
New Jersey's Pension Funding Push Is Collapsing.

The push to fully fund New Jersey government workers' pensions is in jeopardy amid a contentious clash between state employee unions and lawmakers that is leaving investors wondering what's next.

Lawmakers face a Monday deadline to authorize a ballot measure, which if approved by voters in November would require the state to pay what it owes to pension plans that have less than half of what's needed to cover obligations. Senate President Steve Sweeney, a Democrat and union official who sponsored the bill, said Thursday he won't put it up for a vote until he wins an agreement on transportation funding. He accused two unions of trying to illegally coerce the vote.

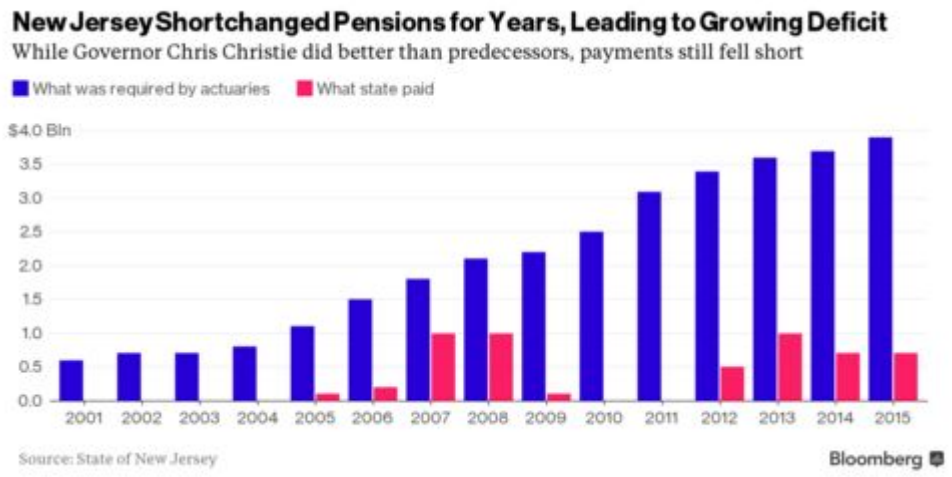
The constitutional amendment would put the state on track to make full actuarially required contributions by 2022 and cut the unfunded liability by $4.9 billion over three decades. The quarterly payments would strain the state's cash flow, Moody's Investors Service and S&P Global Ratings said. Republican Governor Chris Christie, whose signature isn't required, has called the measure a "road to ruin" that would mandate massive tax increases.

"Getting the funding up is going to be painful," said Tamara Lowin, director of research at Rye Brook, New York-based Belle Haven Investments, which oversees $5.3 billion of municipal debt. "Making it a forced, fixed expense and making it senior to appropriation debt is a credit weakness, despite the fact that it will eventually bring the state to fiscal stability."

New Jersey's borrowing costs, no matter the outcome on the pension measure by Monday, are likely to stay elevated. The Garden State pays the second-highest yield premium on 10-year bonds among 20 states surveyed by Bloomberg.

The state's mounting pension liabilities have pressured its borrowing costs and ratings, second lowest among U.S. states after Illinois. 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.

S&P in March changed its outlook on New Jersey's credit grade to negative from stable because of the pension tab and said that the ballot measure could result in limiting the state's flexibility during economic downturns.



The ballot measure had appeared on track to go before voters in November. But lawmakers and Christie failed to agree on a package to finance transportation projects through increasing the gas tax. Passing the measure to fully fund pensions could be risky depending on how the roadwork issue is resolved, Sweeney said.

That's raised the ire of public-employee unions. The New Jersey Education Association ran online ads Thursday featuring pictures of Sweeney that said "New Jersey Doesn't Need Another Politician Who Lies" and urged members to tell him not to break his promise.

On Wednesday, Sweeney called threats from the NJEA and the Fraternal Order of Police to withhold campaign contributions unless the Senate passes the pension legislation as clear-cut examples of extortion. He sent letters to the U.S. attorney and state attorney general asking for investigations of the NJEA warning as a violation of state and federal bribery laws.

Christie, who usually receives the brunt of the criticism from the public unions because of his push to restructure benefits, wants to cut the sales tax in exchange for the gas tax move. "Combining that with passage of the constitutional amendment to require quarterly pension payments would be a devastating blow to future budgets that would cripple the state's ability to fund much needed programs and services," Sweeney said in a statement Thursday.

The impasse from transportation to pensions is "frustrating" but par for the course for investors in New Jersey, said Dan Solender, head of municipals in Jersey City, New Jersey, for Lord Abbett & Co., which manages $20 billion of the debt.

"There's low expectation for major progress right now," he said.

Bloomberg Business

by Romy Varghese

August 5, 2016 — 2:00 AM PDT Updated on August 5, 2016 — 7:10 AM PDT

[Muni Money Market Funds Decimated by Rules Intended to Save Them.]

Municipal money market funds are hemorrhaging cash in advance of rules aimed at reducing the risk of runs on the pools.

Assets have plunged $64 billion since the beginning of the year to the lowest levels since 1999 as investors pulled money from tax-exempt funds in 25 of the last 30 weeks and shifted into ones that buy only government debt. These government-only funds are exempt from Securities and Exchange Commission rules effective in October that require floating net-asset values and impose liquidity fees and redemption suspensions under certain conditions.

The new regulations are adding more pain to funds that have been plagued by seven years of the Federal Reserve's zero interest-rate policy.

"They're in danger of going extinct, especially if you don't get a rate hike anytime in the next couple of years," said Peter Crane, president of Westborough, Massachusetts-based Crane Data LLC. "Municipal money market funds lobbied hard to get an exemption from the SEC's rules, but the SEC threw them under the bus."

Ryan White, a spokesman for the SEC, declined to comment.

In 2014, the SEC adopted new money-market rules after a four-year debate between the fund industry and regulators. The rules were aimed at preventing a repeat of the run on one money fund during the 2008 credit crisis. The $62.5 billion taxable Reserve Primary fund "broke the buck" because of losses on Lehman Brothers Holdings Inc. debt it held. The fund's move to reprice shares below $1 sowed panic among investors, who pulled $310 billion from money funds in a single week, helping freeze credit markets.

Under SEC rules taking effect Oct. 14, municipal-money funds whose investors are institutions, including municipalities such as Los Angeles, must abandon their $1 per-share value and allow their prices to float. Retail tax-exempt funds can keep a stable $1 per-share fixed price.

In addition, both institutional and retail funds may impose liquidity fees and suspend redemptions if weekly liquid assets fall below 30 percent of total assets. If weekly liquidity falls below 10 percent, money market funds must impose a 1 percent liquidity fee, unless the board decides it's not in the fund's best interest.

The changes don't apply to Treasury and government-only funds.

Liquidity Situation

The rules shocked muni money fund managers. The historical average for seven-day liquidity has been between 70 percent and 80 percent for decades, said Mary Jo Ochson, who oversees $14.7 billion in tax-exempt money funds at Pittsburgh-based Federated Investors Inc. The funds, which invest in highly rated short-term debt, remained liquid during the financial crisis, she said.

“You don’t have a liquidity situation in these funds, they’re extremely high quality,” Ochson said. In the financial crisis “they did exactly what a cash vehicle should do, but are being hit very hard.”

The SEC said tax-exempt money market funds have greater credit and liquidity risks than government funds.
Municipal money market funds managed $179.4 billion as of July 27, a 26 percent decline since the beginning of the year, according to Lipper U.S. Fund Flows data. In 2008 they had more than $500 billion.

Colleen Meehan, who manages about $6 billion of muni money market funds at Dreyfus Corp., said investors are balking at the prospect of liquidity fees and redemption gates. In June, UBS Asset Management said it would transfer money in its tax-exempt sweep funds to a government money fund.

Rate Environment

“It’s a lot easier for people to just move out of these other products into government-only funds until they address what their concerns are” from both a compliance and systems standpoint, Meehan said. The Fed’s zero-interest rate policy hasn’t helped.

Between Oct. 21, 2015, and March 2, 2016, the yield on short-term municipal bonds was 0.01 percent. The average yield over the past seven years is 0.15 percent.

“Tax exemptions don’t help you if there’s no income to tax,” said Crane.

In March, yields shot to 0.40 percentage points as investors sold shares to pay income tax bills, and new money didn’t flow back. It currently stands at 0.44 percentage points, the highest in more than seven years and 90 percent of 1-month Libor, the taxable-rate.

As a result, it costs more for states, cities, hospitals and other non-profits to borrow in the short-term market.

While fund outflows in the first quarter could be attributed to the rate environment, the money investors pulled since March has been a result of coming money market changes, said Ochson.

“We’re cheap as can be now,” she said. “Rates are attractive, liquidity is high, the funds couldn’t look any better if you tried, however you have money market regulations that have certain features that clients don’t like.”

Tax-exempt money funds won’t go the way of the dodo, an extinct flightless bird native to the island of Mauritius, but the industry will be much smaller, both Ochson and Meehan said. It will take time for investors to get more comfortable with floating net asset values and realize the probability that the funds having weekly liquid assets fall below 30 percent is very small.

“We’re going to be attractive to similar taxable products,” said Meehan. “And maybe someday we’ll be in a normal rate environment when it will really make sense.”

