances—but under the Constitution, it can’t have that.

Making bankruptcy a last-ditch option, writes Stanford’s Rodden, would reinforce the U.S. tradition of market discipline. “It is not too late,” he wrote in a chapter for a 2014 book, The Global Debt Crisis: Haunting U.S. and European Federalism. “In fact, the timing might be quite good to clarify once and for all that states can and will default if they do not achieve fiscal sustainability.”

Bloomberg Businessweek

by Peter Coy

January 21, 2016 — 1:44 PM PST

Bloomberg Brief Weekly Video - 01/21

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

Watch the video.

January 21, 2016

Moody's: Adjusted Net Pension Liabilities Decline for Most U.S. States in FY 2014.

New York, January 15, 2016 — The majority of US states experienced declines in their adjusted net pension liabilities (ANPL) in fiscal 2014, Moody's Investors Service says. Moody's ANPL decreased for 27 states, of which, nine saw a decline for a second year in a row. However, the aggregate 50-state ANPL increased marginally to $1.3 trillion due to rising liabilities in some states.

Strong investment returns drove an average pension liability decline of 15.3%, with median returns for larger plans at 16.1%, Moody's says in "Fiscal 2014 Pension Medians – US States: Robust 2014 Investment Returns Provide Pause in Growth of Adjusted Net Pension Liabilities."

"Double-digit investment returns contributed to reducing pension liabilities. More timely plan disclosures under Governmental Accounting Standards Board (GASB) 67 improve comparison between states," says John Lombardi, a Moody's Associate Analyst.

Also in fiscal 2014, most states made budgetary contributions at or close to their actuarially determined contribution (ADC) levels. Thirty-six states contributed greater than 90% of ADC, with 12 contributing between 60% to 90% and only two funding below 60% of their pension costs.

"The two states most significantly underfunding their pension payments are New Jersey (A2 negative) and California (Aa3 stable) at 18.6% and 48.2%,respectively," Lombardi says.

The median three-year average ANPL as a percentage of governmental revenue remained flat at 53% in fiscal 2014.

However, several states remained outliers with three-year average ANPL beyond 100% of their revenues. The five states with the largest unfunded pension liabilities by this measure were Illinois (Baa1 negative) at 278%, Connecticut (Aa3 stable) at 225%, Kentucky (Aa2 stable) at 182%, Louisiana (Aa2 negative) at 163%, and Hawaii (Aa2 stable) at 149%.

The five states with the lowest three-year average ANPL compared to revenues were Nebraska (Aa2 stable) at 11%, Wisconsin (Aa2 positive) at 14%, New York (Aa1 stable) at 23%, Tennessee (Aaa stable) at 23%, and Iowa (Aaa stable) at 26%.

Moody's anticipates growth of pension liabilities to resume fiscal 2015, as investment performance was much weaker than the prior two years.. Additionally, several states coping with pension underfunding and outsized liabilities will continue to face significant credit challenges.

The report is available to Moody's subscribers here.

BDA Submits Letter to SEC on MSRB Pay-to-Play Rule.

The Bond Dealers of America submitted a comment letter to the SEC on MSRB's proposed pay-t--play rule. You can review the draft letter here.

More specifically, the letter addresses:

- BDA's support of extending MSRB's rule to cover MAs;
- BDA's request for additional guidance on regulatory filings for dealers; and,
- BDA's request to raise the de minimis threshold from $250 to $350 to harmonize the contribution limit with other regulators

Additional information:

- You can view MSRB's filing to the SEC here.
- You can view BDA's previous comment letter to on G-37 here.

The Detroit Bondholders Did Not Get 'Stiffed.'

The settlement votes affirm that the bondholders in the Detroit case felt fairly treated.

In "Fixing Puerto Rico's Debt Mess" (Jan. 6), Prof. David Skeel discusses the Detroit bankruptcy case. He states, "Holders of the city's general-obligation bonds, which had the same priority as pensions, got stiffed, receiving roughly 41% of what they were owed. Pensioners got at least 60%."

This is wrong. The bondholders in the Detroit case did not get "stiffed." Prof. Skeel omits the fact that a much larger class of bondholders, the unlimited tax general-obligation bonds (UTGO) bondholders, received 74%.

Prof. Skeel also ignores that the recoveries in the Detroit case for the bondholder classes and the pensioner classes were the outcome of intense, monthslong negotiations in which all parties were well-represented by expert professionals. As a result of these successful negotiations, the UTGO class voted to accept the plan by 97% and the limited tax general obligation class (the class that did receive 41%) voted to accept the plan by 83%.

These votes affirm that the bondholders in the Detroit case felt fairly treated. After their settlements, they supported Detroit's plan of adjustment. They did not get "stiffed."

Detroit's insolvency required its creditors to accept the shared sacrifice that was necessary for the city to revitalize its services and its economy, and to pay its creditors what it could. Thankfully, after negotiations, its creditors did so. As a result, Detroit is now on the road to a proud and secure future.

THE WALL STREET JOURNAL

Jan. 20, 2016 3:34 p.m. ET

by Steven Rhodes

Ann Arbor, Mich.

Mr. Rhodes, a retired U.S. bankruptcy judge, handled the Detroit bankruptcy case.

Confirmation Disclosure and Bank Loans Among Topics at Upcoming MSRB Board Meeting.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today published an agenda for its upcoming Board of Directors meeting, to be held January 27-28, 2016 in Washington, DC. The Board of Directors meets quarterly to oversee the strategic direction of the organization, make policy decisions, and authorize rulemaking and market transparency initiatives.

Among the Board's agenda topics is the MSRB's proposal to require municipal securities dealers to disclose on retail customer confirmations the amount of the mark-up in a class of principal transactions. The Board plans to discuss public comments received on its proposal, and determine next steps. The mark-up disclosure proposal seeks to enhance the transparency of investor transaction costs and dealer compensation in the municipal securities market.

The Board also will continue its ongoing discussion of secondary market disclosure in the municipal market related to bank loans and other alternative financings. The MSRB has been advocating for voluntary disclosure of this information to investors because of the potential impact of bank loans and other debt-like obligations on the seniority status of existing bondholders, among other implications. At its meeting, the Board will explore possible regulatory action in this area to promote disclosures about bank loans affecting the overall indebtedness of an issuer.

Another topic the Board will discuss is the MSRB's existing rule related to the minimum denomination at which municipal securities can be sold to investors. Minimum denominations have been the focus of recent regulatory examinations and enforcement actions, and the Board plans to discuss potential clarifications to MSRB Rule G-15, on uniform practice requirements for municipal securities dealers, which include provisions on minimum denominations.

Read the MSRB Board of Directors' meeting agenda.

Date: January 20, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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- New MSRB Notice Summarizes Provisions of Municipal Advisor Conduct Rule.
- MSRB Notice Details MA Conduct Requirements; Webinar Planned.
- NABL: SEC Announces 2016 Examination Priorities.
- BDA's January 2016 Member Fly-in Focused on FINRA 4210 Margin Amendments.
- BDA Submits Comment Letter to SEC in Response to FINRA ATS Trade Reporting Amendments.
- Paying for Protection: The Return of Bond Insurers.
- S&P Report Says 2016 Could Be New Era in Bond Refinancing in the Project Finance Sector.
- One of the Biggest Bond Market Players Has No Employees.

- Fitch Updates Criteria for Rating Public-Sector Counterparty Obligations in PPP Transactions.
- *Haggart v. Woodley* – In "rails-to-trails" class action takings claim, Court of Appeals reverses Court of Federal Claims' approval of settlement agreement between U.S. and landowners, disapproving class counsel's methodology (extrapolation) for calculating fair market value for properties and holding that fee-shifting statute (URA) foreclosed application of common fund doctrine to action.
- And finally, Location, Location, Location! is brought to you this week by *Sid-Mar's Restaurant & Lounge, Inc. v. State ex rel. Governor*, in which the state argued that (now submerged) restaurant property had never been eligible for private ownership, as it had formerly been (literally) the bottom of Lake Ponchartrain. Seems like someone may have been a tad unclear on the concept of lake*front* property.

INSURANCE - ILLINOIS

City of Elgin v. Arch Ins. Co.

Appellate Court of Illinois, Second District - December 10, 2015 - N.E.3d - 2015 IL App (2d) 150013 - 2015 WL 8526250

City, which had entered into agreement with developer to develop certain property and make improvements to property, brought action against surety, from which developer had received bonds guaranteeing its performance, and buyer of remaining property after developer went bankrupt, which refused city's demands that it complete improvements required by annexation agreement between city and developer. Surety filed counterclaim against buyer alleging that it should be held primarily liable for improvements. The Circuit Court granted buyer's motion to dismiss surety's counterclaim. Surety appealed.

The Appellate Court held that:

- Buyer assumed developer's underlying obligation to complete improvements to property;
- Surety sufficiently pled claim of unjust enrichment in counterclaim; and
- Surety's failure to name as counter-defendants those individual homeowners who bought home in development did not warrant dismissal of counterclaim.

Buyer of remaining property after developer went bankrupt assumed developer's underlying obligation to complete improvements to property, pursuant to developer's annexation agreement with city, even though surety, from which developer had received bonds guaranteeing its performance, was not party to agreement. Agreement provided that it was binding on successors and assigned that its terms constituted covenant running with land, and obligations secured by bonds arose out of agreement, even if that agreement was not specifically mentioned in bonds.

Surety, from which developer had received bonds guaranteeing its performance, sufficiently pled claim of unjust enrichment in its counterclaim against buyer of remaining property after developer went bankrupt, in city's action against surety and buyer, after buyer refused city's demands to complete improvements to property required by annexation agreement between city and developer. Surety alleged that buyer was primary obliger bounds to perform underlying obligation under agreement that was secured by bounds issued by surety, that city sought payment from surety because buyer did not perform that obligation, that any recovery city received from surety must have been used to make improvements required by agreement, that buyer would be benefited by those improvements, and that it was unjust for buyer to retain benefit when its own wrongful failure to perform underlying obligation gave rise to surety's liability.

Surety's failure to name as counter-defendants those individual homeowners who had bought homes in development did not warrant dismissal of its counterclaim against buyer of remaining property after developer went bankrupt, in city's action against surety, from which developer had received bonds guaranteeing its performance, and buyer, after buyer refused city's demands to complete improvements to property required by annexation agreement between city and developer. Although counterclaim alleged that buyer was current owner of some or all of property in development, counterclaim did not allege that there were, in fact, any other owners, and causes of action pled in counterclaim did not show that homeowners were necessary parties.

INVERSE CONDEMNATION - LOUISIANA

Sid-Mar's Restaurant & Lounge, Inc. v. State ex rel. Governor

Court of Appeal of Louisiana, Fifth Circuit - December 9, 2015 - So.3d - 2015 WL 8543950 - 15-326 (La.App. 5 Cir. 12/9/15)

Restaurant owners brought action against state for inverse condemnation, alleging that their restaurant property was commandeered/taken by executive order of the Governor for a flood control project after Hurricane Katrina.

Following bench trial for compensation, the District Court entered judgment in favor of restaurant owners for approximately $2.02 million and a separate judgment for attorney fees of approximately $850,000. State moved for suspensive appeal, and owners and estate answered appeal.

The Court of Appeal held that:

- Amendment to eminent domain provision of state constitution and statute did not apply retroactively;
- Owners were not entitled to an award of damages for mental anguish;
- Trial court did not abuse its discretion in awarding ten years of economic damages;
- Interest was due from the date the state took the restaurant's land;
- Owners were not entitled to recover attorney fees that they incurred in related federal litigation; and
- Owners were not entitled to recover appellate attorney fees.

ZONING - MASSACHUSETTS

Parkview Electronics Trust, LLC v. Conservation Com'n of Winchester

Appeals Court of Massachusetts, Middlesex - January 12, 2016 - N.E.3d - 2014 WL 10987315

Property owner brought action in the nature of certiorari contending that town conservation commission's order of resource area delineation (ORAD) was invalid. The Superior Court granted commission's motion for judgment on the pleadings. Property owner appealed.

The Appeals Court held that:

- Commission was permitted to apply both local by-law and state law in determining compliance with wetlands protection standards, and
- By-law's definition of "land subject to flooding" was not so vague as to violate due process.

IMMUNITY - MISSISSIPPI

Crum v. City of Corinth

Supreme Court of Mississippi - January 14, 2016 - So.3d - 2016 WL 159399

City resident filed suit against city for negligence, based on its alleged breach of duty to maintain and repair sewer system, arising out overflow sewage backing up into her home and garage on two occasions.

The Circuit Court granted city's motion to dismiss for failure to state claim, based on determination that city was entitled to governmental immunity, and resident appealed.

The Supreme Court of Mississippi held that:

- Resident stated adequate claim against city for negligence sufficient to survive dismissal on grounds of immunity, and
- Allowing resident to amend complaint, rather than dismissal for failure to state claim, was appropriate remedy for any failure by resident to adequately allege that maintenance and repairs of sewer systems was ministerial, rather than discretionary function of city.

City resident stated adequate claim against city for negligence based on its alleged breach of duty to maintain and repair sewer systems, arising out of sewage overflow that backed up into her home and garage, as required to overcome city's defense of sovereign immunity that was based on assertion that its duty to maintain repair sewer systems was discretionary, and not ministerial. Resident alleged that backflow of sewage into home was due to fault of city in not properly maintaining sewer system and/or its manholes and/or city caused sewer system and/or manholes to flood, and state regulation imposed ministerial duty on city to maintain such systems, and thus, city could not show that there were no set of facts under which resident could survive dismissal on grounds of governmental immunity. (Per Kitchens, J., with one justice concurring in result only, one justice concurring in part and in result, and two justices concurring).

Allowing city resident to amend complaint for negligence against city, rather than dismissal for failure to state claim, was appropriate remedy for any failure by resident to allege that city's duty to maintain and repair sewer systems was ministerial, rather than discretionary, as required to defeat city's governmental immunity from suit, and that her injuries were caused by act done in course of performing such duty made ministerial by statute, ordinance, or regulation.

MUNICIPAL ORDINANCE - MISSOURI

Duffner v. City of St. Peters

Missouri Court of Appeals, Eastern District, Division Two - January 12, 2016 - S.W.3d - 2016 WL 145556

Property owners filed suit against city challenging constitutionality and validity of city ordinance requiring owners to maintain turf grass on at least 50% of residential yard. The Circuit Court granted city's motion to dismiss for lack of jurisdiction, and owners appealed.

The Court of Appeals held that:

- Circuit court had general plenary jurisdiction over owners claims challenging validity of ordinance

on grounds that it violated due process and amounted to regulatory taking;
- Claim that ordinance violated equal protection was collateral attack of decision of board of adjustment on application for variance, and thus, petition for writ of certiorari review to circuit was owners' exclusive remedy for that claim;
- Owners did not waive due process and takings claims, so as to deprive circuit court of subject matter jurisdiction, by applying for variance and failing to raise claims with board of adjustment;
- Owners' allegations failed to state claim that ordinance violated their substantive due process right to control their property;
- Owners stated claim for regulatory taking without just compensation; and
- Owners' allegations stated claim that city's enactment of ordinance impermissibly exceeded scope of powers granted by statute.

Allegation that city ordinance requiring owners to maintain turf grass on at least 50% of their residential yards inhibited property owners' use and enjoyment of their yard, regardless of whether city's intention was to benefit public generally or to benefit private owners through subsidizing residential property values, stated claim against city for regulatory taking without just compensation, under Missouri Constitution.

Property owners stated claim that city's enactment of zoning ordinance requiring owners to maintain turf grass on at least 50% of their residential yard impermissibly exceeded scope of powers granted by statute. Owners alleged that requirement of specific amount of land devoted to specific type of plant was not included in general police powers to "promote health, safety, morals or general welfare," and that ordinance did not fall within scope of statutory authority to regulate and restrict height, number of stories, and size of buildings and other structures, to regulate percentage of lot that could be occupied, size of yards, courts, and other open spaces, to regulate density of population, to preserve features of historical significance, and to regulate location and use of buildings, structures and land for trade, industry, residence or other purposes.

EMINENT DOMAIN - SOUTH CAROLINA

South Carolina Dept. of Transp. v. Powell

Court of Appeals of South Carolina - December 9, 2015 - S.E.2d - 2015 WL 8323392

On August 27, 2010, the South Carolina Department of Transportation (SCDOT) filed a notice of condemnation acquiring 0.183 acres of a 2.51 acre tract of unimproved land owned by David Powell. The acquisition occurred in conjunction with a highway improvement project involving nearby Highway 17. SCDOT offered Powell $72,000 for the condemned property. Powell rejected SCDOT's offer and requested a jury trial to determine just compensation.

The Circuit Court entered summary judgment for Department, finding that Powell was not entitled to any compensation Powell appealed.

The Court of Appeals affirmed, holding that any diminution in value of landowner's property as a result of the change in road access was not compensable.

Any diminution in value of landowner's property as a result of the change in road access was not compensable in condemnation case involving Department of Transportation, which condemned portion of landowner's property as part of its overall road project. Any damage to the remainder of landowner's property as a result of the closure of the intersection of road and highway was not compensable, and landowner had not lost his right of ingress or egress to and from his property.

In condemnation context, landowner has no vested rights in the continuance of a public highway and in the continuation of maintenance of traffic flow past his property.

The taking of part of landowner's property by Department of Transportation was only an incidental result of the closure of highway's intersection and was not indispensable to and inseparable from overall highway project, and thus landowner was not entitled to compensation for loss of access to remainder of his property. Property was taken to round intersection of road and a second highway, and taking of landowner's property was not a substantial part of overall project given that Department could have closed intersection without taking part of landowner's property.

EMINENT DOMAIN - WASHINGTON

Haggart v. Woodley

United States Court of Appeals, Federal Circuit - January 8, 2016 - F.3d - 2016 WL 97520

Landowners filed rails-to-trails class action against United States, claiming that National Trails System Act (NTSA) provision, authorizing "railbanking" as alternative to abandonment of railroad right-of-way that would be operated as recreational trail, effected Fifth Amendment taking of landowners' reversionary rights to property underlying railroad right-of-way.

The United States Court of Federal Claims approved settlement agreement and awarded attorney fees to class counsel under common fund doctrine. Objectors appealed.

The Court of Appeals held that:

- Government had standing to challenge Court of Federal Claims' award of attorney fees;
- Government did not waive arguments;
- Government was not barred, under doctrine of judicial estoppel, from raising arguments;
- Court of Federal Claims abused its discretion in finding that class counsel's explanation of methodology used to calculate fair market value for properties was fair, reasonable, and adequate; and
- Fee-shifting statute foreclosed application of common fund doctrine to action.

Government had standing to challenge Court of Federal Claims' award of attorney fees under common fund doctrine in landowners' class action against United States, in which taking of landowners' reversionary right to property underlying railroad right-of-way, in violation of the Fifth Amendment Takings Clause, was alleged, since government possessed institutional interest in assuring that court did not abrogate Congress's intent by impermissibly substituting common fund doctrine in place of a fee-shifting statute requiring government to assume litigation expenses of counsel in bringing forth takings claims when awarding attorney fees, and in defending Attorney General's determination that fees determined in accordance with fee-shifting statute constituted reasonable attorney fees.

Government's failure to take position, before Court of Federal Claims, on issue of class counsel's disclosure of information to class members or class counsel's motion for additional attorney fees, in landowners's class action against United States in which taking of landowners' reversionary right to property underlying railroad right-of-way, in violation of the Fifth Amendment Takings Clause, was alleged, did not waive government's argument, on appeal, that class counsel improperly refused to disclose information necessary to allow class members to asses fairness and reasonableness of proposed settlement, or that award of additional attorney fees to class counsel, under common fund doctrine, was improper.

Government was not precluded, under doctrine of judicial estoppel, from arguing, on appeal from Court of Federal Claims' decision approving settlement and award of additional attorney fees to class counsel under common fund doctrine, in landowners' class action against United States in which taking of landowners' reversionary rights to property underlying railroad right-of-way, in violation of the Fifth Amendment Takings Clause, was alleged, that class counsel improperly refused to disclose information necessary to allow class members to asses fairness and reasonableness of proposed settlement, or that award of additional attorney fees to class counsel was improper, where government did not take position in Court of Federal Claims on issues of proposed settlement agreement or attorney fees.

Court of Federal Claims abused its discretion in finding that class counsel's explanation of methodology used to calculate fair market value for properties, which served as basis for allocation of settlement award among class members in landowners' class action against the United States, in which taking of landowners' reversionary right to property underlying railroad right-of-way, in violation of the Fifth Amendment Takings Clause, was alleged, was fair, reasonable, and adequate, where, due to large number of individual properties, only certain representative properties were appraised, fair market values of non-representative properties were extrapolated from the appraised properties, and class counsel did not provide class members who owned non-appraised properties with information about properties from which their properties' values were extrapolated or how any variable inputs were valued in calculating their fair market values, such that class members were unable to determine whether their individual settlement awards were fair, reasonable, or adequate.

Common fund existed in landowners class action against United States, in which taking of landowners' reversionary right to property underlying railroad right-of-way, in violation of the Fifth Amendment Takings Clause, was alleged, where, under settlement agreement, lump sum was to be paid by government, and each landowner's individual ascertainable claim was fair market value of his property.

Inequity existed with respect to class members in landowners' class action against the United States in which taking of landowners' reversionary right to property underlying railroad right-of-way, in violation of the Fifth Amendment Takings Clause, was alleged, as required for common fund doctrine to apply to action, where approximately 27% of class members signed contingency fee agreements with class counsel prior to certification of the class, and were thus contractually obligated to contribute to payment of attorney fees incurred on their behalf, and approximately 73% of class members did not sign contingency fee agreements with class counsel, and were thus not contractually obligated to contribute to payment of attorney fees incurred on their behalves.

Application of common fund doctrine was foreclosed in settlement of landowners' class action against United States, in which taking of landowners' reversionary right to property underlying railroad right-of-way, in violation of the Fifth Amendment Takings Clause, was alleged, where statute requiring government to assume litigation expenses of counsel in bringing forth takings claims existed, and government, rather than class counsel or members of class, thus bore the reasonable cost of action, such that inequity between class members did not exist.

EMINENT DOMAIN - WASHINGTON

TT Properties v. City of Tacoma

Court of Appeals of Washington, Division 2 - January 12, 2016 - P.3d - 2016 WL 123523

Owner of two properties brought action against city for unconstitutional taking, relating to transit authority's rail service plans. The Superior Court granted summary judgment to city. Owner appealed.

The Court of Appeals held that:

- City's destruction of a property's access to a particular street is not a per se taking;
- Genuine issue as to substantial impairment of access to one property precluded summary judgment;
- No compensable taking occurred as to other property; and
- Genuine issue as to whether city acted in proprietary or regulatory capacity precluded summary judgment.

Placement of utility bungalow on city right-of-way abutting alley near property, which made it impossible for trucks to swing wide across right-of-way to enter alleyway and reach property, did not substantially impair property owner's access to property, and therefore there was no compensable taking. Even though bungalow encroached about one foot into alleyway, encroachment was minimal, remaining width of alley was more than city's minimum required alley width, and owner did not have property right to swing wide over city's property beyond alley to enter alley.

Best Credit Data Partners with FactSet to Distribute Municipal Bond Pricing.

BOSTON, Jan. 13, 2016 /PRNewswire/ — Best Credit Data (BCD), a provider of bond pricing data and analytics, today announced a partnership with FactSet Research Systems (NYSE: FDS) (Nasdaq: FDS), to distribute end-of-day municipal bond pricing to FactSet's global clients. FactSet is a leading provider of integrated global financial information and analytical applications for the investment community.

BCD Municipal Bond Pricing provides evaluated pricing for over 1.25 million U.S. municipal bonds every day with eight years of end-of-day history. With this new partnership, FactSet customers have the ability to subscribe to the BCD municipal bond pricing and download the data directly into local databases or analytic tools.

"FactSet's high quality customer service and its ability to seamlessly integrate data within the customer's workflow are only a few of the reasons we are excited about the FactSet partnership," said Pierre Robert, CEO of Best Credit Data Inc. "Having our data available through FactSet gives us a meaningful advantage when it comes to the evaluated pricing space."

"We are pleased to offer BCD pricing data to our clients, giving more FactSet users access to EOD evaluated pricing data," explained Robert Robie, SVP, Director of Global Fixed Income of FactSet. "This partnership gives our clients another perspective into the highly illiquid Muni Bond Market and reinforces our commitment to provide high-quality and unique content to empower clients in their decision-making."

About Best Credit Data Inc.

Best Credit Data is a Boston based provider of US bond pricing and analytics. By using observation driven methodology and big data cloud computing technology, BCD is changing the bond pricing and analytics world by providing cost effect alternatives to pricing bonds. Best Credit Data expects to close its next round of funding in Q1 2016.

About FactSet

FactSet, a global provider of financial information and analytics, helps the world's best investment professionals outperform. More than 63,000 users stay ahead of global market trends, access extensive company and industry intelligence, and monitor performance with FactSet's desktop analytics, mobile applications, and comprehensive data feeds. The Company has been included in FORTUNE's Top 100 Best Companies to Work For, the United Kingdom's Great Places to Work and France's Best Workplaces. FactSet is listed on the New York Stock Exchange and NASDAQ (NYSE: FDS) (NASDAQ: FDS). Learn more at www.factset.com, and follow us on Twitter: www.twitter.com/factset.

Assured, Orrick Lead the Charge In Banner Year for Bond Insurers, Counsel.

The municipal bond insurance industry took another step forward in their comeback, wrapping almost 36% more in par value in 2015 and increasing market share to the highest in five years.

Assured Guaranty led the charge again, as the par value of bonds wrapped and number of deals insured surged. Orrick Herrington & Sutcliffe maintained its position atop the bond counsel rankings.

Municipal bond insurers guaranteed $25.21 billion of bonds in 1,880 transactions, up from $18.54 billion in 1,403 transactions in 2014, according to data from Thomson Reuters.

The insurance penetration rate increased to 6.36% from 5.56% in 2014. This is the highest the rate has been since 2009 when it was 8.64%.

Assured improved on the par amount of deals wrapped, number of deals and market share, finishing the year with $15.14 billion in 1,009 transactions and 60.2% market share. In 2014, Assured has $10.74 billion, 697 transactions and 57.9%. The data includes Assured's subsidiary Municipal Assurance Corp.

"Demand for bond insurance grew in 2015, with primary-market par insured increasing 36%, far outpacing market growth of 20%," said Robert Tucker, managing director communications and investor relations at Assured. "We continue to see increased demand for our insurance in 2015. We led the market in terms of both par and the number of transactions insured during the year, capturing 60% of all insured new-issue par and 54% of the insured transactions. "

Tucker said Assured increased primary market transaction by 41% over 2014 and improved liquidity in its insured paper with the average trading volume exceeding $500 million per day.

"In 2015, we were the insurer of choice for smaller bond issues, bonds in amounts of $10 million or less, leading the industry with 662 transactions totaling $3.4 billion in par insured. Counting secondary market activity, our total 2015 US public finance par insured reached $16.1 billion," Tucker said.

Tucker also said for the fourth quarter of 2015, Assured Guaranty insured 203 new issues to produce an industry-leading par of over $3.2 billion.

"In the secondary market, we increased par insured by 16% and doubled the number of transactions we insured compared to the fourth quarter of 2014. Assured Guaranty's total par insured across both the primary and secondary municipal markets was $3.4 billion in the fourth quarter of 2015," Tucker said.

Build America Mutual insured $9.57 billion in 849 transactions, up from $7.47 billion in 705 transactions, though its market share dropped to 38% from 40.3% the previous year.

"We were pleased to see a strong increase in the use of insurance across the industry, and BAM's growth played an important role in driving that," said Bob Cochran, BAM's chairman. "Our gross par insured reached $23.5 billion by the close of 2015, up more than 80% over the year, and the number of municipal issuer members increased to more than 1,700. Importantly, those consistent results in the market allowed BAM to increase our claims-paying resources in every quarter of 2015."

Cochran said that BAM has now published 2,500 Obligor Disclosure Briefs on the insurer's website, and the number of downloads more than doubled in 2015.

"These credit summaries of every bond issue insured by BAM provide an important and easily accessible source of information for investors and other market participants who want to learn more about the small- and medium-sized issuers that make up BAM's core market," Cochran said.

National Public Finance Guarantee, the municipal arm of MBIA Inc., wrapped $496 million over 22 deals, up from $332 million in three deals during 2014. NPFG started writing new business in the third quarter of 2014. NPFG's market share stayed steady at 1.8% from last year.

"For our growth, we are also diversifying our base. In addition to new deals, there have also been a number of secondary market transactions that we have done," said Tom Weyl, managing director, head of new business development at National. "We are expanding that area, as well. We also did some competitive deals recently. There have been 2 or 3 transactions that were awarded to us, that had little to no spread compared to our competitors. We are positioning ourselves for growth, we are building a base. It's been slow-going, but we'll be well-positioned when interest rates become more favorable."

Weyl said National expects refunding activity to continue even as short term rates go up, as the volume of 2006 and 2007 muni debt with 10-year call dates is significant. He said the company's new business production depends more on longer term rates, which rely on factors beyond Fed rate hikes.

"We ended 2015 with the same basic story. We are building our new business team and expanding our market knowledge. As interest rates raise and we get into a more normal interest rate environment, then bond insurance will have a better chance to compete. In the meanwhile, we have been staffing up and we are now seeing and winning more transactions," Weyl said.

Orrick Again Tops Bond Counsel Rankings

Law firms benefited from last year's growth in the municipal bond industry, as all top 15 firms posted improved par amounts from the prior year. The top firms posted a par amount of $374.53 billion in 12,009 transactions in 2015, compared to $314.22 billion in 10,115 transactions in 2014.

Orrick had a par amount of $37.55 billion in 391 deals, which accounts for 10% of market share. This is an improvement upon the firm's 2014 numbers of $30.38 billion in 321 deals and 9.7% market share.

"We are, of course, pleased to be ranked number one as bond counsel and number one as disclosure counsel, as we have each year for well over a decade," said Roger Davis, chair of Orrick's public finance department. “We attribute our consistent standing at the top of the league tables to the quality of our bond and tax lawyers, the supportive and creative services they provide to our clients, which has led many of those clients to turn to us, repeatedly, for their public finance needs, which is more important to us than the rankings.”

Hawkins Delafield & Wood LLP remained in second place from a year ago with $23.08 billion in par amount in 396 issues and 6.2% market share, up from $16.45 billion in 321 issues and 5.2% market share.

“We once again had the most bond volume of any law firm as underwriters’ counsel,” said Howard Zucker, managing partner at Hawkins. “We are fortunate to have many very loyal clients across the nation; but by ‘fortunate’, I do not mean ‘lucky.’ We know that we cannot rest on our laurels; we understand that we have to come to work each and every day to earn and deserve the trust and confidence of our clients. ”

Hawkins was the top underwriters’ counsel with $17.37 billion in 147 deals, according to Thomson Reuters.

Zucker also mentioned that the trend for many years has been for greater specialization in the bond legal practice. This is a reflection of the increased complexity of municipal bond issues, the highly extensive regime of federal tax regulations, as well as the heightened disclosure expectations of the market and of the SEC.

“Today law firms that want to be active in this field have to be truly dedicated, and have to commit significant resources to have the depth and breadth of expertise in order to be able to advise issuers and others in the navigation of the matrix of issues across the full range of sectors of public finance,” Zucker said.

Zucker said Hawkins is now in its 162nd year and has over 135 years acting as bond counsel.

“Three months ago we opened an office in Michigan, our ninth office, and as of Jan. 1, we added three new partners to our ranks. We look forward with excitement and great expectations to 2016 and beyond,” he said.

McCall Parkhurst & Horton LLP came in third place with $14.50 billion in 436 deals or 3.9% to remain in third place.

Norton Rose Fulbright jumped to fourth place from seventh, finishing the year with $13.40 billion or 3.6% market share, improving upon 2014’s numbers of $8.14 billion and 2.6% market share.

Bob Dransfield, Norton’s U.S. head of finance said that he attributes the firms good year to its commitment to client service as well as the favorable interest rate environment that was present in 2015, which enabled Norton to assist its’ clients in achieving substantial savings through refundings and restructurings, as well as raising capital for new projects at attractive interest rates.

“We listen to the needs and goals of our clients and work collaboratively with them to help them reach those goals,” said Dransfield. “We work hard to understand the business of our clients which enables us to help them evaluate their options in light of their business goals and we work to make sure they understand the alternatives that may be available with any particular financing structure so that their business decisions are based on a complete understanding of the issues.”

Kutak Rock LLP rounds out the top five, with $13.33 billion, also a 3.6% market share.

Gilmore & Bell PC, Ballard Spahr LLP, Sidley Austin LLP, Chapman and Cutler LLP, Squire Patton Boggs, Stradling Yocca Carlson & Rauth, Greenberg Traurig LLP, Bracewell & Giuliani LLP, Mintz Levin Cohn Ferris Glovsky & Popeo PC and Chiesa Shahinian & Giantomasi PC round out the top 15.

Davis said that Orrick expects 2016 to be somewhat more challenging, as market activity has been slowing for several months, refundings are becoming fewer, rates are rising, municipal revenues are improving, but slowly and offset by rising pension and OPEB liabilities. He also said that regulation and enforcement are rapidly increasing and changing a market that until recently has been characterized by being largely unregulated and lightly enforced, and this election year, which is always distracting.

"On the other hand, we see activity increasing in specific sectors, like multifamily housing, student housing, health care, charter schools, cultural facilities, public private partnerships, PACE and other alternative energy programs," Davis said. "We are starting 2016 busy and expect that to continue."

THE BOND BUYER

BY AARON WEITZMAN

JAN 13, 2016 3:22pm ET

Paying for Protection: The Return of Bond Insurers.

Some municipal bond investors have had it pretty hard of late. For the holders of the debt of Puerto Rico, Detroit, Stockton, CA, Ferguson, MO, and Jefferson County, AL it's been a parade of deteriorating financial performance, defaults and bankruptcies. In Detroit's final bankruptcy agreement, for example, bondholders of the unlimited tax general obligation debt received a haircut down to 74% of their principal.

Yet some other Detroit bondholders got 100% of their principal, never missed an interest payment and generally saw better valuation on their bonds throughout the bankruptcy proceedings. So how did those bondholders walk away with full wallets while others lost $260 on every $1,000 invested? They had bought bonds wrapped with a bond insurance policy–a policy that unconditionally guarantees payment of principal and interest on the debt.

The days of bond insurance were assumed long gone after the collapse of nearly all of those businesses during the financial crisis of 2008. As of August 2015, there were $18.1 billion of insured bonds, up from a low of $11.4 billion in 2013, but still a far cry from the $191.3 billion of bonds insured in 2006. In fact, just two public companies survived that tumultuous period—Assured Guaranty (NR/AA) and National Public Finance (the restructured company of the insurer formerly known as MBIA) (A3/AA-).

But in a sign of renewed life, a new mutual insurance company was recently formed, Build America Mutual (NR/AA), which is owned by the municipalities it insures. Under revised rating agency guidelines, no financial guarantor can receive the formerly vaunted "AAA" rating. However, each bond insurer enjoys a "AA" level rating by Standard & Poor's and each is focused on municipal bond insurance as a core business. In fact, Assured Guaranty established a separate insurance subsidiary, MAC, which will only insure municipal bonds.

Benefits of Insurance

Given that municipal bond defaults are still rare (less than 0.05% according to a Moody's study of ten-year cumulative default rates), investors might reasonably ask why they should bother purchasing insured bonds. After all, like any insurance, bond insurance costs money. For investors that extra cost is in the form of lower yields for insurance bonds than for similar uninsured bonds.

It's a fair question, but there are several reasons to consider insured bonds. First, keep in mind that the municipal bond market is extremely diverse. There are more than 50,000 borrowers across more than 15 sectors, from local governments to industrial development bonds. Even the most diligent individual investor probably doesn't have the technical expertise to analyze the creditworthiness of a borrower and value its bonds appropriately.

Another consideration is that when municipal bonds do default—however infrequently—it's a real mess. Not only are numerous stakeholders and creditors fighting vociferously for a very small pie, any resolution is tempered by the fact that the municipal entity must emerge from the negotiations strong enough to continue serving the public. In almost any scenario, an investor will get a haircut on principal and, as the resolution process drags on, face the added uncertainty of when you are going to get paid either principal or interest again.

Bond insurance eliminates all of this. In the event of a default, the bondholder never misses a payment of either principal or interest. But insurance is not only useful in the event of default, it also cushions against a ratings downgrade—which have become more frequent.

Consider the City of Chicago. When the general obligation debt of the city was downgraded in May 2015 to Ba1 by Moody's (its highest junk bond rating), the value of the uninsured ten-year maturity bonds dropped nearly $80 per $1,000 bond, or 8%, by the end of the week. However, investors holding these insured Chicago bonds remained valued slightly above $1,000 during that period.

Another benefit of insurance is liquidity. Tens of millions of dollars of bonds backed by bond insurers are traded daily. Meanwhile, buyers of distressed bonds often demand substantial discounts—when they can be found.

Strength of Insurers

In light of recent history, some investors have voiced concern about whether insurers could maintain their ratings and fulfill their obligations in the event of a big municipal default. For example, both Assured Guaranty and National Public Finance insure the bonds of one or more of Puerto Rico's troubled municipal borrowers.

But even with Puerto Rico's default on some of its bonds, it's critical to remember that a default on an insured bond does not mean the entire outstanding par amount of those bonds become immediately due and payable. The bond insurer simply continues to pay principal and interest on the originally mandated dates.

In the event of a default and subsequent claim, the bond insurers have strong covenants and legal provisions protecting them. These will be vigorously enforced and litigated, if history is any guide. The insurer will have to pay something, but the recovery on the bonds is often far greater than zero.

Moreover, bonds coming out of default are often restructured and refunded. This is an important consideration. As soon as any refunding occurs, the existing holders of the insured debt are made whole, the bond insurer's commitment ceases, any reserved capital is freed up and any unearned premiums become earned immediately. There are tremendous incentives to resolve a bankruptcy expeditiously by refunding the outstanding defaulted debt.

Lastly, these companies are very well capitalized, with capital positions that are arguably better, and books of business that are certainly stronger, than prior to the credit crisis. In the event of a claim, the bond insurer continues on with business as usual. New policies are written, older policies roll off as bonds mature and the portfolio capital continues to earn money which can (and is) applied to paying on outstanding claims.

For all of that, bond insurance is not an investment panacea. It does not guarantee a risk-free investment; instead, investors take on the risk—however slight—of the bond insurer itself. In other words, bond insurance is transferred and diminished risk, not the elimination of risk. You still have to do your homework.

FORBES

BARNETT SHERMAN, CONTRIBUTOR

JAN 14, 2016 @ 04:08 PM

Barnet Sherman is a director and the portfolio manager of the TIAA-CREF Tax-Exempt Bond strategy at TIAA-CREF, a national financial services organization.

U.S. Muni Bond Sales to Slip to $5.66 bln Next Week.