Bloomberg Business

by Martin Z Braun

August 3, 2016 — 2:00 AM PDT Updated on August 3, 2016 — 7:18 AM PDT

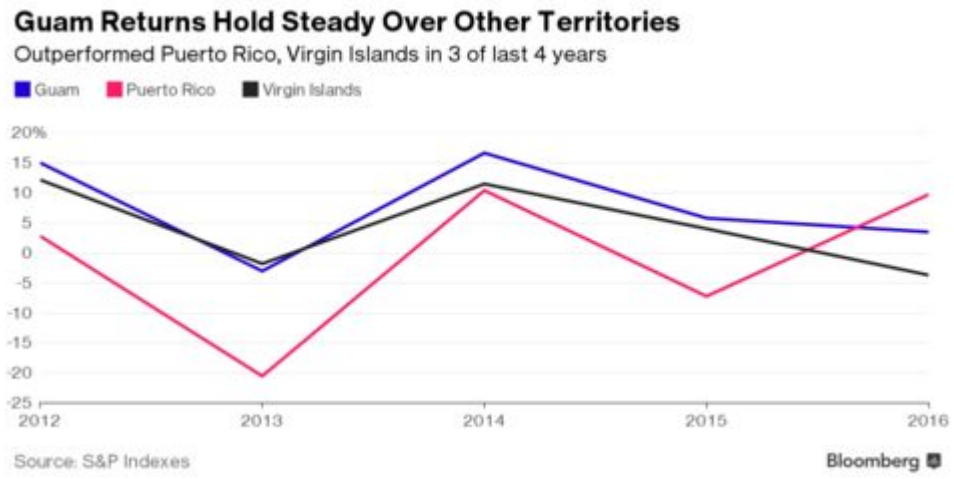
Guam Downplays Puerto Rico Risk Amid Return to Muni Market.

Guam, the U.S. territory in the Pacific more than 9,000 miles (14,480 kilometers) from Puerto Rico, is giving municipal bond investors stung by the Caribbean island's record default a reason to pause.

The 30-mile-long tropical island sold $237.9 million of limited-obligation bonds Thursday to refinance older, higher-yielding debt and to help fund improvements at the territory's public hospital. The securities, which are backed by revenue derived from federal income taxes collected on the island, carry an investment grade rating of BBB+ from S&P Global Ratings, five steps above the junk rating of BB- on Guam's general-obligations.

The limited-obligation debt, referred to as Section 30 bonds, stands to benefit from U.S. plans to expand its military operations on the island of about 165,000, which is the closest U.S. territory to potential hot spots in Asia. The U.S. is looking to double the size of its presence as it seeks to diminish its footprint on the Japanese island of Okinawa.

S&P kept its outlook on Guam unchanged following the passage of what's known as Promesa, the law enacted by President Barack Obama on June 30 to help Puerto Rico restructure its debt through a federal oversight board. The same approach could be extended to other territories beyond Puerto Rico based on the law, an idea that both Guam and the U.S. Virgin Islands have repeatedly rejected.



"It's the credit fundamentals that speak to the ability of a government to pay its debt in full and on time, not lingering or potential legislation," said S&P analyst Paul Dyson. "Relative to Puerto Rico, they're doing a lot better."

With an active military presence of about six thousand personnel already stationed on the island, Guam's financial resume reads a bit differently than its Caribbean territory counterparts of Puerto Rico and the U.S. Virgin Islands, both of which have been plagued with debt amid population declines and chronic budget deficits. Guam's $1.1 billion of debt, issued by various arms of the government, amounts to some $6,000 per person; far less than Puerto Rico's $20,000 and the Virgin

Islands' $23,000. Guam has posted eight consecutive years of economic growth through 2014, according to the Bureau of Economic Analysis, as well as an expanding population, which could increase even more as military personnel and their families spill over from Japan.

Guam's bonds maturing in 2039 have rallied over the past year, coming off of a peak yield of 4.15 percent in September. The 10-year maturity of the issue sold Thursday was priced to yield 2.43 percent, or 0.93 percentage point above benchmark debt, data compiled by Bloomberg show.

Territory officials met with investors in the U.S. ahead of the sale to quell concerns. Jay Rojas, administrator of the Guam Economic Development Authority, said that they were delivering the message that Guam's economic outlook is strong and just because Promesa passed, the Pacific territory shouldn't be viewed negatively.

"Guam's story is good," Rojas said. "We are unique, we are different, we are alive."

Talks of the military relocation started back in 2006, when territory officials estimated that the move could bring in as much as some 19,000 people between the Marines, their dependents, and other government workers. That projection has since been scaled back several times, with Rojas now estimating an increase of 7,000 to 9,000 by 2028 once the 13-year, $8.7 billion project is complete.

"We're not speculating," said Ted Chapman, another analyst for S&P. "The final impact and deadline is just potentially a moving target."

Bloomberg Business

by Molly Smith

August 4, 2016 — 2:00 AM PDT Updated on August 4, 2016 — 11:52 AM PDT

Chicago Bonds Gain as City Plans Tax Hike to Fix Biggest Pension.

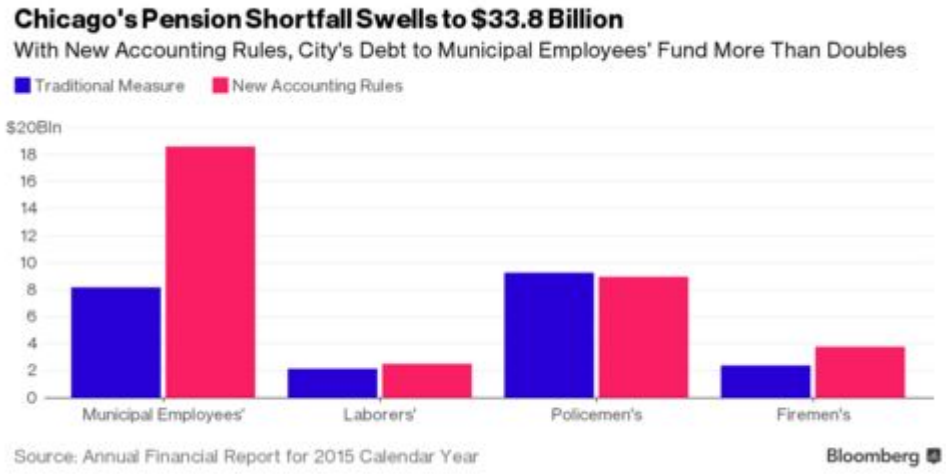
Chicago debt rallied after Mayor Rahm Emanuel released his plan to increase water and sewer levies to shore up the retirement plan for municipal workers, a move to avert insolvency for the city's largest pension fund.

Without the fix, the fund that serves more than 70,000 workers and retirees is on track to run out of money within a decade. Less than a day after Emanuel laid out the plan at Chicago's investor conference, the municipal market applauded the proposal. The city's most-actively traded debt traded at 87.98 cents on the dollar Thursday, the highest average price since April 2015, according to data compiled by Bloomberg. The taxable debt that matures in 2042 yields 6.4 percent.

"This is exactly the type of plan we were looking for," said Ty Schoback, a senior analyst at Columbia Threadneedle Investments, which holds Chicago debt among its $26 billion of municipal securities. "If the tax is successfully ratified by City Council, it will be the last heavy political lift to get all the city's pensions on track to full funding over the long run."

Chicago hasn't paid enough to pensions for years. Over the last decade alone, the city shorted the municipal fund by more than $4 billion, according to an annual actuarial report. The fund has to liquidate assets to pay out benefits. Combined, the police, fire, municipal and laborers' pensions face $34 billion of unfunded liabilities. The strain is weighing on Chicago's ability to offer services to

residents. More than 35 cents of every dollar of the budget goes to pay debt and pensions, according to Moody's Investors Service, which slashed Chicago's rating to junk last year because of the pension crisis.



To rebound to investment grade, Moody's wants Chicago to reverse the trajectory of its pension problem. The city would need to raise about $1 billion a year to see a reduction in retirement costs the following year, according to the credit rater. Moody's is reviewing the municipal plan, David Jacobson, a spokesman, said in an e-mail on Wednesday.

In October, Emanuel pushed through a record property tax hike to fund the police and fire retirement funds. In May, he released a plan, that's still subject to state approval, to get the laborers' pension to 90 percent funded by 2057.

Under Emanuel's proposal to investors on Wednesday, the city would increase its contributions to the municipal fund by no less than 30 percent over five years. New employees would have to pay 3 percent more to their retirement fund, and employees hired after January 2011 would have the option to retire earlier, but would pay more to their pensions.

While this is a very positive action, there's still work that needs to be done, said Paul Mansour, head of municipal research at Conning, which oversees $11 billion of state and local debt, including Chicago securities.

"It's a very dynamic challenge that needs to be adjusted or looked at annually based on investment returns, longevity risks, and any other plan changes," Mansour said. "It's encouraging that they're stepping up and raising revenue and addressing it. Will it be enough? Probably not. Until you meaningfully reduce the rate of growth in benefits, this is going to be a material credit concern for many years to come."

The City Council needs to approve the tax hike, and the state needs to authorize the change in city and employee contributions, but Emanuel expressed confidence that the plan will succeed.

"It's good to see some action taken," said Dan Solender, head of municipals in Jersey City, New Jersey, for Lord Abbett & Co., which manages $20 billion of the debt. "It's been a long wait."

Bloomberg Business

by Elizabeth Campbell

August 4, 2016 — 10:30 AM PDT

Bloomberg Brief Weekly Video - 08/04

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

Watch the video.

August 4, 2016

Municipal Securities Rulemaking Board Names Woodell Chair.

The Municipal Securities Rulemaking Board named former S&P Global Inc. executive Colleen Woodell as chair, effective Oct. 1.

Woodell, who served as chief credit officer of global corporate and government ratings succeeds Nat Singer, the senior managing director at Swap Financial Group. Arthur Miller, managing director at Goldman Sachs Group Inc., will serve as vice chair, the $3.7 trillion municipal market's self-regulator said in a statement. The terms of the chair and vice chair are one year.

New board members include J. Anthony Beard, the chief financial officer of Atlanta; Robert Clarke Brown, treasurer of Case Western Reserve University; Julia H. Cooper, director of finance for San Jose; Jerry W. Ford, president of Ford & Associates Inc.; Kemp J. Lewis, a managing director of Raymond James & Associates and Edward J. Sisk, a managing director of Bank of America Corp.'s Merrill Lynch unit.

The board positions have been extended to four years from three, an action approved by the Securities and Exchange Commission — which oversees the MSRB — earlier this year in an attempt to smooth transitions between members.

The board, comprised of 11 independent public members and 10 members from firms regulated by the MSRB, sets policies and oversees the operations of the organization.

Bloomberg Business

by Molly Smith

August 2, 2016 — 10:19 AM PDT

Preston Hollow Hires Municipal-Bond Team From Mesirow Financial.

Preston Hollow Capital, a Dallas-based boutique firm specializing in economic development and

affordable housing projects, hired three employees from Mesirow Financial Inc. to open a capital-markets group in San Francisco.

Preston Hollow, formed in 2014, hired Curtis Erickson, Peter Bianchini and Richard Akulich. Erickson, Mesirow's former head of high-yield municipal trading, will handle loan structuring, pricing and secondary-market trading. Bianchini and Akulich will manage credit research.

"Curtis is one of the most respected professionals in the municipal capital markets, and he brings an accomplished and well-known team in Peter and Richard," Jim Thompson, Preston Hollow's chairman and chief executive officer, said in a news release. "When coupled with PHC's recent increase in its permanent equity capital to $625 million, our new capital markets group will enable us to provide more efficient pricing and execution for the benefit of borrowers."

Preston Hollow has invested $30 million in a residential and commercial project developed by Related Cos. in Tuxedo, New York, about 40 miles northwest of New York City, according to its website. The firm also purchased $55 million in bonds issued by a San Antonio, Texas-based agency to redevelop a former Air Force base into a mixed-use community.

Before Mesirow, Erickson, 46, traded municipal bonds at JPMorgan Chase & Co. and Bear Stearns Cos. Bianchini, 53, served as Mesirow's senior municipal strategist, and before that was XL Capital Assurance's head of West Coast origination. He also worked as a credit analyst at S&P Global Inc. for 14 years.

Akulich, 35, a specialist in the tobacco-bond sector, served as managing director at Mesirow, and before that spent five years at JPMorgan.

Bloomberg Business

by Martin Z Braun

August 3, 2016 — 11:20 AM PDT

Split Coupons Make Municipalities Pay Up in Low-Rate Environment.

State and local issuers are resorting to betting on the future direction of interest rates to lure municipal-bond investors balking at tax-exempt yields not far from record lows.

When Aurora, Colorado, sold $437 million of water debt last month, its longest bond came with four different interest coupons — and four different yields, one of which exceeded the market level on similar securities that day. That means the city will pay four different interest rates on the debt issued for 30 years.

"What we're hearing from our investment bankers is that with rates so low, some investors are starting to balk," said Mike Shannon, who oversees Aurora's debt and investments. "We were willing to meet the needs of the investors to get these bonds sold, but if you look out at the long end, it gets pretty pricey."

Though it may be the best time in a generation to refinance, it doesn't come without costs. In some cases, despite a perceived shortage of munis, market rates are so low investors don't want bonds, forcing issuers to increase yields that can add millions of dollars in debt service. In a recent report,

Samuel A. Ramirez & Co. advised investors they could earn more with split coupons, where lower coupons yield more than higher coupons.

‘‘It’s like a hidden yield,” said Joy Howard, a financial adviser in St. Louis. “It’s great for the investor, but terrible for the issuer.”

The flat yield curve gives investors less incentive to buy bigger coupons because they don’t get enough compensation for extra risk. Since the first of the year, the slope — or spread between yields of short and long maturities — has flattened from 214 basis points to as little as 164 basis points, or half a percentage point, the lowest since early 2008. In early 2014, it was nearly four percentage points.

With interest rates about as low as they can go, investors realize they may wind up holding longer bonds to maturity after rates increase. Bill Gross, who built Pacific Investment Management Co. into the world’s largest manager of bond funds and is now at Janus Capital Group Inc., warned this week that any reversal of the rally could be painful.

“You’re not getting paid to go out long,” said Peter Block, managing director of credit strategy with Ramirez. “Why buy a 30-year bond when you can get paid nearly as much for a 12-year bond?”

The higher price for bonds with larger coupons is driving out individual investors, making it harder to sell some securities, Matt Posner, principal with the Court Street Group, a New York research firm, said in a report last month. New York’s Metropolitan Transportation Authority split coupons in July.

“We’re seeing municipal-bond yields lower then they’ve ever been before, so most issuers are locking in to take advantage,” Posner said in an interview. “If they need to split some coupons and spend more, they’re willing to do that.”

Patrick McCoy, the authority’s finance director, said the agency adjusts coupons in response to market conditions to get the lowest cost.

“We are seeing investors articulate frustration with the lower absolute yields,” said McCoy.

In February, the Los Angles Unified School District split its 2040 maturity into two coupons, with one paying 4 percent and the other 5 percent, when it borrowed about $1.2 billion. The bond with the 4 percent coupon yielded 3.25 percent, more than a third of percentage point more than the higher-coupon security.

Splitting the coupons “was an effective technique that the district took advantage of to maximize” demand, district spokesman Gayle Pollard-Terry said in an e-mail. That let the district cut costs that would have come with only a single coupon. The actual yield that will be paid will depend on how long bonds are outstanding and whether they’re refinanced.

“A bond with a higher coupon is more likely to be called than a bond with a lower coupon,” the district said. “The reverse is true for a lower-coupon bond.”

Aurora will monitor rates as its bonds mature and refinance the more expensive ones first, said Shannon. The cost of some of its bonds will rise after the 10-year call date, while the cost of others will fall. He said the unusual structure with four coupons, including one that steps up over time, was dictated by banks led by Morgan Stanley in handling the debt sale, who he said told him four coupons were necessary to sell the bonds. Morgan Stanley declined to comment through spokesman Mark Lake.

One coupon increases in steps from 2 percent in early years to 5 percent by the end of its 30-year term. One investor was willing to buy big chunks of the bonds in two maturities if the coupons were lowered. The 2.95 percent yield on the 3 percent bond maturating in 2046 was more than half a percent more than the yield on the 5 percent coupon.

“We had to increase the rates to bring in the investor,” said Shannon. “But we think we will be able to take advantage of this structure and pay some of it off early. The question is whether the bond is going to stay out 10 years, 20 years or 30 years?”

Bloomberg Business

by Darrell Preston

August 4, 2016 — 2:00 AM PDT Updated on August 4, 2016 — 7:31 AM PDT

BDA Submits Comment Letter to the SEC on FINRA’s TRACE Academic Data Set Proposed Rule.

BDA submitted a comment letter to the SEC on FINRA’s rule proposal to create a new TRACE data set for institutions of higher education.

BDA’s letter opposes the creation of the new data set because it would create unnecessary business risks for broker-dealers. BDA requests that FINRA re-propose the rule proposal and have dealers grouped anonymously by size as opposed to individually.

New Academic Data Set: FINRA filed an updated proposal to create a TRACE Academic Data set exclusively available for research purposes and available only to institutions of higher education.

The proposal still includes an anonymous dealer identifier that will allow academics to research TRACE-reported transactions per dealer. However, based on BDA’s comment letter and other industry comment letters the proposal has been amended to include the following features designed to protect dealer identities:

- **36 Month Delay:** FINRA’s 2015 proposal included transaction data that was aged by 24 months. The updated proposal includes a 36-month delay.
- **Unique Dealer Identifiers per Data Request:** Based on a BDA request, each institution that requests data will receive different dealer identifiers for each data set.

BDA’s August 2015 letter to FINRA (available here) expresses BDA’s opposition to the 2015 version of the academic data set because it would include a dealer specific identifier.

BDA Submits Comment Letter to the SEC on FINRA’s CMO Reporting and Dissemination Proposed Rule.

Today, BDA submitted a comment letter to the SEC on FINRA’s rule proposal to require a new reporting and dissemination regime for CMOs.