U.S. municipal bond supply will fall to $5.66 billion next week from about $8.77 billion this week as the muni market will be shuttered on Monday for the Martin Luther King Day holiday, according to Thomson Reuters estimates on Friday.

The lower supply comes amid falling yields and strong investor demand for tax-exempt debt. So far this year, yields on Municipal Market Data's benchmark triple-A scale have tumbled to 1.79 percent from 1.92 percent for 10-year bonds and to 2.74 percent from 2.82 percent for 30-year bonds.

Muni bond fund net inflows continued to garner strength at nearly $995 million in the latest week, following flows of $992.7 million in the week ended Jan. 6 and $1.3 billion the week ended Dec. 30, according to Lipper, a unit of Thomson Reuters. Flows have been positive for 15 straight weeks.

Next week's biggest muni offering comes from the state of Washington, which is selling $529 million of general obligation refunding bonds and $143.6 million of motor vehicle fuel tax GO refunding bonds in competitive bidding on Wednesday.

The AA-plus-rated bonds carry maturities in 2016 and in 2019 through 2033, according to the preliminary official statement.

The District of Columbia Water and Sewer Authority will sell $372 million of public utility subordinate lien revenue refunding bonds through Loop Capital Markets on Wednesday. The bonds are structured with maturities in 2019 and from 2029 through 2039, according to the POS.

New York's Triborough Bridge and Tunnel Authority has a $300 million general revenue bond issue through Citigroup that will be offered to retail investors on Wednesday with institutional pricing on Thursday. The bonds mature in serial maturities of 2016 through 2036, according to the POS, which also lists two term bonds.

Reuters

Fri Jan 15, 2016 1:06pm EST

(Reporting By Karen Pierog; Editing by Diane Craft)

Janney Municipal Bond Market Monthly

Municipal Bond Market Monthly – Outlook 2016 and Puerto Rico Update

Janney Fixed Income Strategy

More Reason to Love Munis.

Municipal bonds had a strong 2015, but low oil prices and a volatile stock market will cause many states to struggle. Even so, munis seem like a good bet.

Investors who liked municipal bonds in 2015 are really loving them so far in 2016. Munis had the highest returns of any fixed-income sector last year, and are shining brighter than ever as stocks have been roiled by concerns about slowing global growth.

“Munis have started off the year with an unexpected surge, not only in performance but also in popularity,” says Jim Colby, municipal strategist at Van Eck Global.

That’s great for investors who own munis, but if you’re looking for a safe place to hide as equities turn treacherous, note that the easy money in munis may have already been made. “They’ve gotten to levels that are a bit rich relative to Treasuries,” admits Hugh McGuirk, who runs municipal bond investing at T. Rowe Price. In recent years, 10-year muni yields were very close to Treasuries, which made them much more attractive on an after-tax basis. Now, intermediate munis yield about 85% of Treasuries. For example, seven- to 12-year munis yield, on average, 1.7%, versus 2% for the 10-year Treasury. The tax benefit still makes munis attractive, but not as much.

“It dampens my enthusiasm moderately,” McGuirk says, “but I still see the benefits of munis as a very defensive investment when global markets are volatile.”

Limited supply of new munis in November and December is a big reason why they outperformed Treasuries late last year, says Vikram Rai, Citi Research muni strategist. But now new issuance is picking up. “That will cause munis to cheapen slightly,” he says. There will be better entry points for new investors after January, he believes.

THERE ARE OTHER looming risks muni fans should keep in mind. A couple are well known: Puerto Rico will likely default on billions in debt this year, and some states, like New Jersey and Connecticut, have growing pension liabilities they need to address.

But Standard & Poor’s highlighted additional worries for state finances in a report issued last week. Energy-producing states like North Dakota, Louisiana, and Oklahoma are likely to face particular fiscal strain as companies scale back on production in response to the crash in crude oil prices. Alaska has already been downgraded. Pennsylvania and Illinois are in political gridlock over budgets. Plus, some states can expect less revenue growth, due to lower capital-gains income (fewer investors are selling at a gain). S&P has a negative outlook for seven states, which means they may be downgraded in the future. "The state sector is currently poised for some volatility in terms of credit," says Gabriel Petek, the main analyst on the report.

Active municipal bond-fund managers say credit research—their long suit—can manage those risks. "We're continuing to emphasize revenue bonds over general obligation bonds, in no small part because of concerns about state and local governments addressing long-term liability issues," says McGuirk. Peter Hayes, who heads the muni bonds group at BlackRock, says he's taking a barbell approach to credit risk, buying high-yield munis, such as tobacco bonds, as well as A-rated revenue bonds.

At least interest-rate risk has dissipated. Last year, concerns that the Fed was about to embark on a rate-hike cycle dampened muni demand. Now, even as the new-issue calendar builds, Hayes expects demand from investors to absorb the new supply. Rai expects muni rates to nudge up this year, but thinks the coupons earned on most maturities (except for the 10-year) will result in positive 2016 returns.

It makes sense for investors looking for safety to turn to munis. But chasing the recent strong performance could result in disappointment. "Munis aren't quite as attractive as they were a year ago," concedes Colby. "But they still have a lot going for them—including very high average credit quality and significantly lower volatility."

Given how markets are acting, that's a pretty good argument for owning them.

BARRON'S

AMEY STONE

January 16, 2016

S&P Report Says 2016 Could Be New Era in Bond Refinancing in the Project Finance Sector.

OVERVIEW

- We believe that 2016 could usher in a new era in bond refinancing in the project finance sector.
- Our research shows that institutional investor interest and refinancing conditions for loans made and priced at the height of the global financial crisis are now ripe for capital market takeouts.
- Assuming that deal flow matches the high demand for infrastructure investment within the institutional investor market, we believe financing conditions for long-dated debt transactions in the capital markets can
  only get better.

LONDON (Standard & Poor's) Dec. 22, 2015–With the end of the low interest rate cycle now clearly in sight, and the likely consequence of this on swap rates, Standard & Poor's believes 2016 could herald a new era in project finance bond refinancings.

"Assuming that deal flow matches the high demand for infrastructure investment within the institutional investor market, we believe financing conditions for long-dated debt transactions in the capital markets can only get better," said Standard & Poor's credit analyst Michael Wilkins, in the report published today, "Project Finance: Rate Rise May Herald A Wave Of Refinancing In The Bond Market."

Rising rates could actually provide a boost to refinancings of infrastructure project debt in the capital markets.

In today's low-yield environment, insurers and asset managers are particularly eager to invest in real assets such as infrastructure. That's because these projects provide inflation-linked, relatively attractive risk-adjusted returns, with a low correlation to the economic cycle and healthy cash flow and income yield. Also, those low interest rates have meant banks have been able to fund themselves at a historically low cost. This has led to ample liquidity in the market and has helped increase bank lending to project finance and infrastructure (see "Are Rumors For Global Project Finance Bank Lending's Demise Greatly Exaggerated?" published Jan. 14, 2015, on RatingsDirect).

At the same time, the amount of issuance in the project bond market has ticked higher over the last couple of years, which has also been partly due to low interest rates. Low interest rates have also been a factor in the upsurge in direct lending and private placements to infrastructure projects from institutions. Yet the number of capital market refinancings of bank loans via new project bond issues hasn't matched this trend, partly due to the disincentives of breaking the swaps associated with bank financings.

However, with the prospect of a low-rate cycle coming to an end, this picture changes. As swap rates go up, the breakage costs for swaps are reduced on a mark-to-market basis, making breakage costs less punitive. Accordingly, refinancings of infrastructure project debt in the capital markets may receive a boost as a consequence.

Standards & Poor's Ratings Services' research shows that institutional investor interest and refinancing conditions for loans made and priced at the height of the global financial crisis are now ripe for capital market takeouts. Our simulations show that the mark-to-market swap breakage cost saving could be as high as 40% for some project loans if swap rates rise by 100 basis points (bps) from where they are today.

We have determined, based solely on the developments described herein, that no rating actions are currently warranted. Only a rating committee may determine a rating action and, as these developments were not viewed as material to the ratings, neither they nor this report were reviewed by a rating committee.

The report is available to subscribers of RatingsDirect at www.globalcreditportal.com and at www.spcapitaliq.com. If you are not a RatingsDirect subscriber, you may purchase a copy of the report by calling (1) 212-438-7280 or sending an e-mail to research_request@standardandpoors.com. Ratings information can also be found on Standard & Poor's public Web site by using the Ratings search box located in the left column at www.standardandpoors.com. Alternatively, call one of the following Standard & Poor's numbers: Client Support Europe (44) 20-7176-7176; London Press Office (44) 20-7176-3605; Paris (33) 1-4420-6708; Frankfurt (49) 69-33-999-225; Stockholm (46) 8-440-5914; or Moscow (7) 495-783-4009.

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[Moody's Requests Comment on Proposed Approach and Methodology for Assessing Green Bonds.]

New York, January 14, 2016 — Moody's Investors Service is requesting market participants to comment on its proposed approach and methodology for evaluating an issuer's management, administration and reporting on environmental projects financed through green bonds.

The Green Bonds Assessment (GBA) described in Moody's proposed approach and methodology will apply to fixed-income securities — both taxable and tax-exempt — that raise capital for use in projects or activities with specific climate or environmental sustainability purposes.

These include debt obligations with direct recourse to issuers, project finance or revenue bonds — with and without recourse to issuers — and securitizations that collateralize projects or assets whose cash flows provide the first source of repayment.

A reported $36.6 billion of green bonds were issued during 2014 and an additional estimated $42.0 billion came to market during 2015.

Moody's proposed assessment of green bonds will focus on five primary factors: (1) organization structure and decision making, (2) use of proceeds, (3) disclosure on the use of proceeds, (4) management of proceeds, and (5) ongoing reporting and disclosure.

As part of the proposed approach and methodology, Moody's is introducing a scorecard that will assign weights to each of the aforementioned factors, which Moody's considers most important in assessing the framework adopted by green bond issuers.

GBAs are not credit ratings; rather, they are forward-looking opinions of the relative effectiveness of the issuer's approach for managing, administering, allocating proceeds to and reporting on environmental projects financed by green bonds.

As such, GBAs assess the relative likelihood that bond proceeds will be invested to support environmentally beneficial projects as designated by the issuer.

Moody's is seeking market feedback on its proposed methodology by February 12, 2016 and will adopt and publish its GBA following appropriate consideration of any comments it receives. Market participants should submit their comments on the Request for Comment page on www.moodys.com.

For more information, including the full text of the RFC, please access this link. (Subscription required.)

Recent Moody's publications on the credit implications of these developing environmental trends are available here.

This publication does not announce a credit rating action. For any credit ratings referenced in this publication, please see the ratings tab on the issuer/entity page on www.moodys.com for the most updated credit rating action information and rating history.

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Fitch: California Budget Proposal Continues Path of Fiscal Restraint.

Fitch Ratings-New York-12 January 2016: Last week, Governor Brown of California released his proposed budget for fiscal year 2016-2017, which will begin July 1, 2016. The budget proposal is based on robust revenue growth that reflects the continued expansion of the California economy, according to Fitch Ratings. The governor continues his policy of restraining growth in on-going spending while paying down long term liabilities and funding the rainy day fund (the Budget Stabilization Account or BSA). This approach has contributed to improved fiscal stability and has led Fitch to upgrade the state's general obligation (GO) bond rating (rated 'A+' by Fitch) twice in the past three years. Fitch believes the approach taken in the budget proposal is prudent and bodes well for continued fiscal stability in light of the state's volatile revenue stream and the possibility of future economic downturn.

The governor is proposing to set aside $3.6 billion in the state's rainy day fund, $2 billion above what would be required by law. This would bring the balance to $8 billion by the end of fiscal 2017, approximately 2/3 of the target 10% of tax revenues detailed in Proposition 2. Budgetary borrowing would also be reduced from $3.9 billion to $2.5 billion by the end of fiscal 2017, as the state repays special funds, uses one-time funds to 'settle-up' prior year Proposition 98 obligations, and repays transportation loans.

The budget proposal for the state's General Fund assumes 3% growth in revenues over the current fiscal year to $125.1 billion, before transfers including to the BSA. The state is also now estimating that current year fiscal 2016 revenues will exceed budget forecast by $3.5 billion (3%) and total $121.5 billion, also prior to transfers including to the BSA. Much of the increase in revenue will be automatically allocated to K-14 education under Proposition 98 but will also support increased spending for Medicaid and higher education. Rather than expanding on-going programs, the governor is proposing an allocation of $2 billion to non-recurring spending for deferred maintenance and state facilities renovations and replacement, in addition to the $2 billion allocated to the rainy day fund. California is estimating that its share of the optional expansion of Medicaid under the Affordable Care Act will total $740 million in fiscal 2017, as a small portion of costs that were fully covered by the federal government for the first three years of implementation are partially shifted to the state. The governor's proposed revisions to the managed health care tax, which is estimated to generate approximately $1 billion, would compensate for this growing expense.

The budget proposal appears prudent in terms of restraining spending growth in favor of retaining flexibility for future economic weakness. The budget assumes solid economic growth in both fiscal 2016 and 2017, but notes the potential for a future downturn as well as risks associated with slower global growth or a stock market correction. As is the case in the current fiscal year, the state does not anticipate the need to issue cash flow notes in fiscal 2017.

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Fitch: Tax-Supported Criteria Revision to be Published by End of 1Q16.

We are in the process of making modifications to address broad-based, constructive market feedback on our US state and local government rating criteria. We expect the final criteria to be published by end of 1Q16.

Overview

Unprecedented challenges in US Public Finance and a divergence of opinion between major credit rating agencies led Fitch Ratings to conduct an in-depth review of factors that drive resilience—and spur divergent recoveries—in municipal credits. Leveraging qualitative judgment, fundamental data and an experienced analytical team, we are proposing revisions to our approach to state and local government ratings to more clearly articulate our assessment of credit quality to the market.

The criteria revision designates key factors that help differentiate credits in a concentrated, municipal ratings scale and shows why some credits are more resistant to risk than others. The framework also better differentiates between credits, defines triggers that change ratings, improves consistency of rating assessments, and highlights our through-the-cycle rating approach.

The comment period for the proposed changes has closed. We will be assessing all comments provided and will be finalizing the criteria by the end of 1Q16.

Fitch: Pennsylvania Interim Budget Supports Value of School Credit Enhancement Programs.

Fitch Ratings-New York-11 January 2016: Pennsylvania's interim budget reinforces Fitch Ratings' belief that the commonwealth remains committed to supporting full and timely payment of school district debt service commitments despite its ongoing budget contention. Fitch rates the commonwealth's pre-default school aid intercept (per section 633 and 785(a) of the School Code) and direct-pay (section 785(b) of the School Code) enhancement programs 'A+' with a Stable Rating Outlook, one notch below Pennsylvania's 'AA-' general obligation (GO) rating (also with a Stable Outlook).

In August, Fitch commented that the credit quality of the school credit enhancement programs (and of the commonwealth and its appropriation-backed debt) were not affected by the budget impasse because the commonwealth remained committed to ensuring timely debt service payment. Fitch maintained its ratings through the ongoing impasse. The interim budget signed by the Governor on Dec. 29, with significant line item vetoes, provides six months of Basic Education Funding for school districts. More importantly, it provides for a full year of appropriation authority in other line items for school districts, including special education and transportation aid, and thereby establishes a clear path for the commonwealth to direct revenues to bond trustees as needed for the school credit enhancement programs.

Since the beginning of the impasse, the commonwealth actively engaged with school districts and helped those facing fiscal pressure through measures including advancing funding available from prior year appropriations, or assisting districts in securing short-term borrowings backed by future state aid payments. The interim budget signed by the Governor last week provides further relief for school districts. Approximately $3 billion in immediate aid went out last week, and several hundred million in additional state and federal aid will be paid to districts over the remainder of the fiscal year.

While the interim budget does not fully fund the Basic Education subsidy for school districts (the largest share of state aid), it does fund all other state and federal aid for school districts through the full fiscal year. This full-year funding provides appropriation authority and revenue streams the state Treasurer and Department of Education can utilize to meet school district debt service obligations under terms of Pennsylvania's school credit enhancement programs.

The interim budget also fully appropriates for debt service payments the commonwealth and related entities make from state revenue sources. This includes the Commonwealth Financing Authority and Pennsylvania Economic Development and Financing authority appropriation-backed bonds rated by Fitch ('A+'/Outlook Stable and 'A'/Outlook Stable, respectively).

The commonwealth still faces fiscal challenges ahead, at a level consistent with the 'AA-' GO rating that trails most states. The governor and legislature will enter a new budget season in just a few short weeks, facing significant structural budget challenges. The recent opening of a $2 billion line of credit with the state's Treasury (from which the Commonwealth borrowed $1 billion to date) reflects those pressures. Pennsylvania also lacks any balance in its dedicated budgetary reserve funds, limiting its fiscal flexibility in the next downturn in the economic cycle. Fitch views these challenges as substantial, but manageable at the 'AA-' rating level given the state's large, diversified economic base and moderate tax burden which provides some capacity to match expenditure growth.

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Fitch Updates Criteria for Rating Public-Sector Counterparty Obligations in PPP Transactions.

Fitch Ratings-New York-15 January 2016: Fitch Ratings has published an update of its ‘Rating Public-Sector Counterparty Obligations in PPP Transactions’. The updated report replaces the existing criteria (published July 23, 2015) without modifying Fitch’s analytical approach. There will be no rating changes as a result of the updated criteria.

The criteria establish a globally consistent framework to determine if the public private partnership (PPP) framework agreement qualifies for assignment of a counterparty rating. It then defines the extent of notching from the general credit quality of the public sector counterparty applied to reflect any perceived higher risk of default under a framework agreement. It also provides guidance on how to consider the PPP obligation in the public sector counterparty’s general credit rating as well as how late payment or rejection of an obligation under the framework agreement would be reflected in the counterparty’s Issuer Default Rating (IDR).

The updated report notes that where the debt of a project company is to be rated either publicly or privately on a monitored basis, the public grantor’s IDR and counterparty obligation ratings will also be subject to monitoring, but not necessarily on the same basis (public or private). There are no other changes to the criteria.

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Thornburg 4Q 2015 Municipal Bond Commentary.

It finally happened. After waiting for what seemed like an eternity, the Federal Reserve moved the target on short-term interest rates up 25 basis points (0.25%) with indications of future rate increases to come. The market reaction? Unimpressed. All who predicted doom and gloom from an interest rate increase were quickly reminded that while the Fed has some power, the mechanics of supply and demand inevitably determine the value of interest rates.

While we are all left to ponder the future path of interest rates and Federal Reserve Board actions, it is probably more prudent to discuss where we have been and what that may mean for the future than to try and speculate about where interest rates may be at the end of 2016.

In the fourth quarter of 2015, we held to our philosophy of striving to ensure we are paid appropriately for any risk we add to the portfolios. While that may seem simple, it has become more and more difficult to implement as low interest rates have pushed investors out the risk spectrum in search of better returns and more attractive income.

Municipal investors have a few levers they can pull to try and increase returns. The most effective typically affect credit quality and duration. An investor seeking to generate more yield can always buy a bond with a longer maturity. And bonds of lower credit quality can also be purchased to drive up yield. In both instances the investor is taking on more risk in hope of higher returns.

At Thornburg, we constantly evaluate both of these options, but in the fourth quarter of 2015, as in the previous quarter, we found them less than optimal. Real rates remained low during the entire quarter, and the yield curve was flat. Investors looking for yield by stretching for longer maturities were actually picking up very little relative to the duration risk that comes with longer-dated bonds. Similarly, credit spreads remain at extremely tight levels. Investors who seek to boost returns by purchasing debt from lower-rated issuers were essentially buying the weakest credits at the most expensive levels they have ever seen. Not a great strategy.