BDA's letter expresses appreciation for the amendments that FINRA has proposed to its February 2015 request for comment. However, BDA argues that FINRA's proposed $1 million threshold for real-time dissemination will create a bifurcated market in which small-to-medium sized dealers and retail customers will be disadvantaged. Therefore, BDA urges FINRA to file an amendment to eliminate the $1 million threshold.

Proposed TRACE Reporting and Dissemination for CMOs:

- **60-Minute Trade Reporting Requirement:** FINRA proposes a 60-minute reporting requirement for CMO transactions.
- **Weekly or Monthly Dissemination for Trades Greater than $1 million:** CMO trades greater than $1 million in principal size for securities that are traded at least five times by at least 2 MPIDs over a given week or month would be subject to weekly and/or monthly reporting.
- **Real-time Dissemination for Trades less than $1 million:** CMO trades of less than $1 million would be required to be reported to TRACE within 60 minutes for immediate dissemination.
- **Pre-issuance CMO Transactions:** FINRA proposes to require TRACE reporting for transactions that occur prior to issuance to occur no later than the first settlement date for the security.

BDA's April 2015 comment letter to FINRA on TRACE reporting and dissemination for securitized products, including CMOs can be read here.

IRS FY2017 Update: Effect of Sequestration on State & Local Government Filers of Form 8038-CP.

Pursuant to the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, refund payments to certain state and local government filers claiming refundable credits under section 6431 of the Internal Revenue Code applicable to certain qualified bonds are subject to sequestration. This means that refund payments processed on or after October 1, 2016 and on or before September 30, 2017 will be reduced by the fiscal year 2017 sequestration rate of 6.9 percent, irrespective of when the amounts claimed by an issuer on any Form 8038-CP was filed with the IRS. The sequestration reduction rate will be applied unless and until a law is enacted that cancels or otherwise impacts the sequester, at which time the sequestration reduction rate is subject to change.

These reductions apply to Build America Bonds, Qualified School Construction Bonds, Qualified Zone Academy Bonds, New Clean Renewable Energy Bonds, and Qualified Energy Conservation Bonds for which the issuer elected to receive a direct credit subsidy pursuant to section 6431. Issuers should complete Form 8038-CP in the manner provided by the Form 8038-CP Instructions, and affected issuers will be notified through correspondence that a portion of their requested payment was subject to the sequester reduction. Issuers should use this correspondence to identify the portion(s) of amounts requested that were subject to the sequester reduction.

Issuers with any questions about the status of refunds claimed on Form 8038-CP, including any sequester reduction, should contact IRS Customer Account Services at 1-877-829-5500.

Click here to see the FY2013 article.
Click here to see the FY2014 article.
Click here to see the FY2015 article.
Click here to see the FY2016 article.

The New Thorn in the Sides of Big Banks.

Lawyer Joel Liberson is leading the charge in Miami's lawsuit against Bank of America and Wells Fargo, blaming them for the city's economic troubles

Joel Liberson's mortgage lawsuits against Bank of America Corp. and Wells Fargo & Co. follow a now-familiar template: accuse big banks of targeting minority borrowers with unfair loans that fed a housing crisis.

What is unusual is his client. Mr. Liberson, a 52-year-old lawyer who has devoted much of his career to defending apartment dwellers from eviction, is suing on behalf of the city of Miami. In the lawsuits, Miami blames the banks for widespread declines in property values and tax revenue, and increased expenses for police, fire and other services, due to the burdens of mass foreclosures.

The banks, which already shelled out tens of billions of dollars for mortgage-related settlements with federal and state governments since the financial crisis, have challenged whether the city has the right to sue. The Supreme Court in June agreed to take up the question and is likely to hear oral arguments in the fall and will decide by July 2017.

The court's decision potentially could reshape the breadth and use of the Fair Housing Act, a landmark civil-rights statute that forbids discrimination in real-estate lending, rental property and other areas of the housing industry.

The banks said Miami is stretching the bounds of a law meant to integrate neighborhoods, not fill tax coffers. They also dispute that Miami has proved its economic woes are a direct result of the banks' actions.

In a legal filing, Wells Fargo said its lending practices "did not cause the City's financial difficulties any more than they caused the City to thrive in the years leading up to the financial crisis." Bank of America expressed a similar sentiment in its filings.

The banks believe a Supreme Court decision siding with Miami will leave them vulnerable to a torrent of mortgage litigation from anyone who said they were harmed by the housing bubble. Lobbyists warn that banks might curtail lending in urban neighborhoods because of the legal risk.

The city and its attorney disagree. The Supreme Court has traditionally been lenient in interpreting the Fair Housing Act, according to academics who study the issue. Last year, for example, it ruled such lawsuits can be brought without proof of intentional bias.

In Mr. Liberson's view, a ruling in the banks' favor would limit an important weapon borrowers have wielded in housing lawsuits for decades, leaving them more vulnerable to questionable loans.

"What happens to a city when houses go vacant?" Mr. Liberson said. "Everybody suffers."

Mr. Liberson has spent the past several years encouraging cash-strapped cities to sue the banks under the Fair Housing Act. He has enlisted help from bigger plaintiffs' firms and big-name legal talent, including Erwin Chemerinsky, dean of the law school at the University of California, Irvine, and author of a popular textbook on constitutional law. But Mr. Liberson often works alone, hunched over a smudged Lenovo ThinkPad laptop at coffee shops and public libraries, manning the firm he named Trial & Appellate Resources.

Mr. Liberson, who lives in New York, is overseeing similar lawsuits on behalf of Los Angeles, Oakland, Calif., and Miami Gardens, Fla.

A ruling in Miami's favor could recharge those suits, which are pending. It could do the same for similar lawsuits by Atlanta-area counties and Cook County in Illinois, both spearheaded by a small firm in Georgia. Some municipal officials believe their cities could be in line for tens of millions of dollars or more, with a cut for Mr. Liberson, if they eventually win. A ruling against Mr. Liberson could cripple those claims.

"If the Supreme Court finds standing for the city, then you'll see a lot more of these lawsuits," said George Rutherglen, a professor at the University of Virginia School of Law. "And if not, then the court is retrenching on a very broad approach to litigation under the Fair Housing Act."

The legal process has taken longer than Mr. Liberson expected, but he said the strategy has worked before. Wells Fargo in 2012 resolved charges of race-based housing discrimination brought by the city of Baltimore. That agreement was wrapped into a larger settlement by the Justice Department.

It was while that case was pending that Mr. Liberson started approaching other cities to see if they were interested in doing the same. The sooner you file, the sooner you can get your money, he told them, with reassurances that the banks tended to settle such lawsuits and resolve them quickly.

Francis Suarez, a Miami city commissioner, remembers when Mr. Liberson came to him around early 2013 with an offer to work on a contingency basis. "It was kind of a no-brainer," Mr. Suarez said. "We have the opportunity to vindicate the city for its residents, and we don't have to front the money."

Mr. Liberson declined to say how the cases were being financed.

Miami also is suing Citigroup Inc. and J.P. Morgan Chase & Co., although those cases aren't before the Supreme Court. Citigroup and J.P. Morgan have denied Miami's accusations.

Mr. Suarez, a real-estate lawyer who is running for mayor, said that if the lawsuits are successful, he would like to use the money to pay for police, fire, park and library services, and affordable housing, among others.

Even if Miami wins in the Supreme Court, a payout isn't guaranteed. The banks have previously argued they didn't make racially discriminatory loans, and that the statute of limitations for filing such claims has expired. Those arguments likely would come up again in district court.

And banks are fighting back more against housing-crisis cases. Bank of America recently won an appeal to overturn Justice Department accusations and a jury finding of mortgage-securities fraud.

THE WALL STREET JOURNAL

By CHRISTINA REXRODE

Aug. 2, 2016 5:25 p.m. ET

Write to Christina Rexrode at christina.rexrode@wsj.com

Puerto Rico Bondholders Devastated, but See Hope in U.S. Plan.

SAN JUAN, Puerto Rico — Attorney Santiago Mari sighed as he punched numbers into his calculator and saw the result.

The value of his retirement account has dropped 75 percent due to the collapse in Puerto Rican bonds that make up much of his personal portfolio, he said. He's long abandoned plans for an early retirement. And he's far from alone.

"You have a whole lot of Puerto Ricans who invested millions of dollars in bonds that they're unable to sell," said Puerto Rico financial adviser Jose Ivan Acosta.

While hedge funds hold much of Puerto Rico's troubled debt, individual investors own an estimated $15 billion in bonds — 22 percent of the island's overall $68 billion public debt. Many eagerly bought Puerto Rico bonds because they are exempt from state, local and federal taxes and were widely considered safe.

"They made it sound like it was the last remaining Coca Cola in a desert, that it was safe because it was backed by the government," Mari said.

That changed as the U.S. territory's government and its public utilities piled on debt to cover deficits during a 10-year economic slump. New taxes and higher utility rates pushed businesses to close and the tax base dwindled as more than 200,000 Puerto Ricans left for the U.S. mainland. With falling revenue, the government this year imposed a debt moratorium after a series of defaults on bond payments that began last year.

Prices for Puerto Rican bonds have plummeted, devastating many investors in Puerto Rico and on the mainland. Some have had to delay retirement, find alternative sources for their children's college funds or rejoin the workforce.