The only logical solution for an investor to take when they aren’t being paid to take risk is to take less of it. That is exactly what we have been doing in the Thornburg municipal funds for quite some time. All of the portfolios are being managed on the bearish (shorter) end of their respective duration ranges. We have also sought, actively, to increase the average credit quality (at least at the margins) of all of the portfolios. Finally, cash reserve positions are also being managed conservatively.

Following this management style has meant that we have had to sacrifice some performance. However, we are more than happy to give up some short-term gain for the long-term good of the portfolios. More importantly, the actual sacrifice was muted by the fact that, given the current market environment, even taking a lot of risk is not supremely additive to portfolio returns. The Limited Term Municipal, Intermediate Municipal, and Strategic Municipal Income Funds returned a reasonably attractive 1.89%, 2.41%, and 2.61%, respectively, (I shares) for the year ended

12/31/2015.

So, what’s next, and what does it mean for investors? Whether you believe that the Federal Reserve is going to move interest rates up by 100 basis points in 2016 (its projection), or whether you believe it will prove a more muted 50 basis points (which is roughly what the market is guessing), we at Thornburg will continue to try to ensure we are paid adequately for any risk we take.

Whatever happens, it seems certain that volatility is on the horizon. Liquidity in the fixed income markets has been, to some extent, sapped by government regulations. We have already seen firms that manage portfolios in the taxable market sacrifice investment prudence in the hopes of higher returns, only to be crushed by their inability to liquidate high-risk securities. It is certainly possible that those same dynamics could bleed into the more conservative fixed income areas, including municipal bonds.

Should we see a dramatic rise in rates and a selloff in the municipal market, the Thornburg municipal portfolios are well positioned to take advantage of the weakness. Higher cash reserve positions allow us the dry powder to enter the market as a liquidity provider instead of as a liquidity taker—during troubled intervals. Rocky times are often the best times to take a little risk, because the market is paying generously to offload said risk. Given that the portfolios have been managed quite conservatively of late, they will each have the ability to not just enter the market, but also to materially extend duration and take advantage of wider credit spreads.

The Thornburg municipal portfolio management team believes that 2016 has the potential to be an interesting year for fixed income, and we look forward to taking advantage of attractive opportunities for the portfolios. No matter what happens, rest assured we will continue to do what we have always done: provide investors with tax-exempt laddered (except in the case of the opportunistically managed Strategic Municipal Income Fund) bond portfolios that aim to generate attractive levels of income, while attempting to preserve principal and minimize volatility. And, of course, we’ll only assume the risk for which we believe we are adequately compensated.

Performance data shown represents past performance and is no guarantee of future results. Investment return and principal value will fluctuate so shares, when redeemed, may be worth more or less than their original cost. Current performance may be lower or higher than quoted. For performance current to the most recent month end, see our prices and performance page or call 877-215-1330. The Low Duration and Limited Term funds have a maximum sales charge of 1.50%. The Intermediate Municipal Fund and the Strategic Municipal Income Fund have a maximum sales charge of 2.00%.

Important Information Before investing, carefully consider the Fund’s investment goals, risks, charges, and expenses. For a prospectus or summary prospectus containing this and other information, contact your financial advisor or visit our literature center. Read them carefully before investing.

Investments carry risks, including possible loss of principal. Portfolios investing in bonds have the same interest rate, inflation, and credit risks that are associated with the underlying bonds. The value of bonds will fluctuate relative to changes in interest rates, decreasing when interest rates rise. This effect is more pronounced for longer-term bonds. Unlike bonds, bond funds have ongoing fees and expenses. Investments in lower rated and unrated bonds may be more sensitive to default, downgrades, and market volatility; these investments may also be less liquid than higher rated bonds. Investments in derivatives are subject to the risks associated with the securities or other assets underlying the pool of securities, including illiquidity and difficulty in valuation. Investments in the Fund are not FDIC insured, nor are they bank deposits or guaranteed by a bank or any other entity.

The views expressed by the portfolio managers reflect their professional opinions and are subject to change. Under no circumstances does the information contained within represent a recommendation to buy or sell any security.

Class I shares may not be available to all investors. Minimum investments for the I share class may be higher than those for other classes.

Income earned from municipal bonds is exempt from regular federal and in some cases, state and local income tax. Income may be subject to the alternative minimum tax (AMT).

There is no guarantee that the Fund will meet its investment objectives.

Please see our glossary for a definition of terms.

Thornburg mutual funds are distributed by Thornburg Securities Corporation.

Thornburg Investment Management, Inc. mutual funds are sold through investment professionals including investment advisors, brokerage firms, bank trust departments, trust companies and certain other financial intermediaries. Thornburg Securities Corporation (TSC) does not act as broker of record for investors.

January 15, 2016

by Chris Ryon, Nick Venditti
of Thornburg Investment Management

[MSRB Sends SEC Revised Proposal to Lengthen Board Terms.]

WASHINGTON – The Municipal Securities Rulemaking Board is asking the Securities and Exchange Commission to approve its slightly revised proposal to lengthen board members' terms to four years from three.

Market participants will have 21 days after the SEC publishes the filing in the Federal Register to submit comments to the commission on the proposed changes to MSRB's Rule A-3 on board membership. Most groups were supportive of the initial proposal in the first round of comments.

The MSRB board currently has 11 public and 10 regulated members who served staggered three-year terms. Each MSRB fiscal year, which begins on Oct. 1, seven members leave the board and seven new members join. The MSRB names each incoming group of seven the "class" of the year they leave the board.

The MSRB in its initial proposal, released on Oct. 25, said the increased board terms would "improve continuity and institutional knowledge of the board from year to year, while retaining the benefits of the regular addition of new members." The board said new members must overcome a learning curve that can keep them from being fully effective until they are more than a year into their service.

Under the proposal, the three classes of seven members that serve on the board at any given time would change into four classes, three of which would have five members and one of which would have six. The new structure would maintain the majority-public nature of the 21-member board, the MSRB said.

This latest version of the proposal differs slightly from the initial one in terms of how the transition to four board classes would occur. The initial one circulated by the MSRB for comment would have put a committee of board members not being considered for extensions in charge of nominating the members who would be eligible. Then the full board would vote on those nominees.

This latest version would make any previously elected board member whose term will expire on or after the end of MSRB fiscal year 2016 on Sept. 30 eligible for a one-year extension. The full board would then vote by ballot to determine who receives the extensions.

The MSRB says it made the change after further considerations led it to believe that it would be hard to create a special committee of members that represented the board when 18 of them could not be considered for the committee because of their eligibility for extensions. Any concerns about potential conflicts of interest in the newly proposed selection process should be mitigated by the large number of members both voting and eligible for extensions, making it difficult for any one member to affect the outcome of the election.

The MSRB proposal also describes the process it will use to transition to a four-class board, which will begin with the class selection for fiscal year 2017.

One public representative from the class of 2016 will receive a one-year extension and six new members will join the board. Then, for fiscal year 2018, one public and two regulated representatives from the class of 2017 will receive one-year extensions and five new members will join the board. Finally, for fiscal year 2019, three public and two regulated representatives from the class of 2018 will receive a one-year extension and five new members will join the board.

By fiscal year 2020, no new extensions will be needed and five new members will join the board. In fiscal 2021, there will be six new members and then five in each of the next three years. The cycle will be repeated every four years.

In addition to changing the number of board classes and the length of tenure, the proposal would also limit the number of consecutive terms a board member could serve to two and eliminate a requirement that each class must have at least one non-dealer municipal advisor.

Board members can currently only serve a consecutive term if they receive an invitation to do so because of a board-determined special circumstance or if they are filling a vacancy and are therefore only serving a partial term. The rule would keep the special circumstances rule and add the two consecutive term limit for a maximum service limit of eight years.

The elimination of the non-dealer municipal advisor requirement would prevent the MSRB from mandating that every board has four non-dealer municipal advisors. The MSRB was concerned that such a requirement could limit the representation from other regulated entities.

THE BOND BUYER

BY JACK CASEY

JAN 15, 2016 5:29pm ET

NABL: SEC Announces 2016 Examination Priorities.

On January 11, 2016, the Securities and Exchange Commission announced the 2016 examination priorities for the Office of Compliance Inspections and Examinations' (OCIE).

The priorities include public pension advisers, focusing on pay-to-play, including undisclosed gifts and entertainment. OCIE also expects to allocate examination resources to newly-registered Municipal Advisors to assess compliance with recently adopted SEC and MSRB rules.

The SEC press release is available here.

The OCIE 2016 examination priorities are available here.

OCIE's August 19, 2014 letter concerning the Municipal Advisor Examination Initiative is available here.

Investors Opt for Munis as Stocks, Commodities Plunge.

Municipal bonds are getting a boost as investors look for stability after international and domestic equity markets tumbled.

"A lot of things are going right for our asset class here at the beginning of the year," Jim Colby, senior municipal strategist and portfolio manager at Van Eck Global, said in an interview on Tuesday. Municipals are benefitting from the asset reallocation by investors after the Chinese stock market sold off on concern over an economic slowdown, he said.

The Dow Jones Industrial Average on Jan. 13 was down almost 10% from its highs of late last year, as investors flocked to safer assets.

"With China seemingly in a downward spiral having suspended their stock trading and with oil seemingly in a free fall, and equities down 5% to 6% at the start of the year, some advisors are saying munis are a spot of choice – at least right now – not just domestically, but worldwide," Colby said.

Demand for municipals – including the $3.7 billion of assets in Van Eck's Market Vectors suite of municipal ETFs overseen by Colby – has surged.

"It's been a wild two and half to three weeks" thanks to a significant amount of cash inflows in a short period of time, he said. "We have seen quite a bit of cash come into the ETFs here, and I can't remember a recent January that was quite this way.

"Given everything that is happening right now, the muni marketplace with its low volatility and high credit quality has to remain right up there at the top of anyone's list as the asset of choice," Colby said.

On Jan. 13, 10-year municipal bonds were yielding 86.2% of their 10-year Treasury counterpart, while the ratio of 30-year municipals to comparable Treasuries was 95.6%, according to Municipal Market Data. Those ratios compare with averages of 89.9% and 98.8%, respectively, over the three month period between Oct. 22 and Jan. 13, according to MMD.

Colby said the attractive ratios add to the sector's appeal.

Even though his ETFs seek to mirror and/or track the performance of a selected benchmark index instead of investment strategies used to achieve performance and value on its own, Colby said he does have some advice for investors.

He said in the midst of the reallocation trend the long end of the municipal market should be favored not feared, especially as the Federal Reserve Board has begun its slow and steady pace of raising rates.

"Don't fear the long end of the market," Colby said.

Although it has been 10 years since the Fed last began raising rates aggressively, when that phenomenon took place back in 2006, the long-end remained relatively stable while the short end gave ground, Colby recalled.

"The performance lay in munis 10 years and longer – and little damage was done in duration extension," the strategist said.

Colby said the long end of the yield curve finished 2015 with evidence of strong performance.

In fact, municipal bond outperformed Treasuries and corporates in December and emerged as the best-performing fixed income asset class of 2015, according to BlackRock Inc. in its municipal market update dated Dec. 31, 2015.

Municipals were "propelled once again by favorable supply-demand dynamics," BlackRock analysts Peter Hayes, Sean Carney, and James Schwartz wrote in the report.

The S&P Municipal Bond Index returned 0.71% in December and 3.32% for 2015, making it the leading fixed income asset class of the year.

The long end of the curve led performance monthly in December with returns of 1.08% and 4.45% year to date, while the intermediate range was also attractive as it returned 0.62% for December and 3.27% year to date, according to the S&P data used in BlackRock report.

"The yield curve flattened significantly, with the short end rising as the Fed lifted its target short-term interest rate for the first time since 2006 and the long end holding steady as global growth disappointed and oil prices approached a six-year low, muting inflation expectations," the analysts wrote.

Hayes is the managing director and head of the municipal bonds group, Carney is the director and head of municipal strategy, while Schwartz is the managing director and head of municipal credit research.

Going forward, Colby believes that history will repeat itself.

"Once there is a clear path for the Fed to raise rates in a regular fashion and wages start to lift a little bit to compliment the strength in the labor force and auto and housing industries, then the Fed might feel more empowered to raise rates," Colby said.

However, with an ongoing series of rate increases dependent on further economic and wage growth, Colby said the intermediate part of the curve is an attractive and stable alternative in the meantime.

“There’s plenty of bonds in this part of the curve; deals come with significant tranches in 10 to 15 years, and the yield curve is still steep, so you can find opportunities to position yourself where you are getting incremental returns relative to the two ends,” Colby said.

The 10-year triple-A general obligation scale on Jan. 13 yielded 1.78%, while the 15-year part of the scale yielded 2.22% — both unchanged from the day before, according to MMD.

“Banks like that part of the curve, and insurance companies like that part of the curve,” Colby said. “They tend to buy at whole prices in a relatively steady market environment.”

He said this is part of the attractiveness of tax-exempt securities as investors seek cover from volatility outside the municipal world, Colby noted.

“Given the relative attractiveness and low volatility of the asset class as a whole, the strategy ought to be to continue to keep your foot in the game with munis,” Colby said.

The BlackRock analysts share a similar view.

“We have a constructive outlook for municipals in 2016 given their high-quality nature and unique ability to provide tax-free income and solid risk-adjusted returns with less volatility than other fixed income assets,” BlackRock’s analysts wrote.

THE BOND BUYER

BY CHRISTINE ALBANO

JAN 14, 2016 2:12pm ET

Nossaman: Top Public Finance Attorneys Urge Regulatory Changes To Foster More P3's.

We all know how hard it is to change federal statutes these days—you need an Act of Congress and the President to sign the bill. Last week, a group of the top public finance lawyers in the US offered an approach relating to the use of tax exempt bonds that wouldn’t require a change in tax statutes but instead could be accomplished through a change in the regulations relating to the so-called “private use” test. As the group pointed out in its letter to high ranking US Treasury officials, Congress itself has made it clear that Treasury had the authority to adopt other, more flexible rules.

The US is unique in the world in its use of tax exempt financing to finance a variety of infrastructure. To benefit from this source of debt capital, a project must not have private use nor can debt service be repaid from private business revenues. The issue for P3’s arises because of the long-term operation and maintenance responsibilities that are a feature of many P3 contracts. Current IRS rules limit the length and method of compensation payable to a private party in a way that makes it almost impossible to effectively transfer long-term life cycle risk to the private sector. There are notable exceptions to these rules for specific types of infrastructure, such as qualified transportation facilities, airports and ports and water/wastewater facilities but in many cases there are so many requirements applicable to issuing these “private activity bonds” tax exempt financing is not available.

The question for P3’s is when do long-term operation and management services and payment for these services create "private use" for purposes of the tax exempt bond rules? In the past the IRS has published somewhat prescriptive revenue procedures that describe "safe harbor" provisions for management contracts relating to the term of the contract and the manner of compensation. The problem is these "safe harbor" provisions predate the development and growth of the P3 delivery model. Over the last several years, through published notices and private letter rulings, the IRS has indicated that strict adherence to the "safe harbor" provisions may not preclude the use of tax exempt financing. Furthermore, the IRS recently published regulations relating to the allocation and accounting of revenues from a bond financed facility that recognize merely sharing these revenues with a private entity will not adversely impact the tax exempt financing for the project. And recent private letter rulings for water/wastewater facilities, solid waste disposal facilities and electrical transmission and distribution systems recognize the need for flexibility in this area. The Treasury Department released a 2014 white paper on "Expanding our Nation's Infrastructure through Innovating Financing" describing in detail the use of an availability payment contract where the public owner makes service fee payments to a private manager subject to compliance with specific performance standards and provided the facility is available for general public use.

In addition to several specific "fixes" to the "safe harbor" provisions on the term of the contract and how compensation is paid, the attorney group is proposing a general framework that focuses on the primary purpose of the project—is the arrangement designed to transfer the benefit of the lower cost of tax exempt financing to a private party or are there sufficient controls on the activities of the private party exercised by the public owner to achieve the primarily public purpose of the project.

This simple fix to the current "safe harbor" rules relating to private management contracts could go a long way to increasing the use of the P3 delivery approach for much needed public infrastructure.

Last Updated: January 12 2016

Article by Barney A. Allison

Nossaman LLP

TAX - OHIO

Warrensville Hts. City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision

Supreme Court of Ohio - January 13, 2016 - N.E.3d - 2016 WL 147273 - 2016 -Ohio- 78

City board of education appealed decision of the Board of Tax Appeals, which found that the value of a racetrack was approximately $30 million less than the purchase price at a bankruptcy sale six months after tax-lien date.

The Supreme Court of Ohio held that:

- Purchase price did not establish true value, and
- Evidence was sufficient to support valuation.

Purchase price of racetrack at bankruptcy sale six months after tax-lien date did not establish property's true value, and therefore Board of Tax Appeals properly considered appraisal evidence in valuing property, where racetrack was sold at auction, which was forced sale other than in ordinary course of business and not between typically motivated parties, and sale occurred at least in part to liquidate assets for benefit of creditors.

Evidence was sufficient to support Board of Tax Appeals' decision to value racetrack at $13.8 million, as opposed to $43 million, which was purchase price at bankruptcy sale, as advocated by board of education. Board of education presented nothing apart from price at forced auction to establish value of property, purchaser's appraisal indicated that $27,950,000 of purchase price was attributed to obtaining racing license and that furniture, fixtures, and equipment were worth approximately $1,200,000, and other evidence, including recitals in purchase agreement, corroborated appraisal's valuation.

MSRB's Net Assets for FY-15 Almost Triple from Five Years Ago.

WASHINGTON — The Municipal Securities Rulemaking Board had $69.52 million of net assets at the end of September, nearly triple the $25.94 million it had five years ago, according to MSRB financial documents.

Additionally, almost all of the self-regulator's revenues from fees rose in fiscal 2015, especially underwriting revenues from fees, up almost 30%, and revenues from enforcement agency actions, which more than tripled.

The only drop in revenue was from data subscriber fees, which fell about $34,425 or 1.85% to $1.82 million from $1.85 million.

The figures are from the MSRB's financial statement for fiscal year 2015, which ran from Oct. 1, 2014 through Sept. 30 of last year.

The board's $69.52 million of net assets for fiscal 2015 was up $9.1 million or 15% from $60.39 million at the end of the previous fiscal year. The board's net assets have been steadily growing for five years, after dropping for two fiscal years.

The board's total revenues for fiscal 2015 rose almost $9.34 million or 29% to $41.33 million from $31.99 million.

Its total expenses rose $2.72 million or 9.2% to $32.20 million from $29.48 million in 2014. Market information transparency programs and operations, at $15.56 million, made up almost half of the MSRB's expenses in fiscal year 2015. The next greatest expenses were $6.85 million for rulemaking and policy development and $5.56 million for administration.

In the revenue category, underwriting fee revenues rose to $12.99 million in fiscal year 2015 from about $9.98 million the previous year. Revenues from municipal advisor professional fees followed suit rising to $1.34 million compared to $968,700 in 2014. Fiscal 2015 was the second year MSRB collected those fees.

Revenue from rule violations also rose to more than $2.65 million from $709,523 in 2014. The Dodd Frank Act allowed the MSRB to collect a share of enforcement revenues from both the Securities and Exchange Commission and the Financial Industry Regulatory Authority.

This huge increase does not take include any enforcement revenue from either of the two sets of settlements that groups of underwriters entered into with the SEC under its Municipalities Continuing Disclosure Cooperation initiative, but may include enforcement revenue from the Edwards Jones case where Edward Jones paid $15 million in penalties to settle a case involving primary market pricing abuses.