"My dream was to retire at 55 years old, and I worked hard for that," said 57-year-old Eduardo Rodriguez, a former maintenance worker who now works in a supermarket. "What can I do? They say men don't cry, but we do."

Many hold out hope that a new federal aid package signed by President Barack Obama in June will at least limit their losses. The measure creates a federal control board to oversee Puerto Rico's finances, supervise some debt restructuring and negotiate with creditors. Puerto Rico bonds rallied by some 20 percent that day and remained at that level even after the governor announced a moratorium on general obligation debt, Acosta said.

The news has encouraged Mari who, unlike some of his friends, has retained his bonds.

"I still have hope within my despair," Mari said. "The solution has to come from the outside. If it's left in local hands, they will plunder what little remains."

While it's too early to know what changes the control board will implement, a restructuring process of any kind would be positive, Acosta said.

"Honestly, anything is better than what we have right now," he said.

Some analysts cautioned about reading too much into the bond price rally, however.

"It was a momentary, reflex reaction as opposed to a market-moving event," said Jim Colby, who

runs the $2.2 billion VanEck Vectors High Yield Municipal Index, an exchange-traded fund in New York.

He said Puerto Rico general obligation bonds, which many consider Puerto Rico's safest, are trading at around 65 cents on the dollar, and that future prices might be close to that. But "there's really no telling right now what kind of haircut, what kind of valuation is going to be given to any of the bonds of any of the series that are currently outstanding but not paying their interest.

"It's going to be a long time before we really have a clear picture," he added.

Of the estimated $15 billion debt held by Puerto Rico investors, $3.8 billion of the original $7 billion issued belongs to the Government Development Bank, which is operating under a state of emergency, and another $1 billion to the Public Finance Corporation, which was the first government agency to default. Only a small portion represents general obligation debt that is expected to receive top priority once the anticipated restructuring begins.

Raymond Watson, a former director of Puerto Rico's Highway Transportation Authority, bought general obligation debt because he believed it was the most secure. The 80-year-old said he was aghast when the governor last month declared a moratorium on that debt even though it is supposedly backed by the island's constitution.

"That is almost as sacred as the Bible," he said, adding that he and his wife face high medical bills and worry about being forced to declare bankruptcy. "We are not indulging in any kind of luxuries. We have cut back greatly on eating out, even if it's at Burger King. We used to take a cruise almost yearly. None of that. We are now prisoners in our own home."

Watson holds out hope that the federal aid measures will help.

At a minimum, they could repair Puerto Rico's credibility by stabilizing the island's finances and providing long-overdue transparency, which in turn could help it re-enter the market and allow people to recuperate some of their investment, Acosta said.

That's an encouraging prospect for Mari, who said some bonds he bought at $10 are now worth $1 or $2.

"I am holding on until the end," he said. "The uncertainty is killing me."

By THE ASSOCIATED PRESS

AUG. 1, 2016, 11:22 A.M. E.D.T.

Chicago Mayor's Plan to Fix Municipal Pension Fund Seeks Water, Sewer Tax.

CHICAGO — Chicago Mayor Rahm Emanuel unveiled a plan on Wednesday that he called "an honest approach" to save the city's biggest retirement system from insolvency with a water and sewer tax to be phased in over five years starting in 2017.

The municipal retirement system, which covers about 71,000 current and former city workers, is projected to run out of money within 10 years as it sinks under an unfunded liability of $18.6 billion.

The new tax would generate $56 million in its first year and increase to $239 million annually by

2020, the mayor's office said.

"Today, one of the big question marks that hung around the city because of past decisions – or past decisions that were not made – we have addressed," Emanuel told an investor conference in Chicago, adding that the city has now identified specific revenue streams to support each of its four retirement systems.

The plan requires city council approval, which Emanuel said he intends to seek in September. Chicago then needs the Illinois state legislature to approve a five-year phase-in of the city's contribution to the pension system to boost the funded level to 90 percent by 2057 from the current 32.9 percent.

The tax would follow an increase in water and sewer rates between 2012 and 2015 to generate money to repair and replace aging infrastructure. Revenue rose from $644.1 million in 2011 to $1.125 billion in 2015.

Pension contributions by new municipal workers would increase and not all affected unions have signed on to the plan. Anders Lindall, a spokesman for the American Federation of State, County and Municipal Employees Council 31, said the plan is under review.

The rescue plan for the municipal system follows previous action by the city to boost funding for police and fire pensions through a phased-in $543 million property tax increase, and its laborers' system through a hike in a telephone surcharge.

Chicago's big pension burden was a driving factor in the downgrade of the city's credit rating last year to the "junk" level of 'Ba1′ by Moody's Investors Service.

But in March, the task of fixing the city's pensions became harder after the Illinois Supreme Court threw out a 2014 state law that reduced benefits and increased city and worker contributions to the municipal and laborers' funds.

By REUTERS

AUG. 3, 2016, 4:03 P.M. E.D.T.

(Editing by Chris Reese, G Crosse)

GASB Video: Certain Asset Retirement Obligations Project.

July 2016 — GASB Project Manager Jialan Su talks about the certain asset retirement obligations project, what the Board heard during due process, and what's coming up.

Watch the video.

MSRB Releases Muni Market Stats for 2016, Q2.

View the stats.

- A Summary of the Final Regulations on Non-Issue Price Arbitrage Restrictions: Squire Patton Boggs
- U.S. Muni Regulator Scraps Pursuit of Bank Loan Disclosure Rule.
- Social Finance Publishes New Report: Social Impact Bonds: The Early Years.
- Why the SEC Says it Can't Fight a Challenge to a Pay-To-Play Rule.
- Why the MSRB is Shortening its Dealer Closeout Timeframes.
- S&P: U.S. State And Local Government Credit Conditions Outlook: Economic Growth Outlook Dims Amid Rising Global Uncertainty.
- Think Tank Warns of Downsides to P3 Noncompete Clauses.
- The Municipal Bond Industry Responds to Tax Foundation's Recent Paper.
- NCPPP Launches Fall Schedule for P3 Bootcamp.
- Manufacturing Finance: Bonds & Tax Increment Supporting the Industrial Renaissance.
- And finally, BCB's Department of Pyrrhic Victories is proud to bring you *Bay Point Properties, Inc. v. Mississippi Transp. Com'n,* in which landowners were awarded the encumbered value of their property burdened by an MTC easement. Nice win. The value of that easement? $500. Cool. Landowner's legal costs? $680,000. We certainly don't claim to be economists. Nor mathematicians. Heck, I wouldn't trust us to do basic arithmetic. That being said, anyone else picking up a vague sense that there may be something – I don't know – just a little bit off with those numbers?

EMINENT DOMAIN - CALIFORNIA

Property Reserve, Inc. v. Superior Court

Supreme Court of California - July 21, 2016 - P.3d - 2016 WL 3924221 - 16 Cal. Daily Op. Serv. 7780

State petitioned for orders to enter private properties and conduct environmental and geological studies of their suitability for construction of water tunnel.

The Superior Court granted the petition as to the environmental studies but denied it as to the geological studies.

State and landowners appealed, and landowners petitioned for writs of mandate, prohibition, or other appropriate relief. The Court of Appeal denied the petitions, but the Supreme Court granted review and directed the Court of Appeal to issue an order to show cause.

The Court of Appeal affirmed in part, reversed in part, and granted petitions. State petitioned for review. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that:

- Precondemnation entry and testing statutes authorized the Department of Water Resources to petition to enter privately owned land to conduct environmental studies and geological activities such as drilling test holes;
- Procedure established by the precondemnation entry and testing statutes is reasonable, certain, and adequate under the federal takings clause;
- Environmental studies pursuant to precondemnation entry and testing procedure would not violate California takings clause;

- Supreme Court would reform precondemnation entry and testing scheme so as to afford a jury trial on damages;
- Geological activities such as drilling test holes pursuant to precondemnation entry and testing procedure would not violate California takings clause; and
- Geological activities such as drilling test holes would not violate federal takings clause.

The precondemnation entry and testing statutes authorized the Department of Water Resources to petition to enter privately owned land to conduct both environmental studies and geological activities such as drilling test holes, for a project to investigate the feasibility of constructing a new tunnel or canal to deliver fresh water, even if the Department's activities would amount to more than "innocuous" entries and "superficial" examinations.

Most typically, although damage to property adjacent to a public improvement caused by the construction or operation of the improvement constitutes a compensable taking or damaging of property for purposes of the state takings clause, a public entity is not considered to have violated the state takings clause simply because the public entity has not commenced a judicial proceeding under the Eminent Domain Law or paid or deposited in court just compensation as ascertained by a jury before inflicting such damage.

Assuming that environmental studies requiring entry onto landowners' property, for a Department of Water Resources project to investigate the feasibility of constructing a new tunnel or canal to deliver fresh water, amounted to a taking or damaging of property requiring compensation under the California takings clause, the procedure established by the precondemnation entry and testing statutes satisfied the requirements of the California takings clause when the procedure was reformed to comply with the jury trial requirement of that clause, where the environmental order did not grant the Department exclusive possession of any portion of a landowner's property for a significant period of time.