While technology fee collections appeared to increase substantially to $7.27 million in fiscal 2015 from nearly $3.70 million, the latter figure does not take into account a $3.6 million partial rebate the MSRB gave to dealers in 2014 because the technology fund had exceeded its reserve target.

The MSRB's investments showed a gain of $8 million, growing to $57.93 million in fiscal 2015 from $49.77 million in 2014.

Underwriters, who have traditionally paid the large majority of the collected MSRB fees, have consistently complained that newly regulated municipal advisors should have to shoulder more of the burden. Responding to such concerns, the MSRB proposed a plan last August to better distribute costs among regulated entities based on their level of involvement in market activities.

The self-regulator also decided it would raise its initial and annual fees, which all regulated members pay starting on Oct. 1, 2015 and would lower its underwriting fee starting on Jan. 1 of this year.

The initial fee rose to $1,000 from $100 and the annual fee changed to $1,000 from $500 while the underwriting fee dropped to $0.0275 per $1,000 of the par value of primary offerings from the current $0.03 per $1,000.

The MSRB also made the previously temporary technology fee permanent at $1.00 per transaction for each interdealer and customer sale report to the board and said it would no longer use the technology fee money solely for capitalized hardware and software expenses but instead would use it wherever the organization deemed appropriate.

Dealer and advisor groups both criticized the change, saying it treated members unfairly.

Michael Decker, managing director and co-head of municipal securities with the Securities Industry and Financial Markets Association, said in September that the MSRB failed to address the previous inequities to underwriters and suggested the self-regulator instead impose an activity-based fee structure on MAs that would mimic the current underwriting fee.

Terri Heaton, president of the National Association of Municipal Advisors, said in September that small MAs will face an undue burden as they are forced to absorb the increased initial and annual fees.

THE BOND BUYER

BY JACK CASEY

JAN 11, 2016 4:33pm ET

[Deloitte Power & Utilities Accounting, Financial Reporting, and Tax Update.]

We are pleased to announce the release of the [Power & Utilities Accounting, Financial Reporting,] and Tax Update. The publication includes the latest information on accounting, tax, and regulatory matters, including SEC, FASB, and tax updates, and focuses on specialized industry accounting matters frequently seen by P&U companies, including rate-regulated entities. The annual update also includes a section on accounting and reporting matters specific to renewable energy.

New sections in this edition include:

- The new leases standard, expected to be issued in early 2016
- Alternative revenue programs
- Asset retirement obligations

Additionally, to address potential challenges in accounting and reporting related to topics on which the FASB has recently issued proposed guidance or final standards that are not yet effective or available for adoption, we have included a section about Board proposals and have highlighted nuances that could affect the industry.

January 2016

New MSRB Notice Summarizes Provisions of Municipal Advisor Conduct Rule.

The Municipal Securities Rulemaking Board (MSRB) today published a regulatory notice detailing the development of its core conduct rule for municipal advisors and summarizing each of the new rule's provisions. MSRB Rule G-42, taking effect in June 2016, was approved by the Securities and Exchange Commission (SEC) in December 2015. Read the MSRB approval notice.

To facilitate compliance, the MSRB will host a free educational webinar in advance of the effective date of Rule G-42. The webinar will be held on Thursday, April 28, 2016 from 3:00 p.m.-4:00 p.m. Register for the webinar. Submit questions in advance of the webinar to MSRBEvents@msrb.org.

Also, the MSRB, in conjunction with the SEC and the Financial Industry Regulatory Authority (FINRA), will host a general compliance outreach program for municipal advisors in Philadelphia, PA and via live webcast on Wednesday, February 3, 2016. Register to attend.

TAX - VERMONT

Rasmussen v. Town of Fair Haven

Supreme Court of Vermont - January 8, 2016 - A.3d - 2016 WL 99839 - 2016 VT 1

Taxpayer appealed Board of Civil Authority (BCA) decision finding taxpayer withdrew his property assessment appeal. The Property Valuation and Review Division's Property Tax Hearing Officer concluded that the BCA had correctly dismissed taxpayer's appeal. Taxpayer appealed.

The Supreme Court of Vermont held that:

- Taxpayer's refusal to allow a complete inspection of the properties comprising his single parcel, including an inspection of the interior of any dwelling, constituted a withdrawal of his assessment appeal, and an affirmance of the lister's assessment of the property, and
- Town did not need to file an objection to taxpayer's appeal in order to enable the hearing officer to

consider if he had the authority to consider the appraised value of the property de novo.

Because taxpayer's lands were one parcel for tax purposes, he was obligated to make any lands comprising the parcel available for inspection, and thus, his refusal to allow a complete inspection of the properties comprising his single parcel, including an inspection of the interior of any dwelling, constituted a withdrawal of his assessment appeal, and an affirmance of the lister's assessment of the property.

Inspection of a taxpayer's property for property tax assessment by town listers, the Board of Civil Authority (BCA), or a Property Valuation and Review Divsion's Property Tax Hearing Officer, would not constitute an unreasonable search under the Fourth Amendment. While a taxpayer could refuse to allow an inspection, the consequence would be that the taxpayer would not be allowed to challenge the assessment of his or her property.

The scope of taxpayer's appeal of a Board of Civil Authority (BCA) decision finding that taxpayer withdrew his property assessment appeal when he refused to allow an inspection of a portion of his property was not limited to the issues identified by taxpayer in his notice of appeal, and town did not need to file an objection to the appeal in order to enable the hearing officer to consider if he had authority to consider the appraised value of the property de novo. Due to taxpayer's refusal to allow an inspection, the BCA could not and did not make any findings or rulings on the merits.

S&P Live Webcast: U.S. Higher Education 2016 Outlook.

Please join Standard & Poor's Ratings Services on Thursday, January 21, 2016 at 3:00 p.m. Eastern Time for a live Webcast and Q&A discussion on the major trends facing the higher education sector and their possible credit implications, as well as a review of our major rating actions from 2015.

Register for the complimentary webcast.

S&P Live Webcast and Q&A: U.S. Municipal Housing 2016 Outlook.

Please join Standard & Poor's Ratings Services on Wednesday, January 20, 2016, at 2:00 p.m. Eastern Time for a live Webcast and Q&A on the U.S. Municipal Housing sector.

Register for the complimentary webcast.

U.S. Local Government: Growing Tax Bases and Good Management Underpin Stable Outlook, Despite Some Pension and OPEB Stress.

The local government sector has historically been characterized by solid credit quality and stable rating performance. Following this trend, Standard & Poor's Rating Services expects this sector to demonstrate another year of stable credit quality in 2016. Despite a small handful of struggling issuers (including Chicago, Detroit, and Atlantic City), we believe that the overall stability and growth of local economies, generally strong-to-very strong institutional framework (IF) scores, managements' ability to direct revenue and spending, and reliability and resilience of local revenue sources such as the property tax (even through the Great Recession) continue to support the stable credit quality outlook. This outlook is Standard & Poor's view of possible rating performance within the sector or specific geographic region in the medium term as gauged in part by the ratio of upgrades versus downgrades, a trend of positive versus negative outlooks, and broader key trends and issuer-level credit drivers.

The macroeconomic conditions and general financing conditions in North America, as well as those risks identified by Standard & Poor's Credit Conditions Committees, provide the foundation for our U.S. Public Finance sector outlooks (see "Volatility Risk Lingers As North America Readies Itself For Less Accommodative Credit Conditions," published Dec. 4, 2015, on RatingsDirect). Our rating outlooks are informed by our macroeconomic forecast of the U.S. down to the regional and sector level, if applicable (see "U.S. Public Finance 2016 Credit Conditions Outlook: Expect Growth But Hold The Cheer," published Jan. 11, 2016). Our focus in this article is on those broader industry trends that can have a large impact across our rated universe as well as developments we are seeing at the issuer-level that could drive credit quality.

Overview

- The local government sector has historically been characterized by solid credit quality and stable rating performance.
- We expect our ratings on local government to remain stable in 2016 thanks to consistent tax bases and continued growth, along with increased reserve levels and improved management practices.
- Although the overall local government sector is stable, challenges lie ahead, especially for those governments with large pension and other postemployment benefit liabilities.
- Local governments continue to benefit from a low interest rate environment, but if further rate increases occur, governments that wait to borrow could miss the opportunity to finance capital needs at historically lower rates and subsequently affect costs in future budgets.Continue reading.

13-Jan-2016

S&P: U.S. Higher Education – Amidst Continuing Pressures, the Ratings Outlook is Bifurcated.

For 2016, Standard & Poor's Ratings Services' outlook on the U.S. higher education sector is bifurcated. Higher education in the U.S. has always been a relatively stable sector, and we've generally affirmed most of our ratings in any given year. During the past few years, of the rating changes we have seen, downgrades have outnumbered upgrades by a significant and increasing ratio. Although we expect downgrades to outpace upgrades again this year, we anticipate fewer downgrades than in previous years. In addition, while the sector continues to face longer-term challenges and opportunities, we believe most institutions have adapted to the "new normal" of more competition for students and limited tuition flexibility and are taking advantage of their individual strategic positions to continue operating successfully. However, these factors are not affecting all institutions equally. Schools with national or international reputations and growing resources will likely be able to capitalize on opportunities to further strengthen their positions, while smaller, regional schools will continue to struggle to differentiate their brands, which will require additional investment and resources that could weaken their credit profiles in 2016.

This outlook is our view of possible rating performance within the sector over the intermediate term, as gauged in part by the ratio of upgrades to downgrades, the trend in positive versus negative outlooks, broader key trends, and issuer-level credit drivers. The macroeconomic conditions and general financing conditions in North America, as well as those risks Standard & Poor's Credit Conditions Committees have identified, provide the foundation for our U.S. public finance sector outlooks. (See "Volatility Risk Lingers As North America Readies Itself For Less Accommodative Credit Conditions" dated Dec 4, 2015). Our macroeconomic forecasts for the U.S., down to the regional and sector level, if applicable, also inform our outlooks. (See "U.S. Public Finance 2016 Credit Conditions Outlook: Expect Growth But Hold The Cheer" dated Jan. 11, 2016.)

We recently published revised criteria for rating not-for-profit colleges and universities. This outlook and the following discussion of overall trends in the sector reflects our view of the possible effects such trends could have on the credit of a college of university, without regards to changes in our rating methodology. For additional information on our revised criteria, please see "Methodology: Not-For-Profit Public and Private Colleges and Universities" published Jan. 6, 2016, on RatingsDirect.

Overview

- Higher education institutions with strong demand, growing resources, and national or international reputations will continue to improve their credit quality in 2016.
- Smaller, regional institutions will continue to struggle to differentiate their brands, which will require additional investment and resources that could weaken their credit profiles in 2016.

Continue reading.

14-Jan-2016

MSRB Notice Details MA Conduct Requirements; Webinar Planned.

WASHINGTON – The Municipal Securities Rulemaking Board on Tuesday released a regulatory notice detailing new core conduct requirements for municipal advisors.

The MSRB also plans to hold a webinar to discuss Rule G-42's requirements on April 28 before they are implemented in June.

Rule G-42 was approved by the Securities and Exchange Commission on Dec. 23. The MSRB first proposed Rule G-42 in January 2014 and, after making several changes, filed it with the SEC for approval in April 2015. The SEC twice extended the time to consider the rule and the MSRB filed two amendments — one tightening and clarifying language contained in the rule and the second allowing for a limited exception to a controversial principal transaction ban for MAs.

A central portion of the rule defines the fiduciary duty MAs owe their clients to include both a "duty of care" and a "duty of loyalty."

The duty of loyalty is owed to an MA's municipal issuer clients and requires the advisor "without limitation … to deal honestly and with the upmost good faith with a municipal entity and act in the client's best interests without regard to [its] financial or other interests." The duty prevents an MA from engaging with municipal issuer clients if the MA cannot manage or prevent conflicts of interest.

The duty of care is owed to all clients and requires MAs to: exercise due care in their work; be qualified to provide advisor services; make a "reasonable inquiry" into the facts relevant to a client's request before deciding whether to proceed; and undertake a "reasonable investigation" to determine their advice is not based on bad information.

Whether providing direct advice to a client or reviewing a third party's recommendation to a client, the MA has to show that it has a reasonable basis for the conclusions it shares with its client. To fulfill the obligation, the MA must tell its client about: the evaluation of material risks, potential benefits, structure and other characteristics of the recommended muni transaction or financial product; the basis for the advisor's belief that the transaction or product is suitable for the client; and whether the MA has investigated or considered other alternatives for the client. The MA must take into account such things as the client's financial situation and needs, objectives, tax status, risk tolerance, and liquidity needs, according to the notice.

Another part of the rule requires MAs to document their advisory relationships in writing before, at the start, or promptly after the start of their advisory activities with a client. The documentation portion of the rule requires seven pieces of information, including a description of the scope of municipal advisory activities and any conflicts of interest, the disclosure of which is described in a different section of the rule.

The rule does not provide an exhaustive list of reportable conflicts of interest, which must be reported before or at the start of the relationship, but lays out several examples, including: MA payments to be made to an issuer official to obtain an engagement for services; any advice an affiliate of the MA provides to the client that is directly related to the municipal advisory activities of the MA and; any fee-splitting arrangements involving the MA and a provider of investments or services to the client.

Conflicts of interest that are disclosed in writing must be detailed enough to tell the client the nature, implications, and potential consequences of each conflict and must include an explanation of how the MA plans to address each instance, the MSRB said.

If an MA uses "reasonable diligence" to conclude it does not have any conflicts of interest, it must inform its issuer client or other borrower in writing that it came to that conclusion.

Additionally, if an MA gives advice to a client inadvertently, it does not have to follow the disclosure and documentation requirements. Instead, the MA could give its client a document that includes a disclaimer explaining and identifying the inadvertent advice and stating the MA is no longer giving that client advice. The MA must also review its supervisory procedures to better prevent inadvertent advice in the future.

The rule includes a list of specified prohibitions on MA activity, including excessive compensation in relation to the advice given, inaccurate invoices for advisory work, and false or materially misleading representations of an MA's expertise. MAs also cannot enter into fee-splitting arrangements with an underwriter on a transaction for which the MA is providing advice or with regard to an undisclosed relationship with an investment or service provider for a municipal entity or obligated person client of the MA.

A final and controversial portion of the rule bans MAs from acting as a principal in a transaction with a muni issuer client that is directly related to a transaction on which the MA is providing advice. The transaction would include any bank loan if its amount exceeds $1 million.

The proposed rule contained an outright ban on principal transactions for most of the time it was considered and drew strong criticism from dealer and issuer groups. They claimed the ban was overly burdensome and would drive up costs for issuers.

Rule G-42 now includes a narrow exception to the ban for registered broker-dealers on sales to, or purchases from, a municipal client of U.S. Treasury securities, agency debt securities, or corporate debt securities. The exception allows MAs to either make written disclosure on a transaction-b--transaction basis and receive the issuer's written or oral consent or meet several additional procedural requirements so that the MA could make oral rather than written disclosure.

The Bond Buyer

by Jack Casey

Jan 13, 2016

[New England Tax Wars.]

With Massachusetts' unofficial nickname being "Taxachusetts," some may be wondering why General Electric (GE) announced this week that it's moving its corporate headquarters from Connecticut to Boston. The move follows a contentious fight in Connecticut over the state's corporate tax structure that would have eventually increased GE's tax burden.

The bulk of the fight was over Connecticut's move toward "combined reporting," which basically makes a corporation declare any tax havens it may have in other states that presumably have lower (or no) taxes on corporate and individual income. About half the states have implemented combined reporting as a way of discouraging companies from using havens to evade taxes. If GE stayed in Connecticut, its income earned elsewhere would have been subject to the state's 9 percent corporate tax rate, which is one of the highest in the country. Connecticut has also increased taxes several times in recent years, and a committee is currently studying broader tax reform.

When GE threatened to leave Connecticut over these changes last year, Gov. Dannel Malloy quickly backtracked and delayed the tax hikes until this year. But it turns out he was just buying time for GE to scout out its next move.

Oddly enough, Massachusetts already has combined reporting requirements and a similarly high corporate income tax rate. But it has a much lower individual income tax rate (a flat rate of 5.1 percent, versus Connecticut's highest tax bracket of 6.99 percent). Massachusetts and Boston also sweetened GE's deal by providing tax credits totaling $145 million.

After spending the past 40 years in Connecticut, GE's relocation sends a sobering message to states as they continue to see their revenue from corporate income taxes shrink. "[General Electric] becomes just another company that has chosen to relocate due to a state's decision to alter its tax code," said Nicole Kaeding of the Tax Foundation.

GOVERNING.COM

BY LIZ FARMER | JANUARY 15, 2016

[Mediation Ends Longstanding Firefighter Pension Dispute in New Orleans.]

In several cities where pension reform has failed, this type of problem-solving has proved beneficial.

Earlier this month, New Orleans Mayor Mitch Landrieu stood with Nick Felton, president of the firefighters union, at a press conference calling for voters to approve a small property tax increase. The symbolism was significant. Felton and Landrieu had been on opposite sides in a bitter battle over firefighter pension funding and backpay for the past half-decade. The tax increase they're asking for would help the city meet its part of a deal that would put an end to the longstanding dispute.

What finally got both sides to budge in a fight that predates Landrieu's administration was going through a roughly 14-month mediation. The process involved a pension task force made up of business and community members who worked with consultants to find a unanimous plan for saving the failing pension.

New Orleans is now the third city to turn to this type of help for pension reform, and the process is so far proving successful in places where tensions are running high and strong-arming — by both sides — has failed. New Orleans has been the toughest test yet, said consultant Vijay Kapoor, who has been a mediator for pension task forces in Chattanooga, Tenn., and Lexington, Ky. "The first time we brought everyone together, it lasted 20 minutes before [each side] was shouting," Kapoor said. "We decided to meet separately after that."

The issues and resentments on both sides were deep. Despite several court rulings, the city still had not paid firefighters the $75 million it owed them in backpay. The dispute had been going on so long — the original lawsuit dates back to the mid-1990s — that dozens of firefighters have died without getting what they were owed. At one point in 2014, Landrieu had agreed to pay the settlement, but then balked, saying the city first had to get relief from its mounting pension bill.

That pension, which Kapoor said was in the "worst shape I'd ever seen for a public fund of its size," was nearing insolvency and putting unprecedented pressure on the city's budget. In 2016, the city's actuarially required contribution was set for $60 million — more than five times its entire parks department budget. The high bill is because the pension has about one-fifth of the money it needs to meet its liabilities.

From the city's viewpoint, the pension's leaders were mainly to blame. In the 2000s, the pension board sucked millions out of the fund via botched investments and now-defaulted loans to the entertainment industry. When Landrieu took office in 2011, he cited the city's fiscal crisis as his reason for continuing the previous administration's underfunding of the pension. Still, not putting more money into the system at a time when the stock market has gained two-thirds in value only worsened the pension's financial state.

Kapoor, who was hired in 2014 as a consultant by the New Orleans Business Council, said it took months for the two sides to even agree on the numbers — this, despite the help of an actuarial firm. Six months into negotiating a funding plan, it became clear that the firefighters union wouldn't agree to anything until the city paid what it owed in backpay. Without a unanimous agreement, the outside task force dissolved. Still, the parties kept working at a solution.

Late last year, the long process paid off. The two sides struck a deal that puts in place a 12-year payment plan for the $75 million in backpay, including $21 million upfront; triples the city's contribution to the pension plan to about $32 million this year and guarantees that payments will stabilize going forward; eliminates retirees' cost-of-living increases until the pension is nearly fully funded; and gives the city oversight of the fund's investments and governance.