The state takings clause does not preclude the Legislature, in the precondemnation entry and testing context, from authorizing a public entity to proceed pursuant to an expedited precondemnation procedure rather than through a more elaborate classic condemnation proceeding.

The precondemnation entry and testing statutes do not violate the state takings clause in authorizing a public entity to enter private property to conduct substantial precondemnation activities without the owner's consent or the commencement of a classic condemnation action, so long as (1) the public entity obtains a court order specifying the activities that may be conducted on the property and first deposits in court an amount that the trial court determines is sufficient to cover the probable compensation to which the property owner may be entitled for losses sustained as a result of the entry and testing activities, and (2) the property owner is entitled to recover damages for any injury to the property and any substantial interference with its possession or use of the property resulting from the public entity's activities.

The statute providing that no public entity "shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property" is not directed at precondemnation entry and testing activities, and that statute cannot reasonably be interpreted as intended to limit or displace the precondemnation entry and testing statutes.

The statutory damages that a property owner is entitled to obtain under the precondemnation entry and testing statute are a constitutionally adequate measure of just compensation under the state takings clause for the precondemnation activities authorized by the statutory scheme.

The compensation provision of the precondemnation entry and testing statutory scheme, as written,

violates the state takings clause by failing to afford a property owner the right to have a jury determine the amount of compensation within the precondemnation proceeding itself.

Supreme Court would reform the precondemnation entry and testing statutory scheme so as to afford the property owner the option of obtaining a jury trial on damages at the proceeding prescribed by precondemnation compensation statute, as a remedy for the violation of the state takings clause in the statutory scheme's failure to afford the right to have a jury determine the amount of compensation within the precondemnation proceeding itself, since it was possible to reform the statute in a manner that closely effectuated policy judgments clearly articulated by the Legislature, and the Legislature would prefer such reformation to invalidation of the statute.

Assuming that geological activities such as drilling test holes, for a Department of Water Resources project to investigate the feasibility of constructing a new tunnel or canal to deliver fresh water, amounted to a taking or damaging of property requiring compensation under the California takings clause, the procedure established by the precondemnation entry and testing statutes satisfied the requirements of the California takings clause when the procedure was reformed to comply with the jury trial requirement of that clause, since the Department would retain no continuing interest in the grout that it used to refill the test holes, the trial court would be authorized to limit the geological activities to protect the landowners, and landowners would be authorized to recover damages for any actual injury or substantial interference with their possession or use of the property.

Assuming that geological activities such as drilling test holes, for a Department of Water Resources project to investigate the feasibility of constructing a new tunnel or canal to deliver fresh water, amounted to a permanent physical occupation and thus a per se taking of property requiring compensation under the federal takings clause, the procedure established by the precondemnation entry and testing statutes satisfied the requirements of the takings clause, since the landowners could recover damages for any actual injury or substantial interference with their possession or use of the property caused by the continued presence of grout in the test holes.

ANNEXATION - CALIFORNIA

City of Selma v. Fresno County Local Agency Formation Commission

Court of Appeal, Fifth District, California - July 14, 2016 - Cal.Rptr.3d - 2016 WL 3885027 - 16 Cal. Daily Op. Serv. 7562

Neighboring city filed writ of mandate challenging decision of local agency formation commission (LAFCo) to approve annexing city's annexation project.

The Superior Court denied writ. Neighboring city appealed.

The Court of Appeal held that statutory 70-day time limitation for a LAFCo to hold a continued public hearing on a reorganization proposal under the Cortese–Knox–Hertzberg Local Government Reorganization Act of 2000 is directory, not mandatory, such that a continuance beyond the 70-day limitation does not result in invalidation of the LAFCo's determinations.

A local agency formation commission (LAFCo) violates the Cortese–Knox–Hertzberg Local Government Reorganization Act of 2000 when it continues a hearing in excess of 70 days from the date specified in the original notice. However, while the Legislature requires a LAFCo to hold continued hearings within a particular time frame, a failure to comply with that time frame requirement does not result in invalidation of the LAFCo's determinations.

FIRE SERVICE FEES - FLORIDA

Discount Sleep of Ocala, LLC v. City of Ocala

District Court of Appeal of Florida, Fifth District - June 17, 2016 - So.3d - 2016 WL 3364655 (Mem) - 41 Fla. L. Weekly D1437

The City of Ocala enacted several ordinances that established, repealed, and later reenacted certain fire service fees. The City began assessing the fees in 2006, but on October 6, 2009, the City enacted Ordinance 6015, which repealed the fees. Ordinance 6015 provided that it took effect "upon approval by the mayor, or upon becoming law without such approval on October 1, 2010." The mayor signed and approved the ordinance on October 8, 2009. Subsequently, on May 4, 2010, the City repealed Ordinance 6015 and reinstated the fees by enacting Ordinance 2010–43.

Discount Sleep filed its complaint challenging the validity of the fees on February 20, 2014. The trial court found that Ordinance 6015 never took effect because it was repealed before its effective date of October 1, 2010. Consequently, the court held that the fire service fees had been continuously in effect since 2006, and Appellants failed to timely file their complaint within the four-year statute of limitations period.

The appeals court reversed, holding that the plain language of Ordinance 6015 dictated that it became effective both (1) when it was signed and approved by the mayor, or (2) without such approval on October 1, 2010. Thus, Ordinance 6015 became effective on October 8, 2009, and it repealed the fire service fees.

Moreover, without express revival, Ordinance 2010–43 could not reinstate prior ordinances governing the imposition of the fire service fees. Therefore, while Ordinance 2010–43 repealed Ordinance 6015, it also triggered a new four-year limitations period beginning on May 4, 2010.

Accordingly, Appellant's complaint was timely and the trial court erred in granting the motion to dismiss on statute of limitations grounds.

EMINENT DOMAIN - KANSAS

Water District No. 1 of Johnson County v. Prairie Center Development, L.L.C.

Supreme Court of Kansas - June 10, 2016 - P.3d - 2016 WL 3344661

Owners of roadway easement appealed condemnation award of water main easement to county water district and filed motion to void condemnation based on district's failure to name owners in petition against landowners and to give notice.

The District Court denied motion. Owners appealed.

The Supreme Court of Kansas held that:

- Trial court had subject matter jurisdiction to consider roadway easement owners' argument of statutory defect;
- Petition was valid on its face without including roadway easement and its owners; and
- Owners invited alleged error in consideration of parol evidence.

Supreme Court could consider county water district's argument that district court lacked

jurisdiction to consider claim of statutory defect in eminent domain petition that did not include or notify easement owners, even though district did not cross-appeal judgment against owners. District presented question of subject matter jurisdiction which could be raised at any time.

District court had subject matter jurisdiction to consider roadway easement owners' argument of statutory defect in county water district's eminent domain petition that sought water main and construction easements and did not include or notify roadway easement owners, even though they were not parties to proceeding and characterized their motion specifically as a motion to void. District court had to determine whether district took the owners' property interest in order to determine whether its petition was statutorily defective for failing to name the owners.

County water district's petition to condemn property for temporary construction easements and permanent water main easements subject to existing easements of record was valid on its face without including roadway easement and its owners. District never sought to take roadway easement, and owners could not prove statutory defect based on assertion that district would necessarily, at some point, interfere with their easement.

Alleged error by district court in considering parol evidence of county water district's project plan when denying motion by roadway easement owners to void condemnation was invited by owners' argument based on the plan that district would need to dig up road to install water main, and, thus, Supreme Court would not consider the error. Just as district could not use its plans to show how it would avoid interfering with the roadway easement, owners could not go outside petition's language to argue district would interfere with roadway easement.

SCHOOL FINANCE - LOUISIANA

St. John the Baptist Parish School Bd. v. State

Court of Appeal of Louisiana, First Circuit - July 12, 2016 - Not Reported in So.3d - 2016 WL 3689899 - 2015-0264 (La.App. 1 Cir. 7/12/16)

School board, individually and on behalf of all similarly situated public parish and city school boards operating public elementary and secondary schools, several teacher unions and seven individuals, filed petition for declaratory judgment against state, Board of Elementary and Secondary Education (BESE), and Department of Education, alleging that state, BESE, and Department unconstitutionally diverted minimum foundation program (MFP) funds that were constitutionally mandated to be allocated to plaintiffs' school systems.

Following hearing, the District Court sustained defendants' exception of no right of action as to all original plaintiffs with the exception of school board, and after additional public parish and city school boards filed petition to intervene, found that plaintiffs' claims did not present justiciable controversy, granted defendants' motion for summary judgment, and denied plaintiffs' motion for summary judgment. After cross-motions for new trial were denied, plaintiffs sought devolutive appeal, which was granted.

The Court of Appeal held that:

- Plaintiffs' claims did not present justiciable controversy, and
- Even if claims presented justiciable controversy, granting declaratory relief would have been inappropriate.

School boards' claims that state, Board of Elementary and Secondary Education (BESE), and

Department of Education unconstitutionally diverted minimum foundation program (MFP) funds that were constitutionally mandated to be allocated to school boards' school systems did not present justiciable controversy for which declaratory relief was able to be granted. Legislatively appropriated MFP funds were allocated in accordance with resolutions and were spent in appropriate fiscal years, and there was no law or jurisprudence to allow court to force legislature to re-allocate and fund from current fiscal year budget for payments that might have been improperly allocated or unconstitutionally deficient in prior fiscal years.