Kapoor believes New Orleans' complicated story shows how this type of problem-solving could be beneficial for other cities facing sticky pension issues, but others note that mediation should be a last resort. "If we thought we could have gotten the city council to pay out [the backpay] more quickly," said Pension Board Treasurer Thomas Meagher III, "then we would have proposed legislation and gone that route."

GOVERNING.COM

BY LIZ FARMER | JANUARY 14, 2016

[One of the Biggest Bond Market Players Has No Employees.]

One of the most prolific issuers in the $3.7 trillion municipal market is a Wisconsin agency with no employees, coveted tax-exempt bond status and a nationwide client list.

The Public Finance Authority last year issued bonds for more than 30 charter schools, senior living facilities, universities and real estate developers in 15 states. None were from Wisconsin. The University of Kansas sold $327 million of tax-exempt bonds last week through the authority for the first time so it didn't have to wait on the legislature's approval to raise money for a new 285,000 square-foot science building, a student union and housing.

"We're expecting a larger class in 2017," said Theresa Gordzica, the university's chief business and financial planning officer. "We needed to keep the project moving so we can get the residence hall done."

The deal highlights an obscure corner of the state and local-government debt market where pass-through agencies rent out their ability to sell tax-exempt bonds to out-of-state companies and non-profits in exchange for a fee. The practice has drawn criticism from some public officials, who say it can allow debt issuers to skirt their oversight by financing projects through authorities beyond their jurisdiction.

"The university is owned by the state, both the facilities as well as the good faith and credit," said Representative Mark Hutton, a Wichita Republican, who called the university's decision a "dangerous" precedent. "The reality is that they answer to the taxpayers of the state of Kansas, and we're that voice."

Such agencies sell securities and immediately lend the proceeds to borrowers, whose projects qualify for the tax exemption the federal government awards to debt for public works. The authorities aren't on the hook if the money isn't repaid. That makes the bonds among the riskiest in the municipal market: They make up as much as 30 percent of outstanding debt but account for almost 60 percent of defaults, according to Matt Fabian, a partner at Concord, Massachusetts-based Municipal Market Analytics.

State Competition

Wisconsin is one of seven states, including Florida and Arizona, that allow so-called conduit authorities to issue debt for projects beyond their borders, according to the Columbus, Ohio-based Council of Development Finance Agencies.

Wisconsin lawmakers approved legislation in early 2010 that allowed for the creation of the Madison-based PFA, which has since sold $3.4 billion of bonds. Started by the Wisconsin Counties Association, working with the National Association of Counties and the National League of Cities, its goal is to provide governments and eligible private entities with access to low-cost financing for projects that contribute to social and economic growth. Last year, the PFA was the most active conduit issuer, according to data compiled by Bloomberg.

Mike LaPierre, president of Walnut Creek, California-based GPM Municipal Advisors, which manages the day-to-day operations of the PFA, said all of its bond sales are first approved by local governing bodies such as city councils. The university's board of regents authorized last week's sale.

"We're going to the elected body most impacted by the projects," said LaPierre, whose firm was paid $1.5 million by the authority in 2014. "We're not doing anything unless that local agency has vetted it before a public hearing."

"As local public officials ourselves, we want to to ensure that those most impacted by the project have a chance to weigh in," said William Kacvinsky, the former Bayfield County supervisor who chairs the PFA.

Most of the authority's bond sales have been for out-of-state issuers. About $150 million of the money it has raised was for nine standalone Wisconsin projects and four multi-state deals for work based in the state, according to LaPierre.

Last year, 17 of its bond issues, or more than half, didn't have credit ratings, a step frequently used by borrowers that are unlikely to receive an investment grade, according to data compiled by Bloomberg. Only qualified institutional buyers or accredited investors can buy those securities, and those rated below BBB-, LaPierre said.

No Defaults

No PFA debt has had a payment default. But one charter school in Palm Beach County, Florida, that borrowed through the agency has had to draw on its reserves to pay bondholders, a sign of distress.

"The investors are big boys, they're doing their due diligence," LaPierre said. "We don't want unrated debt being held in the hands of mom and pop."

The PFA shares a mailing address with the Wisconsin Counties Association in a building across the street from the state capitol. Its seven-member board includes four directors nominated by the counties group, and one director each from the National League of Cities, the National Association of Counties and the League of Wisconsin Municipalities. The groups receive fees for endorsing the PFA. Last year, the National Association of Counties received about $130,000, said spokesman Brian Namey.

The University of Kansas, with 25,000 students at its main campus in Lawrence, sold debt to finance projects include a $138 million science building. It was the first time the university used an out-o--state conduit, said Rebecca Floyd, the general counsel of the Kansas Development Finance Authority, which handles bond deals for local borrowers.

"I think it was one of those circumstances that the legislature didn't foresee," she said.

Some charter schools in North Carolina have turned to the PFA rather than issue debt through North Carolina's Capital Facilities Finance Agency. Pamela Blizzard, the managing director of the Research Triangle High School near Durham, said the North Carolina authority's conditions were more restrictive and would have delayed the sale by months.

Other conduits have also been competing for business. In Connecticut, a retirement community last March used the PFA to issue $34.5 million of bonds rated BB, two steps into junk. After the deal, Connecticut's Health and Educational Facilities Authority dropped its policy of only issuing investment grade bonds. It will now allow for public offerings of bonds rated BB and BB+ and sold to qualified institutional buyers or accredited investors, said Executive Director Jeanette Weldon.

"We wanted to make sure we're giving these borrowers the access to capital that they need," Weldon said.

Bloomberg Business

by Martin Z Braun

January 12, 2016 — 9:01 PM PST Updated on January 13, 2016 — 6:28 AM PST

Illinois Penalized as It Ends Hiatus From Muni Bond Market.

Illinois, the worst-rated state in America, returned to the $3.7 trillion municipal-bond market for the first time in almost two years and paid a price for its financial turmoil.

The state, now in its seventh month without a budget, sold $480 million of general-obligation bonds to pay for transportation projects. The federally tax-exempt securities maturing in 2041 sold at a top yield of 4.27 percent, according to data compiled by Bloomberg. That's about 1.5 percentage points more than benchmark debt. When it last sold bonds in April 2014, that gap for debt due in 2039 was about 0.4 percentage point less.

"It's generally a good result in line with or better than expectations given the credit deterioration since the last sale," said Paul Mansour, the head of municipal research for Conning, which oversees $11 billion of state and local debt, including Illinois securities.

Since Illinois's 2014 sale, its credit rating has been cut and temporary tax increase have expired, leaving Republican Governor Bruce Rauner and Democratic lawmakers deadlocked in the longest budget impasse in the state's history. The state supreme court also threw out Illinois's plan to reduce pension costs and shrink a $111 billion retirement-fund deficit.

Bank of America Merrill Lynch submitted the winning bid at a true interest cost of 3.99 percent, said Catherine Kelly, a spokeswoman for Rauner. That is a better rate than the last four tax-exempt GO sales, she said. The true interest cost represents the total cash amount of the interest payments and the time of the interest and principal payments.

"The State experienced strong investor interest on the bonds," Kelly said in an e-mailed statement after the sale. "We are also pleased that we were able to borrow at less than 4 percent and continue to provide funding for essential Illinois construction projects."

Moody's Investors Service dropped Illinois to its lowest investment-grade tier in October as the political stalemate dragged on. Despite the fiscal troubles, municipal analysts say they aren't worried about an Illinois default.

“They have sufficient liquidity and cash flow to continue making their monthly set aside for monthly debt service,” said Ty Schoback, a senior analyst in Minneapolis at Columbia Management Investment Advisers, which handles about $30 billion in municipal bonds.

Bloomberg Business

by Elizabeth Campbell

January 14, 2016 — 10:23 AM PST Updated on January 14, 2016 — 2:38 PM PST

State Street Pays $12 Million for SEC's Pay-to-Play Allegations.

State Street Corp. agreed to pay $12 million to settle U.S. Securities and Exchange Commission claims that a former senior vice president helped route illicit cash payments and political contributions to win lucrative contracts to service Ohio pension funds.

Vincent DeBaggis, who headed State Street’s public funds group at the time, hired an immigration attorney with no lobbying experience to funnel money to Ohio’s then-deputy treasurer Amer Ahmad, according to a statement Thursday from the SEC. DeBaggis also worked with a State Street lobbyist, Robert B. Crowe, to give at least $60,000 to the incumbent Treasurer’s election campaign.

From February 2010 to April 2011, State Street paid the attorney, Mohamed Noure Alo, $160,000 in fees with a substantial portion sent to Ahmad. Ahmad and Alo have been criminally convicted for other misconduct during Ahmad’s tenure and are in federal prison.

“Pension fund contracts cannot be obtained on the basis of illicit political contributions and improper payoffs,” Andrew J. Ceresney, head of the SEC’s enforcement division, said in the statement. “DeBaggis corruptly influenced the steering of pension fund custody contracts to State Street through bribes and campaign donations.”

Wall Street’s main regulator has been cracking down on the so-called pay-to-play scandals in the $3.7 trillion municipal bond market. In one of the largest, former New York State Comptroller Alan Hevesi spent 20 months in prison after pleading guilty to directing $250 million in pension funds to an investment firm in exchange for travel, gifts and more than $500,000 in donations.

State Street, which didn’t admit or deny the SEC’s findings, agreed to pay an $8 million penalty and $4 million in disgorgement and interest. The firm is a custody bank, and keeps records, tracks performance and lends securities for institutional investors including mutual funds, pension funds and hedge funds.

“The SEC’s allegations regarding Mr. Crowe are patently untrue,” his attorney Arthur McMahon said in a statement. “We are disappointed that Mr. Crowe will be required to defend himself and his reputation in a case that the SEC has no basis for bringing.” Crowe is a partner at Nelson Mullins Riley & Scarborough.

The Ohio Public Employees Retirement System said in a statement that unlike most pension funds in U.S., it has no authority to contract, select or dictate terms with custodial banks and supports changes to the selection process in Ohio.

Requests for comment from an attorney representing DeBaggis weren’t immediately returned. State

Street didn't immediately return a request for comment.

Bloomberg Business

by Matt Robinson

January 14, 2016 — 11:51 AM PST Updated on January 14, 2016 — 3:06 PM PST

Day of Reckoning Near as Detroit Schools Pushed to Fiscal Brink.

When Roosevelt Bell's daughter Roshauna left Detroit's Cooke Elementary for a charter school, she joined an exodus that sent the district's finances into free fall. Every student that leaves costs $7,434 in state aid. In the past decade, it's lost 84,000.

"The school was really raggedy," said Bell, a 58-year-old carpenter who pulled Roshauna out four years ago because of over-crowded classrooms and a building in need of repair. "The kids had to wear their coats in the classrooms."

More than a year after Detroit emerged from a record-setting bankruptcy, cutting its debt in an effort to revive from a decades-long population decline, the independent school district is still flirting with insolvency. In February, the amount of state aid that's siphoned off by debt will jump to roughly what is spent on salaries and benefits, and it may run out of cash in April. This week, the frayed finances sparked a staff revolt: More than half the schools closed Monday after teachers called in sick to protest dilapidated conditions.

"It's not sustainable," said Hetty Chang, a vice president with Moody's Investors Service, which rates the district's bonds Caa1, seven steps below investment grade, lower than any other U.S. public-school system. If nothing happens soon "they will run out of money."

Detroit isn't alone, with many urban school systems struggling, including Philadelphia's and Chicago's. But nowhere has the financial pain been as acute or persistent as in Detroit, where the long-running disappearance of automobile-industry jobs caused the biggest population decline ever seen in an American city, leaving much of it vacant. With fewer residents, enrollment in its schools has plunged 65 percent since 2006.

With about $1.7 billion of outstanding bonds, the district has been run by a state-appointed emergency manager since 2009, a step aimed at keeping it out of bankruptcy. Republican Governor Rick Snyder last year proposed an overhaul that would keep its debt from crowding out classroom spending. Drawing on that plan, Republican state Senator Goeff Hansen Thursday introduced legislation that would effectively create two districts — one to pay off $715 million of debt and another to run the schools.

"We have to get them back to solvent," Hansen said in an interview. "You can't have a robust, strong Detroit without having a good school system."

Governor's Priority

Dave Murray, a spokesman for Snyder, said providing a permanent fix for the schools is one of his administration's top priorities this year. Michelle Zdrodowski, a spokeswoman for Detroit's schools, didn't respond to phone and e-mail messages seeking comment.

To help close budget shortfalls, the district's reliance on short-term loans has grown. In September, it sold $121 million of notes that mature in August for a yield of 5.75 percent, about $13 million more than it issued a year earlier. Because of that borrowing, the amount of state aid that goes to debt service will jump by 22 percent to $26 million next month, according to disclosures made for the note offering.

"Things are looking rough, they're coming to a head," said Craig Thiel, senior research associate with the Citizens Research Council of Michigan, which released a report this month on the district's debt. "The state sends its checks to the district after holding out money to repay short-term borrowings. Whatever is left is available to pay teachers, buy books and turn on the lights."

Bondholder's Shelter

That diversion of aid, which is a result of the control exerted by the state, has sheltered bondholders. A Detroit school bond maturing in 2029, one of its most active securities, last traded for an average yield of 2.9 percent in November, or 1.3 percentage points more than benchmark debt, according to data compiled by Bloomberg. That was down from about two percentage points in April.

"It's upsetting to see the poor conditions of the Detroit school system, but as bondholders, we are largely insulated because of the strong support provided to the bonds by the state," said Paul Mansour, the head of municipal research at Conning, which oversees $11 billion of state and local debt, including some from Detroit's schools. "Detroit public schools is not so much a concern over debt repayment, but it's much more of an issue for the provision of services."

To deal with the declining enrollment, the school system has eliminated almost 10,000 jobs since 2005 and closed more than 150 schools, helping reduce expenses by $800 million. There are some signs of stabilization: Enrollment was down by just 1.7 percent in the current year, the smallest drop in at least a decade. Emergency Manager Darnell Earley said in a statement last month that the district is "making strides to address the serious financial challenges that have been plaguing it for decades."

More than 60 schools were closed Monday because teachers called out sick during the protest over derelict conditions. By Wednesday, the number of closings dropped to at least five, according to the Associated Press.

The teachers are upset because of the worsening school conditions, including broken heaters, rodents, cracked ceilings and mold, said Margaret Weertz, a spokeswoman for the Detroit Federation of Teachers. She said the protest wasn't condoned or organized by the union.

"The frustration level is very, very high," Weertz said.

Irving Bailey, 51, felt it years ago. He pulled his 9th grade daughter out of John R. King Academic and Performing Arts Academy, worried about a lack of academic standards, and enrolled her in the Jalen Rose Leadership Academy, a charter. Now she attends Central Michigan University.

"Her Detroit school was crowded and I didn't feel like it was preparing her for college," said Bailey. "It's not getting better in the Detroit schools. It's getting worse."

Bloomberg Business

by Darrell Preston and Elizabeth Campbell

January 14, 2016 — 9:01 PM PST Updated on January 15, 2016 — 9:10 AM PST

Bloomberg Brief Weekly Video - 01/14

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

Watch the video.

10:18 AM PST
January 14, 2016

BDA's January 2016 Member Fly-in Focused on FINRA 4210 Margin Amendments.

BDA member firms met with senior regulatory staff at the SEC and FINRA and senior congressional staff in DC to discuss FINRA's proposed margin amendments for the mortgage market.

On Thursday January 7th, as part of BDA's member fly-in initiative, BDA member firms and BDA staff met with the SEC, FINRA, and senior staff at the Senate Banking Committee and the House Financial Services Committee to discuss the proposed TBA, CMO, and specified pool margin amendments to Rule 4210 that FINRA filed with the SEC. BDA submitted a comment letter in October 2015. The proposed rule can be read here.

Participants included:

- Erica Willems and Nick Pruhs from Baird
- Chris Melton from Coastal Securities
- Jason McCloud and Jeffrey Skinner from Stifel Nicolaus
- Allen Riggs from Vining Sparks

Meetings included:

- SEC Office of Trading and Markets
- FINRA senior regulatory staff
- Senate Banking Counsel
- House Financial Services Counsel

BDA members in attendance focused on the various compliance burdens the rule presents that are listed below. In addition, BDA expressed concerns to the SEC and senior congressional staff with SRO overreach in violation of congressional intent.

- Advocating for at least an 18 month implementation timeframe if this rule is approved.
- The burden of establishing margin agreements with all of a dealer's exempt and non-exempt accounts that trade mortgage products. And the fear that many dealer clients (large and small) will choose not to enter into margin agreements or that smaller dealers that do a small amount of mortgage business will chose to exit the market.
- Managing and tracking exposures to retail clients that do not present systemic risk and will very rarely have exposures that will exceed the proposed rule's $250,000 minimum transfer level. BDA firms also advocated for higher minimum transfer and gross open position limits.

- The inconsistency of the margin and liquidation time requirements compared to existing rules for other securities.

Bond Dealers of America

01-11-16

BDA Submits Comment Letter to SEC in Response to FINRA ATS Trade Reporting Amendments.

BDA submitted a comment letter to the SEC on SR-FINRA-2015-055, a Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Provide FINRA with Authority to Grant Exemptions from TRACE Reporting for Certain ATS Transactions.

Please review BDA's comment letter to the SEC here.

- The proposed rule creates a process for ATSs to be exempt from certain TRACE reporting responsibilities if certain conditions are met. For an ATS to be exempt, the ATS and a dealer will be required to have a written agreement in place which states that the dealer (and not the ATS) is responsible for reporting trades to TRACE.
- Additionally, dealers will be required to add ATS MPIDs to the TRACE reports for exempted trades. BDA's letter objected to the fact that FINRA filed these rule changes as "non-controversial" for immediate effectiveness with a July 18, 2016 implementation date without a sufficient public comment period.
- Additionally, BDA argues that dealers should be given more time to work with compliance personnel, third-party vendors, and ATSs before the implementation date.

Bond Dealers of America

01-13-15

Supreme Court to Weigh Public-Sector Union Dues.

Plaintiffs say they oppose union goals that may benefit them, like higher pay; labor groups argue they need mandatory fees to do their work effectively

WASHINGTON—The Supreme Court on Monday will consider eliminating a pillar of public-sector union strength in more than 20 Democratic-leaning states: the ability to require workers, including those who don't join the union, to pay for representation.

The high court ruled in 1977 that such provisions—known as union security, agency fee or fair-share clauses—were constitutional for public employees, as they have been for private-sector workers.

The current case, brought by the Christian Educators Association International and nine California teachers, asks the justices to overrule the precedent and effectively end the practice.

The challengers in the case, Friedrichs v. California Teachers Association, argue they shouldn't have to pay for any union services, on the theory that even basic functions such as collective bargaining are political speech because they involve requesting action from a government agency.

The ability to collect fees from dues-paying members and workers who don't join has bolstered the strength of public-sector unions, which typically represent all workers in a bargaining unit regardless of membership status. Union officials say removing that ability would make their work harder, if not insurmountable.

Nearly half of public employees in states with such provisions were represented by unions, compared with 17% in states that prohibit the fees, according to an October report from the left-leaning Economic Policy Institute. Of the latter group, between 2000 and 2014 about 20% were workers who declined to pay dues, the institute said.

The plaintiffs, all Republicans or independents, say they oppose union bargaining goals that may benefit them, such as higher pay or seniority protections.

"In my district, we have 70% of our students on free and reduced lunch. It's a very low-income area and our community cannot support higher salaries," said plaintiff Harlan Elrich, a math teacher at Sanger High School in Fresno County, Calif. Mr. Elrich, who said he has been teaching nearly 30 years and makes about $75,000 annually, added that while "seniority is great," teacher performance should also affect job security.