Even if school boards' claims that state, Board of Elementary and Secondary Education (BESE), and Department of Education unconstitutionally diverted minimum foundation program (MFP) funds that were constitutionally mandated to be allocated to school boards' school systems presented justiciable controversy, granting school boards declaratory relief would have been inappropriate. Declaratory judgment on validity and enforceability of MFP formulas for prior fiscal years did not serve purpose of terminating any immediate, existing controversy between parties, and judgment declaring validity of MFP formulas for purposes of possible cause of action for damages would have amounted to impermissible advisory opinion.

EMINENT DOMAIN - MISSISSIPPI

Bay Point Properties, Inc. v. Mississippi Transp. Com'n

Supreme Court of Mississippi - July 21, 2016 - So.3d - 2016 WL 3941068

Landowner filed inverse condemnation proceedings against the Mississippi Transportation Commission (MTC), claiming the easement MTC had across landowner's property had terminated and that MTC was required to pay landowner the unencumbered value of the property.

The Circuit Court entered judgment on jury verdict finding that the easement — for which MTC had paid $50,000 — continued to encumber the property, but that the use by MTC was not a highway purpose and awarding landowner the encumbered value of $500. Landowner appealed.

The Supreme Court of Mississippi held that:

- Evidence of abandonment would be limited to what the highway statute required, namely MTC minute entries;
- Evidence supported jury's verdict awarding $500 to landowner; and
- Trial court's failure to award any attorney fees to landowner was manifestly wrong.

Highway easement could not have been abandoned by nonuse pursuant to statute, providing that in no instance shall any part of any property acquired by the Mississippi Transportation Commission (MTC), or any interest acquired in such property, including, but not limited to, easements, be construed as abandoned by nonuse. Instead, release (i.e., termination or abandonment) of easement requires a determination on the minutes.

Evidence of abandonment would be limited to what the highway statute required, namely Mississippi Transportation Commission (MTC) minute entries, in inverse condemnation proceeding brought against MTC by landowner, claiming the easement MTC had across landowner's property had terminated and that MTC was required to pay landowner the unencumbered value of the property. Statute provided that all easements for highway purposes shall be released when they are determined on the minutes of the MTC as no longer needed for such purposes, and statute itself provided the sole process by which an easement for highway purposes terminated.

Trial court did not abuse its discretion by excluding evidence of appraised value of the five-foot buffer around bayou reserved to landowner in inverse condemnation action brought against Mississippi Transportation Commission (MTC) by landowner's successor-in-interest, claiming the easement MTC had across the property had terminated and that MTC was required to pay landowner the unencumbered value of the property. Five-foot buffer was reserved to landowner, and thus, he retained rights in that property that he did not retain in the property subject to MTC's easement, and appraisal evidence would be irrelevant and would serve only to confuse the jury, as the value of the buffer was not related to the value of the property.

If easement, acquired by Mississippi Transportation Commission (MTC) for all highway purposes, remained in existence and MTC was using it for a highway purpose, there was no taking, but if the easement remained in existence, but MTC was using the property for a purpose other than a highway purpose, then MTC took landowner's property, and the compensation owed would be the value of the property, subject to the easement, and could not exceed a sum evidenced by the proof offered. However, if the easement had been abandoned, and MTC was using the property for a purpose other than a highway purpose, then MTC took landowner's property, for which landowner was owed the value of the property, unencumbered by the easement.

Evidence supported jury's verdict awarding $500 to landowner in his inverse condemnation action against Mississippi Transportation Commission (MTC), claiming the easement MTC had across landowner's property had terminated and that MTC was required to pay landowner the unencumbered value of the property. Appraiser-witnesses agreed that the unencumbered value of the property was $26 per square foot, landowner's appraiser refused to give an encumbered value, MTC's appraisers testified that, according to appraisal methodology and procedures, along with their personal knowledge of practice, the encumbered value of the property would be a nominal sum of around $100–$500, and this was the only encumbered value presented to the jury.

Evidence was insufficient to constitute a release of Mississippi Transportation Commission's (MTC) easement for highway purposes. Statute provided that easements for highway purposes could be released only when MTC determined on its minutes that it no longer needed the property for highway purposes, and while MTC's agreement with county was executed on the minutes, the agreement provided that the county would provide, at no cost to the MTC, any right or interest in any property owned by the county which might be necessary to complete construction of the park, agreement further provided that MTC retained its interest in the property, and that, if the county determined it would no longer operate the park, the county would inform MTC, which would have the option of closing the park and removing all improvements.

It was within the trial court's discretion not to grant landowner's attorney fee request for $680,000 in full, but trial court's failure to award any reimbursement at all was manifestly wrong and in direct violation of statute providing that, where an inverse condemnation proceeding is instituted by the owner of any right, title or interest in real property because of use of his property in any program or project in which federal and/or federal-aid funds are used, the court, rendering a judgment for the plaintiff in such proceeding and awarding compensation for the taking of property, shall determine and award plaintiff such sum as will, in the opinion of the court, reimburse such plaintiff for his reasonable costs. Mississippi Transportation Commission (MTC) used federal funds to finance construction of the park, landowner was the plaintiff in this inverse-condemnation proceeding, and jury rendered a verdict for landowner in the amount of $500.

EMINENT DOMAIN - NEW YORK

In re South Richmond Bluebelt, Phase 3.

Supreme Court, Appellate Term, New York, Second Department - July 20, 2016 - N.Y.S.3d - 2016 WL 3910492 - 2016 N.Y. Slip Op. 05577

In eminent domain proceeding, the Supreme Court, Richmond County, granted condemnor's motion to strike claimant's appraisal report and adhered to its original determination. Claimant appealed.

The Supreme Court, Appellate Division, held that claimant's de facto taking claim was untimely.

Just compensation for property taken in condemnation proceeding is determined by property's market value at time of taking, which is ordinarily date that title vests in condemnor, but if owner can establish that de facto taking preceded formal one, he or she is entitled to compensation based on deprivation of his or her beneficial use of property from earlier date.

De facto taking claim is governed by three-year statute of limitations applicable to claims to recover damages for injury to property.

De facto taking claim accrues at time of taking or, at latest, when taking becomes apparent, regardless of time of discovery.

Property owner's de facto taking claim against city, based on city's construction of certain stormwater control devices that affected property, accrued, and statute of limitation commenced, when devices were constructed, rather than when owner discovered them.

EMINENT DOMAIN - OHIO

Vary v. City of Cleveland

United States District Court, N.D. Ohio - June 28, 2016 - F.Supp.3d - 2016 WL 3580769

Property owner brought action against city, alleging that water main break damaged her property, and seeking writ of mandamus to compel city to engage in proper appropriation proceedings for involuntary taking of owner's property.

City moved to dismiss for failure to state claim.

The District Court held that district court would abstain from issuing writ of mandamus.

District court, sitting in diversity, would abstain from issuing writ of mandamus in name of state of Ohio to compel city to engage in appropriation proceedings with property owner related to alleged taking that occurred when water main break damaged property. It was unclear under Ohio law whether other remedies, such as action for trespass or nuisance, provided adequate remedy such that property owner would not be entitled to writ of mandamus, court would have to address complex questions of fact and law to determine whether city's activity with respect to water main break amounted to an appropriation, and ordering city to institute state proceedings would be intimately involved with state's sovereign prerogative.

PUBLIC UTILITIES - OHIO

Link v. FirstEnergy Corp.

Supreme Court of Ohio - July 26, 2016 - N.E.3d - 2016 WL 4010020 - 2016 -Ohio- 5083

Motorcyclist injured when he struck utility pole after being hit by deer filed action against utility companies for qualified nuisance, negligence, and other claims.

The Court of Common Pleas entered judgment on jury verdict in favor of motorcyclist. Utility companies appealed and motorcyclist cross-appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. The Supreme Court accepted utility companies' appeal.

The Supreme Court of Ohio held that:

- Companies complied with all applicable law governing placement of utility pole, and thus were not liable for motorcyclist's injuries, and
- Evidence was insufficient to demonstrate that utility pole interfered with usual and ordinary course of travel, and thus companies were not liable for motorcyclist's injuries.

Public utility companies complied with all applicable law governing placement of utility pole located in clear zone in right-of-way following road-widening project, and thus companies were not liable for motorcyclist's injuries from accident involving pole, though county engineer sent letter to utility company expressing disapproval of company's plan not to relocate pole out of clear-zone and chairman of township board of trustees sent letter requesting relocation of disputed poles. Highway-use manual did not require permit for pole installation or relocation, letters, without more, did not carry force of law requiring company to move utility poles, and board reopened road after completion of construction instead of initiating legal proceedings requiring companies to move poles.

Evidence was insufficient to demonstrate that utility pole located in clear zone in right-of-way following road-widening project interfered with usual and ordinary course of travel on road, and thus utility companies were not liable for motorcyclist's injuries from accident involving pole, though pole did not meet 17-foot clear-zone standards in Department of Transportation's location and design manual. After completion of road-improvement project, pole was approximately six feet from edge of pavement, had motorcyclist stayed within marked lanes, or even on improved portion of roadway, his motorcycle would not have come in contact with pole, and noncompliance with manual's guidelines, without more, did not establish unsafe condition.