Among states that forbid the fees, the landscape for unions varies considerably. Wisconsin, which all but eliminated organizing rights for most public employees in 2011, represents one extreme.

Wisconsin Republicans led by Gov. Scott Walker left police and fire unions intact. But they placed restrictions on unions representing other government workers, banning collective bargaining and prohibiting payroll deduction of voluntary dues. Since then, the American Federation of State, County and Municipal Employees lost two-thirds of its membership, while the statewide teachers union shrank 50%, said Paul Secunda, a labor law professor at Marquette University in Milwaukee.

What those unions do today is "collective begging. It's not collective bargaining," he said.

Not all states that prohibit the fees are so restrictive. But without provisions compelling membership, union officials must continuously attend to organizing and membership retention, reducing resources they can devote to bargaining and contract enforcement, said Ann Hodges, a labor law professor at the University of Richmond in Virginia.

A blow to unions would reverberate into the political arena, she notes: "Unions are one of few large institutional players that support Democrats historically. Not just with money but with boots on the ground."

If the unions lose, Ms. Hodges expects their strength to decline more in some categories than others. Unions representing workers with "a shared culture, a shared profession"—such as teachers, police officers and firefighters—are better poised to survive, she said.

Union leaders are already looking to their counterparts in states that don't allow mandatory fee collection for advice on how to navigate possible changes.

Virginia prohibits collective bargaining for public employees. In Norfolk, the school board negotiated a de facto contract with the Norfolk Federation of Teachers, an affiliate of the American Federation of Teachers, in the early 1980s. Although the memorandum of understanding isn't enforceable in court, it has remained the basis of employee relations in the school system ever since.

“We would call it a best practice,” said the school-board chairman, Rodney Jordan. “Now, they challenge us, they advocate for their members, but we also work together,” he said, citing joint lobbying of the city council to increase education funding.

Mr. Jordan said Norfolk’s “respectful relationships” with the federation and the Education Association of Norfolk, affiliated with National Education Association, helps in other ways.

“As an urban district surrounded by suburban districts that may have more resources than we do, I think it’s also a competitive advantage for us” in attracting or retaining teachers, he said.

The Norfolk federation president, Thomas Calhoun, said that just under half the teachers, and about a third of other district employees, choose to join the union, paying about $700 in annual dues.

Because nonmembers automatically get whatever benefits the union negotiates, “there’s nothing you can offer them to entice them to come over” unless they believe in the cause, Mr. Calhoun said. That drives the federation to work constantly to prove its worth, he said.

“We go out there every day,” he said. “I try to be involved in the community, and with the League of Women Voters and the NAACP” and other civic organizations, he said.

Despite Norfolk’s experience, Mr. Calhoun said no other Virginia district has followed its example and voluntarily instituted collective bargaining.

“It’s clear that it hasn’t caught on,” he said.

THE WALL STREET JOURNAL

By JESS BRAVIN and MELANIE TROTTMAN

Jan. 10, 2016 4:30 p.m. ET

Write to Jess Bravin at jess.bravin@wsj.com and Melanie Trottman at melanie.trottman@wsj.com

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The Hidden - and Outrageously High - Fees Investors Pay for Bonds.

If you are a retail investor who purchases or sells corporate or municipal bonds, do you know the costs you are paying to transact in those securities? Chances are you don’t. Because of a regulatory loophole, broker-dealers are currently allowed to withhold essential pricing information from retail investors in fixed-income transactions.

When a retail investor purchases stocks, the broker-dealer is required to disclose the transaction costs the investor paid in the form of a commission on the customer’s confirmation statement. However, when a retail investor purchases bonds, the broker-dealer is not required to provide comparable disclosures of the transaction costs the investor paid in the form of a markup or markdown.

Because broker-dealers are not required to provide transaction cost information to retail customers in fixed-income transactions, and because retail investors don’t see any transaction costs on their confirmation statements, retail investors may mistakenly believe that they aren’t paying any trading costs at all. This opacity allows broker-dealers to charge higher transaction costs than they otherwise would if they were required to disclose.

As a result, retail investors pay substantially more to trade in corporate and municipal bonds than they pay to trade in stocks, where disclosure is required. And, they pay substantially more to trade in corporate- and municipal-bond transactions than sophisticated traders, who are better informed than retail investors and know where to access and how to interpret this information.

Research on retail investors' trading costs for municipal bonds has found that the average cost of a $20,000 municipal-bond trade to be almost 2%. That cost arguably would be quite high even in the context of a normal interest-rate environment. However, in today's low-interest-rate environment, that cost would be even more pronounced–equivalent to almost eight months of the total annual return for a bond with a 3% yield to maturity. Retail investors simply can't afford to pay these sorts of high transaction costs on a low-yield investment.

Relevant cost information is available on FINRA's Trade Reporting and Compliance Engine (TRACE) (for corporate bonds) and MSRB's Electronic Municipal Market Access (EMMA) (for municipal bonds) websites, and some astute investors may know how to find and interpret that data. However, most retail investors likely are not in a position to use those websites with any reasonable degree of expertise. Doing so would require the investor to know not only that those websites exist, but also how to find the precise information one is looking for and, most critically, how to understand and make use of that information to determine the costs one is paying and whether those costs are fair.

The only way to ensure that retail investors receive critical cost information is to provide it directly to them. Such cost information would put them in a better position to assess whether they are paying fair prices and allow retail investors to make more informed investment decisions. That would have the added benefit of fostering increased price competition in fixed-income markets, which would ultimately lower investors' transaction costs.

Even within the highly fractured Securities and Exchange Commission, there seems to be unanimous support among the commissioners to require broker-dealers to disclose transaction costs directly to their retail customers. Commissioner Mike Piwowar has gone so far as to characterize this issue as "low-hanging fruit."

But while there seems to be bipartisan support for forceful action, the two self-regulatory organizations tasked with addressing the issue, FINRA and the MSRB, have offered differing proposals. In my view, FINRA's proposal is stronger and less susceptible to evasion by broker-dealers than the MSRB's proposal and, therefore, any final coordinated approach should follow FINRA's proposal.

Meanwhile, as the respective regulatory agencies debate the technical details of the various proposals, which is likely to complicate and lengthen the process, retail investors remain in the dark.

THE WALL STREET JOURNAL

BY MICAH HAUPTMAN

Jan 13, 2016

Micah Hauptman (@MicahHauptman) is the financial services counsel for the Consumer Federation of America.

US Treasury Secretary Demands Action on Puerto Rico's Crisis.

SAN JUAN, Puerto Rico — U.S. Treasury Secretary Jacob Lew urged Congress on Friday to pass legislation by March to help ease Puerto Rico's economic crisis before it's too late.

Lew made the request in a letter to U.S. House Speaker Paul Ryan, a Wisconsin Republican, as he announced an upcoming trip to the island to meet with government officials and business leaders to talk about the financial situation.

"Although there are many ways this crisis could escalate further, it is clear that Puerto Rico is already in the midst of an economic collapse," Lew wrote. "It is time for Congress to act to provide order to a chaotic and worsening situation."

Puerto Rico is struggling with $72 billion in public debt that the governor has said is unpayable and needs restructuring. The island recently defaulted on $37 million in interest on bonds and faces its first lawsuit over how it has diverted funds to meet certain bond payments. Gov. Alejandro Garcia Padilla has already warned that Puerto Rico doesn't have money for upcoming bond payments including $400 million due in May.

Lew is scheduled to meet on Wednesday with officials and community leaders to talk about the proposal that President Barack Obama's administration presented Congress to create a territorial bankruptcy regime that would allow Puerto Rico's government to restructure its debt and impose new oversight on finances and expand Medicaid benefits, among other things.

Puerto Rico does not have access to any local or federal bankruptcy laws. Meanwhile, the U.S. Supreme Court recently announced it would hear an appeal on a ruling that barred Puerto Rico from giving municipalities the power to declare bankruptcy.

A spokeswoman for Ryan did not respond to a request for comment. Ryan has previously pledged that the House will come up this year with "a responsible solution" for Puerto Rico's debt problems.

Republican leaders including Sen. Orrin Hatch, R-Utah, have demanded to see audited financial statements from Puerto Rico, but they have not materialized. Jesus Manuel Ortiz, public affairs secretary for the Puerto Rican government, said Friday that the statements are nearly ready and would be produced soon, although he didn't specify a date.

Puerto Rico is struggling with an increasingly dwindling cash flow that has threatened to cut off gasoline and electricity to certain public and private institutions. Almost 10 percent of Puerto Rico's population has left since 2006 and hundreds of businesses have closed, with Walmart announcing Friday that it would shutter seven supermarkets on the island as part of a global restructuring.

Lew noted in the letter that Puerto Rico has not had access to the municipal bond market for more than two years and ran out of funding sources commonly used to finance government operations more than six months ago.

"More recently, Puerto Rico has resorted to a series of onerous and unsustainable emergency liquidity measures, including selling assets from already depleted pension funds; borrowing from the workers compensation and other insurance funds; and withholding hundreds of millions of dollars in tax refunds," he wrote.

Pedro Pierluisi, Puerto Rico's representative in Congress, said he expects to meet with Lew and stress that immediate measures are needed to avoid what he said would be enormous government defaults.

By THE ASSOCIATED PRESS

JAN. 15, 2016, 12:51 P.M. E.S.T.

GFOA: Lend Your Support to Preserve the Tax Exemption on Municipal Bond Interest.

As Congress and the White House return to discussions on comprehensive federal tax reform in 2016, GFOA is urging our members to help engage federal lawmakers regarding the need to preserve the tax exemption on municipal bond interest. In addition to the resources already available for your use on our federal government relations page, GFOA is urging members to sign their jurisdictions onto this letter to the leaders of the House and Senate tax writing committees, expressing support for the tax exemption. Beyond GFOA's membership, the letter is also being distributed by our colleagues at the National League of Cities, U.S. Conference of Mayors, National Association of Counties, and the National Association of State Treasurers. Our aim is to secure the support of hundreds of jurisdictions on this letter to demonstrate to Congress the immense support for this provision of the tax code. Jurisdictions that are interested in signing on should contact Emma Heydlauff by February 15.

Download:

Letter Expressing Support for Tax Exemption

Thursday, January 14, 2016

CUSIP Issuance Trends Report.

CUSIP Request Volume Trends Downward in December, Forecasts Continued Volatility in Corporate and Municipal Bond Issuance.

"A great deal of the activity in corporate and municipal bond issuance over the course of 2015 was defined by speculation around interest rates," said Richard Peterson, Senior Director, S&P Capital IQ. "It is fitting, then, given the December move by the Fed that we're now seeing a slow-down to the fever pitch of bond issuance we saw earlier in the year. Expect that trend to continue throughout the first part of this year."

Read the Press Release.

To view a copy of the full CUSIP Issuance Trends report, please click here.

- Kramer Levin: Sorting Through the Options as Green Bonds Gain Popularity.
- The Tougher U.S. Pension Rules in Puerto Rico's Rescue Plan.

- CDFI Fund Opens Application Period for FY 2016 CDFI Bond Guarantee Program.
- NABL: ABA Section of Taxation Submits Issue Price Comments.
- MSRB Proposes Rule Changes on Interdealer Transaction Failures.
- *Gillette Co. v. Franchise Tax Bd.* – Supreme Court of California holds that Multistate Tax Compact is not binding under state constitutional contract clauses, and thus the state Legislature may properly preclude a multistate taxpayer from relying on the Compact's election provision.
- *Employers Mut. Cas. Co. v. Helicon Associates, Inc.* – In action to recover losses incurred in unauthorized bond issuance, Court of Appeals holds that issuer's insurer was not liable for indemnity coverage, as unauthorized issuance triggered the "fraud or dishonesty" exclusion of the Linebacker policy.
- And finally, the Supreme Court of Washington held this week, as a matter of first impression, that the right to bear arms protects only instruments that were designed as weapons traditionally or commonly used by law abiding citizens for self-defense, thus nixing dude's attempt at Federal protection for his paring knife. Unclear if your editor's deployment of the fetal position and a pool of his own urine as his traditional self-defense protocol is affected by this decision.

BANKRUPTCY - CALIFORNIA

In re Community Facilities District No. 1990-1 (Wildwood Estates), Nevada County, California

United States Bankruptcy Court, E.D. California, Sacramento Division - November 23, 2015 - Slip Copy - 2015 WL 7568566

Bankruptcy Court adopts Findings of Fact and Conclusions of Law in Support of Order Confirming Amended Plan for Adjustment of Debts for the Community Facilities District No. 1990–1 (Wildwood Estates), Nevada County, California.

Uncontested proceeding with only two proofs of claim filed. The first by the Fiscal Agent on behalf of the holders of Special Tax Bonds, Series E–1990 (Base CUSIP® No. 64126M) in the current principal amount of $4,840,000 secured by a special tax lien on the property within the boundaries of CFD 1990–1 and the second by the County for unreimbursed amounts paid by the County to satisfy the administrative expenses of CFD 1990–1 for the past several years, which amounts are also secured by the special tax lien on the property within the boundaries of CFD 1990–1.

PUBLIC UTILITIES - CALIFORNIA

San Pablo Bay Pipeline Company, LLC v. Public Utilities Commission

Court of Appeal, Fifth District, California - December 22, 2015 - Cal.Rptr.3d - 2015 WL 9412765 - 15 Cal. Daily Op. Serv. 13, 531

Pipeline company petitioned for writ of review of a ratesetting decision of the Public Utilities Commission (PUC) requiring a refund to pipeline users.

The Court of Appeal held that PUC had authority to bifurcate the matter into two phases and to conclude the limitations period did not run after initiation of the first phase.

The Public Utilities Commission (PUC) acted within its constitutional and statutory authority in tolling or stopping the running of the two-year statute of limitations for a complaint resulting from a violation of the Public Utilities Act between the filing of the initial complaint in oil shippers' bifurcated proceeding for a refund from a pipeline company and the initiation of the second phase, even though the PUC used the unusual procedural device of an administratively final decision to conclude the first phase, and the PUC used the equally unusual procedural device of initiating the second phase by the filing of new complaints and a ratemaking application.

Public Utilities Commission's (PUC) bifurcation of oil shippers' proceeding for damages from a pipeline company under the Public Utilities Act into separate jurisdictional and ratemaking phases did not offend constitutional limitations relating to statutes and due process, even though the PUC tolled or stopped the running of the statute of limitations between the filing of the initial complaint and the initiation of the second phase, where the parties agreed to the bifurcation of the proceeding, and the PUC explicitly found the pipeline company advocated and benefited from the bifurcation of the proceedings.

The Public Utilities Commission (PUC) acted within its equitable authority in tolling the two-year statute of limitations for a complaint resulting from a violation of the Public Utilities Act between the filing of the initial complaint in oil shippers' bifurcated proceeding for a refund from a pipeline company and the initiation of the second phase, even though the PUC used the unusual procedural device of an administratively final decision to conclude the first phase, and the PUC used the equally unusual procedural device of initiating the second phase by the filing of new complaints and a ratemaking application.

MUNICIPAL ORDINANCE - ILLINOIS

Blanchard v. Berrios

Appellate Court of Illinois, First District, Second Division - December 8, 2015 - N.E.3d - 2015 IL App (1st) 142857 - 2015 WL 8328321

County independent inspector brought action to enforce subpoena that Office of Independent Inspector General (OIIG) directed to county assessor. The Circuit Court entered order requiring assessor to produce subpoenaed documents. Assessor appealed.

The Appellate Court held that county did not exceed constitutional authority in enacting ordinances empowering OIIG to issue subpoenas.

Ordinances purportedly empowering the Office of the Independent Inspector General (OIIG) to issue subpoenas directed to elected county officials and requiring the officials to cooperate with the OIIG did not exceed county board of commissioners' constitutional home rule authority. Board had the power to investigate allegations that county officials had abused their powers or committed fraud in their official capacities, as the corruption of county officials pertained to the county's government and affairs within the meaning of the state constitution.

INSURANCE - MICHIGAN

Employers Mut. Cas. Co. v. Helicon Associates, Inc.

Court of Appeals of Michigan - December 1, 2015 - N.W.2d - 2015 WL 7738601

This case arose out of the outcome of a prior federal suit initiated by several fund (Funds) in this matter against parties who were insured by Employers Mutual Casualty Company (EMC). Briefly, the Funds had purchased approximately $7 million in bonds issued by a charter school operated by

Helicon Associates, Inc. The charter school was, however, not legally authorized to issue its own debt. Facing the threat of having its charter revoked, the school had to unwind the bond issue and the Funds accepted $3.2 million in newly issued bonds in lieu of their original $7 million investment.

In the ensuing federal court securities action, the Funds pursued claims pertaining to the bond issuance, including violations of various securities and "blue sky" laws, in addition to tort claims. The federal action resulted in a consent judgment acknowledging violation of the Connecticut Uniform Securities Act and awarding the Funds more than $4 million.

EMC provided Helicon with a defense in the federal action under a reservation of rights, but commenced this declaratory judgment action seeking to establish that indemnity coverage was not available, under its Linebacker or Umbrella policies with Helicon, for the claims asserted in the federal action. EMC did not dispute that Helicon was an insured, but argued that four separate exclusions (return of remuneration, personal profit or advantage, guarantee on bonds, and fraud or dishonesty) applied, each of which would independently preclude coverage. Helicon counterclaimed for breach of contract and "bad faith." The trial court found that three of the four cited exclusions applied, and it therefore granted summary disposition in favor of EMC.

The Funds appealed.

The Court of Appeals affirmed, holding that the "fraud or or dishonesty" exclusion of the Linebacker policy applied, as Helicon had committed acts amounting to fraud and dishonesty and the consent judgment constituted a "judgment or adjudication."

"Based on our finding that the trial court correctly determined the applicability of the fraud and dishonesty exclusion, we need not consider the remaining policy exclusions."

BONDS - MICHIGAN

[Sylvan Tp. v. City Of Chelsea]

Court of Appeals of Michigan - November 24, 2015 - N.W.2d - 2015 WL 7459035

In September 2000, several qualified electors petitioned the State Boundary Commission (the Commission) to consider the incorporation of Chelsea as a home rule city. Chelsea was a village at the time. The petitioners' proposed boundaries for the city included all the territory of the village and some territory from Sylvan and Lima Townships. Beginning in March 2001, Sylvan opposed Chelsea's petition to incorporate before the Commission and in Ingham Circuit Court.

In October 2001, representatives from Chelsea, Sylvan, Lima Township, and a representative of the petitioners for incorporation entered into a joint settlement agreement. As part of the settlement, Chelsea agreed that it would annex less territory from Sylvan and Sylvan agreed to no longer oppose the incorporation of Chelsea as a home rule city. Chelsea became a city in March, 2004.

In March 2014, Sylvan sued Chelsea for declaratory relief. It alleged that, under MCL 117.14, Chelsea assumed a proportionate share of Sylvan's liabilities when it became a city, which included a share of Sylvan's liability for the repayment of the bond debt incurred to construct improvements for the treatment of waste water. Sylvan asked the trial court to declare that Chelsea was liable for a proportionate share of Sylvan's liabilities under the bond contracts, must reimburse Sylvan for Chelsea's share of the debt already paid by Sylvan, and was obligated to pay its share of all future payments on the bonds as they came due.

Chelsea moved for summary disposition, arguing that Sylvan specifically waived any right to contribution that it might have had when it settled its dispute over Chelsea's petition to incorporate. Chelsea further maintained that Sylvan's claim was barred under the doctrine of res judicata because Sylvan raised the issue with the Commission and the Commission did not require Chelsea to assume any portion of Sylvan's liabilities as part of its decision. Chelsea also argued that Sylvan had to assert its right to a division of liabilities under MCL 117.14 at the time of the city's incorporation and failed to do so. For that reason, Chelsea asserted, Sylvan's complaint for declaratory relief was untimely. Chelsea similarly argued that Sylvan unduly delayed asserting its claim, which prejudiced Chelsea, and engaged in inequitable conduct that warranted barring the claim under the doctrines of laches and equitable estoppel.

The trial court granted Chelsea's motion and Sylvan appealed.

The Court of Appeals reversed, holding that:

- The Commission had no authority to make an equitable division of the assets or determine liabilities as provided under MCL 117.14 arising from Chelsea's incorporation as a city.
- Sylvan did not affirmatively waive its rights under MCL 117.14 in the settlement agreement and, for that reason, the agreement could not have induced Chelsea to believe that Sylvan would not assert its rights.
- Because a new city assumes its share of the township's liabilities by operation of law, the township has no obligation to take steps to formalize the assumption of liability by the newly formed city.
- The six-year period of limitations provided under MCL 600.5813 applies to an action to enforce MCL 117.14.
- Sylvan's claim against Chelsea for an accounting of the debts and liabilities accrued when Chelsea first failed to pay its share of the assumed liability, without regard to whether Sylvan itself paid Chelsea's share.
- Chelsea did not assume any liability related to the bonds incurred post-incorporation.
- Further development of the record was necessary in order to determine when it was practicable for Sylvan to assert its claim before the court could rule on Chelsea's laches defense.

The Commission had no authority to make an equitable division of the assets or determine liabilities as provided under MCL 117.14 arising from Chelsea's incorporation as a city. Because the parties could not have resolved the issues involved in this suit before the Commission or in the related litigation concerning the Commission's actions, the trial court erred as a matter of law when it applied res judicata to bar Sylvan's claim.

Sylvan did not affirmatively waive its rights under MCL 117.14 in the settlement agreement and, for that reason, the agreement could not have induced Chelsea to believe that Sylvan would not assert its rights. There was no evidence that Sylvan stood by and neglected its rights under MCL 117.14 while Chelsea changed its position in reliance on Sylvan's silence. In the absence of such evidence, the trial court should have denied Chelsea's motion to the extent that it argued that Sylvan's claim was barred by equitable estoppel.
Sylvan did not waive its right to enforce MCL 117.14 in the settlement agreement, and thus the trial court should have granted Sylvan's request for summary disposition on this defense.

The Legislature did not provide any specific procedure for effecting the assumption of liabilities under MCL 117.14. The statute merely provides that, for a new city, the liabilities "shall be … assumed" by the new city effective "as of the date of filing the certified copy of the charter" and using "the same ratio" provided for cases where a city annexes a portion of a township. MCL 117.14. Because the new city apparently assumes its share of the township's liabilities by operation of law, the township has no obligation to take steps to formalize the assumption of liability by the newly formed city; the township may rely on MCL 117.14 and require the new city to meet its share of the township's obligations as those obligations come due.

Because no specific period of limitations encompasses an action to enforce MCL 117.14, we conclude that the six-year period of limitations provided under MCL 600.5813 applies.

Any claim that Sylvan had against Chelsea for an accounting of the debts and liabilities accrued when Chelsea first failed to pay its share of the assumed liability, without regard to whether Sylvan itself paid Chelsea's share. To the extent that Sylvan incurred new or additional liabilities related to the bonds after the date of Chelsea's incorporation (such as by increasing the obligations through misconduct), Chelsea did not assume any portion of the new or additional debt.

In this case, the trial court did not grant Chelsea's motion for summary disposition on the grounds that it was time-barred and the parties did not develop the record sufficiently to identify the applicable accrual date as a matter of law. It is unclear whether and when Chelsea might have become obligated to make a payment on the shared liability (assuming there to be a shared liability). For example, Sylvan's agreement with the county provides that the township will pay principal and interest on the bonds without regard to the source of the funds used to make the payments. Stated another way, the obligation appears to be absolute—it does not apparently depend on whether there are special assessments. Thus, Chelsea might have been obligated to pay its share of the payments immediately after it incorporated, notwithstanding that there were special assessments available to Sylvan to make the payments. For that reason, Sylvan's failure to assert its rights under MCL 117.14 might be time-barred as to the earlier payments. But see Dearborn Twp, 308 Mich. at 295–296 (noting that the right to have contribution does not arise until a contingent liability becomes a fixed liability). It is also unclear how the refunding of the bonds might have affected the nature and extent of the liability at issue. Because the parties did not adequately address these issues and did not have occasion to develop the record concerning the timing and nature of the required payments, we decline to further address whether and to what extent Sylvan's claim might be barred under the applicable period of limitations.

For similar reasons, we decline to consider whether laches might properly apply to bar Sylvan's claim in whole or in part; as we have explained, the primary inquiry when applying the doctrine of laches is whether the plaintiff's failure to earlier assert his or her claim prejudiced the defendant.

In order to determine whether Chelsea suffered prejudice as a result of Sylvan's delay, it is essential to determine when it was practicable for Sylvan to assert its claim. Sylvan argues that it was not practicable until it became necessary for Sylvan to refinance the bonds and raise taxes to cover the expenses. But that assertion may be incorrect. If Chelsea had an obligation to pay its share earlier—perhaps years earlier—and Sylvan failed to assert its rights, the trial court might reasonably conclude that Sylvan should be charged with laches if the delay prejudiced Chelsea's rights. For example, had Sylvan earlier asserted its rights under MCL 117.14, Chelsea might have been able to intervene in a way that prevented Sylvan from jeopardizing the special assessments or might have been able to otherwise take actions to limit its exposure to liability. On this record, we cannot determine when it was practicable for Sylvan to assert its rights or determine whether Chelsea suffered prejudice warranting the application of laches.

EMINENT DOMAIN - MISSOURI

[Tubbs v. Surface Transp. Bd.]

United States Court of Appeals, Eighth Circuit - December 28, 2015 - F.3d - 2015 WL

9465907

Property owners filed petition for review of the decision of the Surface Transportation Board (STB) that their state-law claims against railroad, in connection with damage to their property due to flooding, were preempted by the Interstate Commerce Commission Termination Act (ICCTA).

The Court of Appeals held that:

- In determining whether the ICCTA preempted state-law claims, the STB should ask whether those claims would have the effect of unreasonably burdening or interfering with rail transportation, and
- State-law claims were preempted by the ICCTA.

State-law claims for trespass, nuisance, negligence, inverse condemnation, and statutory trespass asserted by property owners against railroad, in connection with property damage due to flooding after elevated railroad embankment on owners' property failed, were preempted by the Interstate Commerce Commission Termination Act (ICCTA). The claims arose from railroad's alleged actions in designing, constructing, and maintaining an active rail line, which would unreasonably burden or interfere with rail transportation.

MUNICIPAL ORDINANCE - NEVADA

Scott v. First Jud. Dist. Ct.

Supreme Court of Nevada - December 31, 2015 - P.3d - 2015 WL 9586796 - 131 Nev. Adv. Op. 101

Defendant appealed his conviction for violating municipal ordinance making it unlawful for any person to hinder, obstruct, resist, delay, molest any member of the sheriff's office in the discharge of his official duties. The District Court affirmed. Defendant petitioned for writ of certiorari.

The Supreme Court of Nevada held that:

- Ordinance was unconstitutionally overbroad, and
- Ordinance was unconstitutionally vague.

Municipal ordinance prohibiting any conduct that may "hinder, obstruct, resist, delay, or molest" a police officer in the discharge of his official duties, regardless of intent, was unconstitutionally overbroad on its face, in violation of First Amendment, where the ordinance encompassed protected speech and was not narrowly tailored to prohibit only disorderly conduct or fighting words.

Municipal ordinance prohibiting any conduct that in any way may "hinder, obstruct, resist, delay, or molest" a police officer in the discharge of his official duties, regardless of intent, was unconstitutionally vague, in violation of due process. Ordinance was worded so broadly that sheriffs deputies were given unfettered discretion to arrest individuals for words or conduct that annoyed or offended them.

TORT CLAIMS ACT - OREGON

Heng-Nguyen v. Tigard-Tualatin School Dist. 23J

Court of Appeals of Oregon - December 30, 2015 - P.3d - 2015 WL 9587506

Driver injured in automobile collision with public school employee brought action against school. The Circuit Court entered summary judgment in favor of school. Driver appealed.

The Court of Appeals held that telephone call between driver and school's liability insurance representative regarding driver's traffic accident with school employee provided actual notice of personal-injury claim under Oregon Tort Claims Act (OTCA).

Telephone call between driver and public school's liability insurance representative regarding driver's traffic accident with school employee provided actual notice of personal-injury claim under Oregon Tort Claims Act (OTCA), notwithstanding representative's understanding that driver sought recovery for property damages only. Driver sought reimbursement for damage to her car based on accident involving a school employee who was acting in the course of employment, insurance representative referred to driver as "claimant" in the closing report, and back of the check that representative sent to driver stated that, by negotiating the check, driver released school from all claims except a personal-injury claim.

INVERSE CONDEMNATION - TENNESSEE

Bobo v. City of Jackson

Court of Appeals of Tennessee, at Jackson - December 4, 2015 - Slip Copy - 2015 WL 7890526

Landowner brought inverse condemnation action against city after home on landowner's property was demolished. The Circuit Court dismissed action as time-barred. Landowner appealed.

The Court of Appeals held that:

- Landowner, who acquired property during pendency of demolition proceeding, was never made party to such proceeding, and therefore accrual of limitations on inverse condemnation claim could not have been triggered by landowner's purported party status in demolition proceeding, but
- Landowner had constructive knowledge of impending demolition of home at time landowner acquired property, triggering accrual of limitations on inverse condemnation claim.

BONDS - UTAH

USAA Mutual Funds Trust v. Jordanelle Special Service District

United States District Court, D. Utah - December 9, 2015 - Slip Copy - 2015 WL 8489959

In 2005, the Wasatch County Council created the "Jordanelle Special Service District Special Improvement District No. 2005-2" (JSSD) for the purpose of financing water and sewer improvements to benefit certain properties within the Assessment Area. The resolution contemplated that the bonds financing the improvements would be repaid with revenue from special assessments to be levied against properties to be improved.

In 2009, JSSD adopted an Assessment Ordinance to levy assessments on properties located within the Assessment Area. The Assessment Ordinance imposed a lien against all the assessed properties within the Assessment Area, subjecting the properties to foreclosure by JSSD.

JSSD subsequently issued three series of Special Assessment Bonds (the "Bonds") with an aggregate principal amount of $40,850,000. USAA Mutual Funds Trust (the "Bondholders") purchased the Bonds.

Ultimately, certain property owners in the Assessment Area failed to make assessment payments. Those properties were foreclosed by JSSD and JSSD took title to those properties. JSSD attempted to transfer the foreclosed properties to the Bondholders in full satisfaction of its obligations under the Indenture, giving rise to Bondholders' breach of contract claim against JSSD. In addition, the Bondholders alleged that JSSD had failed to pay all delinquent and current assessments on those properties. Bondholders further alleged that JSSD breached its representations and covenants in the Indenture by misusing the bond proceeds and assessment funds.

Bondholders brought claims against JSSD and Wasatch County for breach of contract, breach of the covenant of good faith and fair dealing, unjust enrichment, constructive trust, appointment of a receiver, accounting, and for declaratory judgment. JSSD and Wasatch County moved to dismiss.

The District Court held that:

- Wasatch County was immune from suit under Utah state law, as the Bonds were clearly limited obligations of JSSD (also rejecting Bondholders' alter ego claims).
- JSSD's purported attempt to transfer the foreclosed properties absent the direction of Bondholders constituted a breach of the Indenture, as Bondholders had the sole right under the Indenture to elect to direct JSSD to transfer ownership of the foreclosed properties. Absent such direction, JSSD was required to pay all assessments on the properties so long as JSSD retained ownership of the property.
- Bondholders had sufficiently pled their allegations of mismanagement of the bond proceeds to survive JSSD's motion to dismiss Bondholders' breach of contract claim.
- JSSD's failure to repurchase the bonds tendered by Bondholders – as provided for in the Indenture – constituted an Event of Default under the Indenture.
- Bondholders had sufficiently plead their claim for Breach of the Implied Covenant of Good Faith and Fair Dealing, as there existed plausible evidence that JSSD's actions had devalued the properties serving as Bondholders' collateral.
- Bondholders' equitable claims of Unjust Enrichment and Constructive Trust (arising from assessments received by JSSD from properties located outside the Assessment Area) were covered by the Indenture and thus would be dismissed.
- Bondholders cause of action seeking appointment of a receiver would be dismissed, with the understanding that Bondholders could subsequently seek the appointment of a receiver as a remedy.
- Bondholders cause of action seeking an accounting would be dismissed, with the understanding that the Bondholders could subsequently seek an accounting as a remedy.
- Bondholders lacked standing to seek a declaration that the water interest exactions imposed by JSSD on the assessed properties were excessive and, therefore, violated state and federal law.

KITCHEN KNIVES - WASHINGTON

City of Seattle v. Evans

Supreme Court of Washington, En Banc - December 31, 2015 - P.3d - 2015 WL 9587541

Defendant was convicted in the trial court of unlawful use of weapons. Defendant appealed. The Superior Court affirmed. Defendant petitioned for discretionary review, which was granted. The Court of Appeals affirmed. Defendant petitioned for review, which was granted.

The Supreme Court of Washington held that:

- A fixed-blade paring knife was not a protected arm under the State Constitution;
- As a matter of first impression, the right to bear arms protected instruments that were designed as weapons traditionally or commonly used by law abiding citizens for self-defense; and
- Knife was not a protected arm under the Federal Constitution, and thus, city ordinance prohibiting the unlawful use of weapons premised on the possession of such knife was not unconstitutional as applied to defendant.

SCHOOL FINANCE - ALASKA

State v. Ketchikan Gateway Borough

Supreme Court of Alaska - January 8, 2016 - P.3d - 2016 WL 106156

After making its contribution to fund local school district, borough brought suit against state asking the superior court to declare the required local contribution unconstitutional, to enjoin the state from requiring the borough to comply with the statute, and, to direct the state to refund its protested $4.2 million payment. Both parties moved for summary judgment. The Superior Court partially granted borough's motion. State appealed and borough cross-appealed.

The Supreme Court of Alaska held that:

- As a matter of first impression, local school funding formula was not a state tax or license within meaning of state constitutional prohibition against dedicated taxes, and
- Required local contribution did not violate the appropriations clause or the governor's veto clause of the Alaska Constitution.

State's local school funding formula, requiring that a local government make a contribution to fund its local school district, was not a "state tax" or "license" within meaning of state constitutional prohibition against dedicated taxes. Minutes of the constitutional convention and the historical context of those proceedings suggested that the delegates intended that local communities and the State would share responsibility for their local schools.

State's local school funding formula, requiring that a local government make a contribution to fund its local school district, did not violate the appropriations clause or the governor's veto clause of the Alaska Constitution; plain language of both the appropriations and governor's veto clauses indicated that the clauses restrict the State's power after money enters the state treasury, not before.

Kramer Levin: Sorting Through the Options as Green Bonds Gain Popularity.

Global green bond issuance approached $40 billion in November, the busiest month for the environmentally minded fixed-income products to that point in 2015. This increase in activity pushed green bonds past the total amount from 2014, when issuers produced $36.59 billion worth of green bonds – the proceeds of which are used by public and private entities alike to fund investments with environmental benefits, such as to reduce carbon emissions or the construction of renewable energy infrastructure.

Although final figures for 2015 are not yet available, global rating agency Moody's expects the surge to continue through the end of the year, particularly following the United Nations Framework on Climate Change Conference that was held in Paris in December. Banks, companies and organizations as diverse as The World Bank, HSBC Holdings, GDF Suez and Southern Power have all completed green bond offerings, illustrating the bonds' popularity with a diverse set of issuers.

The bonds have also proved popular with investors, who continue to search out green assets for their portfolios. The New York Common Retirement Fund and Goldman Sachs recently formed a $2 billion fund to invest in low carbon emitters, part of an overall $3.4 trillion divestment from fossil fuels. In addition, Microsoft founder Bill Gates is leading an investor group – including Soros Fund Management chairman George Soros, Facebook CEO Mark Zuckerberg and Virgin Group founder Richard Branson – forming a $2 billion fund focused on clean energy investments. The Forum for Sustainable and Responsible Investment identified $6.6 trillion worth of AUM invested in sustainable projects in the U.S. in 2014, a 76% increase from 2012.

However, as a growing number of funds and other investors seek to add these bonds to their portfolios, a key question remains largely unanswered: What specifically qualifies as a green bond? Significant ambiguity exists as the category remains vaguely defined and without a universally recognized standard. As a result, some issuances may not necessarily be as "green" as others.

One benchmark that has emerged as a recognized measure of a green bond's level of authenticity is the International Capital Market Association's ("ICMA") Green Bond Principles. Created in 2014 and updated in 2015 in response to the rapidly developing market, the set of guidelines was developed in consultation with both investors and issuers. They have since gained the support of 55 of the world's biggest investors, bond issuers and intermediaries, including Bank of America Merrill Lynch, Citibank, Credit Agricole, JPMorgan Chase, Goldman Sachs and HSBC.

The principles include four primary components:

- **Use of Proceeds** – Green project categories should provide clear environmentally sustainable benefits, which, where feasible, will be quantified by the issuer.
- **Process for Project Evaluation and Selection** – The issuer should outline the decision-making process it follows to determine the eligibility of projects using green bond proceeds.
- **Management of Proceeds** – Bond proceeds should be appropriately tracked by the issuer using a formal process.
- **Reporting** – Issuers should provide, at least annually, a list of projects that bond proceeds have been allocated toward, including a description of the projects, the amounts disbursed and the expected environmentally sustainable impact (as confidentiality and/or competitive considerations allow).

Through these guidelines, ICMA is not attempting to act as a regulator or enforcement agent. Rather, the principles are intended to encourage transparency and disclosure and "promote integrity in the development of the green bond market" and increase environmental benefits "without any single authority or gate keeper."

The not-for-profit Climate Bonds Initiative also manages a certification scheme that assesses, prior to a bond issuance, whether a bond meets certain standards, as determined by an appointed third-party verifier. The group's standards board then confirms the certification once the bond has been issued and the proceeds have been allocated to recognized projects and assets.

Green bond principles align well with the increased origination of property assessed clean energy ("PACE") assessments and PACE bonds in the U.S. All proceeds of PACE assessments are allocated to the construction of renewable energy and energy efficiency improvements to real property. According to the federal Energy Information Administration, residential and commercial buildings accounted for 41% of total U.S. energy consumption in 2014, demonstrating the tremendous potential that exists for such energy efficiency programs to reduce demand. Since 2011, Renovate America's HERO program, in conjunction with several California municipal entities, has financed more than $1 billion worth of environmentally friendly home improvements, resulting in five PACE bond securitizations. The most recent HERO Funding Trust PACE bond securitization indicated that it satisfied the ICMA Green Bond Principles, establishing a significant precedent for energy efficiency projects.

Gaining designation as a green bond is highly valuable for the issuer, as it opens the door for funds and others with assets to invest in environmentally friendly products. It also benefits green-specific fund managers, as it demonstrates to investors that they're fulfilling their objective of investing in sustainable projects. With an estimated gap of $650 billion to $860 billion of investment required to combat climate change every single year between now and 2030, the prominence of green bonds – and the importance of properly identifying them – is likely to continue.

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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.