BALLOT INITIATIVE - OKLAHOMA

OCPA Impact, Inc. v. Sheehan

Supreme Court of Oklahoma - July 18, 2016 - P.3d - 2016 WL 3946912 - 2016 OK 84

Challengers filed petition, post-circulation, to determine sufficiency of gist proposed ballot initiative to add article to Oklahoma Constitution to provide for one-cent increase in sales and use tax in order to improve funding for public school education.

The Supreme Court assumed original jurisdiction and determined that initiative did not violate one general subject and was sufficient to submit to voters.

Following signature-gathering period, Secretary of State certified signature count and votes, and was ordered to publish Attorney General's rewritten ballot title. Challengers then filed application with Supreme Court to assume original jurisdiction, objecting to both gist of measure and Attorney

General's rewritten ballot title.

The Supreme Court of Oklahoma held that:

- Post-circulation challenge to gist of proposed ballot initiative was untimely, and
- Proposed ballot title for addition of article to Constitution designed to improve funding for public school education was misleading.

Post-circulation challenge to gist of proposed ballot initiative to add article to Oklahoma Constitution to provide for one-cent increase of sales and use tax for purposes of improving funding for public school education was untimely. Rather, under Oklahoma law, objection to sufficiency of proposed initiative had to be filed within ten days of publication, and post-circulation objections were limited to validity or number of signatures or to ballot title.

Proposed ballot title for addition of article to Oklahoma Constitution which would provide for one-cent increase of sales and use tax for purposes of "improving" funding for public school education was misleading to extent did not mention Board of Equalization's role in limiting appropriations of such funds, did not refrain from partiality, and did not identify amount of sales and use tax and its allocations.

EMINENT DOMAIN - PENNSYLVANIA

Township of Millcreek v. Angela Cres Trust of June 25, 1998

Commonwealth Court of Pennsylvania - June 22, 2016 - A.3d - 2016 WL 3419109

Trust that held real property filed petition seeking $3,359,900.33 in attorney fees, costs, and expenses nearly four years after prevailing in township's condemnation action.

The Court of Common Pleas awarded trust $517,868 in fees, costs, and expenses. Trust appealed, and township cross-appealed.

The Commonwealth Court held that:

- Trial court had jurisdiction over fee petition;
- Trust was not entitled to costs incurred in separate environmental proceeding;
- Trust was not entitled to costs and expenses attributable to separate litigation;
- Trial court used proper methodology to arrive at amount of fee award;
- Trial court applied appropriate factors for evaluating reasonableness of engineering and geology fees;
- Reduction of paralegal's billing rate was not against clear weight of evidence; and
- Trial court did not abuse discretion in not accepting block billing.

Trial court had jurisdiction over trust's fee petition, which was filed nearly four years after entry of order sustaining trust's preliminary objections in township's condemnation action. Eminent Domain Code provided that it was the "complete and exclusive procedure and law" to be followed in condemnation proceedings, section of Judicial Code setting out 30-day time limit applied "except as otherwise provided or prescribed by law," and Eminent Domain Code did otherwise provide by placing no specific time limit upon condemnee's request for fees incurred in defeating condemnation.

Trust, which sought fees and costs incurred in successfully defending township's condemnation

action, was not entitled to award of costs incurred in environmental proceeding that challenged project permit sought by township in connection with its attempted condemnation of property. Environmental proceeding was separate from condemnation action, as grant of permit would not have necessarily resulted in condemnation of trust's property.

Trust, which sought fees and costs incurred in successfully defending township's condemnation action, was not entitled to award of costs and expenses attributable to litigation separate from condemnation action, even though such litigation might have been ancillary to or motivated by the condemnation action. Eminent Domain Code permitted reimbursement of costs "actually incurred because of the condemnation proceedings."

Trial court properly determined amount of reasonable attorney fees award to trust, in township's condemnation action in which trust prevailed, by considering amount of township's attorney fees and doubling that amount to arrive at trust's award, where the trust failed to prove the reasonableness of the fees, costs, and expenses it paid to its attorneys.

Trial court provided sufficiently clarity as to how it arrived at award of attorney fees, costs, and expenses to trust, which prevailed in township's condemnation action, where court made numerous findings about excessiveness of trust's request for fees and costs, and court explained that no analysis was provided as to question whether services of engineers were required given nature of the litigation.

Trial court's reduction of paralegal's billing rate was not against the clear weight of the evidence in township's condemnation action in which trust prevailed and sought fees and costs. Trust provided testimony that paralegal performed at level of experienced associate attorney and that paralegal's rate was within range of paralegal rates in particular region of state, while township provided testimony and affidavit that hourly rates charged for paralegal was outside normative rates charged in region.

Trial court did not abuse its discretion in not accepting block billing used by trust's attorneys, in township's condemnation action in which trust prevailed and sought fees and costs, where no explanatory testimony was provided, so as to preclude objectively accurate determination of reasonableness of time expended on particular tasks.

JURISDICTION - PENNSYLVANIA

2003 L. and F. Becker Family Trust v. BOKF, NA

United States District Court, E.D. Pennsylvania - June 13, 2016 - Slip Copy - 2016 WL 3227647

Holders of revenue bonds issued in May 2009 for the benefit of the City of Parsons, Kansas, Multi-Family Revenue Bonds Series A 2009 filed suit against BOKF, NA d/b/a Bank of Kansas City in its capacity as trustee, alleging breach of fiduciary duty and negligence.

The suit was initiated after BOKF engaged in significant changes to the project underlying the bonds without disclosing those changes to the bondholders.

The District Court held that:

- The District Court for the E.D. of Pennsylvania did not have a sufficient basis for an exercise of specific jurisdiction over BOKF, as the bond offering closed in Kansas and BOKF carried out its

trustee work from its Tulsa, Oklahoma offices; and
- There was not a sufficient basis for an exercise of general jurisdiction over BOKF Pennsylvania, as BOKF was not incorporated in Pennsylvania, had no principal place of business there, and did not consent to personal jurisdiction there.

MUNICIPAL ORDINANCE - WASHINGTON

City v. Willis

Supreme Court of Washington, En Banc - July 21, 2016 - P.3d - 2016 WL 3960848

Defendant was convicted in the Municipal Court of begging. Defendant appealed.

The Superior Court affirmed. Defendant filed motion for discretionary review, which was granted. The Court of Appeals affirmed. Defendant filed petition for review, which was granted.

The Supreme Court of Washington held that provisions of ordinance prohibiting begging at freeway ramps and major intersections were facially overbroad.

Provisions of municipal ordinance prohibiting begging at on and off freeway ramps and prohibiting begging at major intersections were facially overbroad. Provisions applied to locations likely to have sidewalks, which were traditional public forums, and provisions imposed content-based speech restriction in substantial number of public forums in violation of First Amendment.

EMINENT DOMAIN - WEST VIRGINIA

Gomez v. Kanawha County Commission

Supreme Court of Appeals of West Virginia - June 3, 2016 - S.E.2d - 2016 WL 3207683

County commission brought condemnation action to take ten-acre tract of land on farm to deposit material removed from high hill.

The Circuit Court granted summary judgment for commission after it paid $33,335 into court and took immediate possession of farm. Owner with one-third interest in farm appealed.

The Supreme Court of Appeals held that:

- Question of whether property has been taken for public use is question of law for court;
- Project influence rule prohibited inclusion of commission's use of farm in valuing owner's interest in farm;
- Trial court did not abuse its discretion by striking owner's appraisal expert;
- Trial court abused its discretion in striking owner's "claims" as sanction for failure to appear for her deposition;
- Trial court did not have authority to take judicial notice of condemnation commissioners' reported value of owner's interest; and
- Issue of just compensation due to owner precluded summary judgment.

The question of whether property has been taken for a public use in a condemnation proceeding is a question of law for the court, and not a question of fact for a jury.

Project influence rule, under which any enhancement or depreciation in value caused by public

project for which land was condemned and taken had to be disregarded in determining the market value of the land, prohibited inclusion of county commission's use of farm as dump site in valuing owner's one-third interest in farm in county commission's condemnation action. While owner claimed that highest and best use of farm was same use for which commission was acquiring property, to use as dump site, commission could not be required to pay enhanced price for property which its demand alone had created, and owner's proposed method for valuing property did not reflect what willing buyer would have paid in cash to willing seller in fair market, but reflected value created solely by commission's need for property.

Trial court did not abuse its discretion by striking appraisal expert of owner of one-third interest in farm and refusing to give expert additional time to inspect farm and formulate opinion about value in county commission's condemnation action. After eight months of discovery, expert failed to offer any opinion as to fair market value of farm at time of commission's taking, owner had asked expert to develop opinion that violated project influence rule, under which any enhancement or depreciation in value caused by public project for which land was condemned and taken had to be disregarded in determining the market value of the land, as she asserted that expert needed additional time to assess enhanced value of property, after date of taking, caused by commission's project, and commission would have been surprised and prejudiced by expert's testimony in trial.

Trial court abused its discretion in striking "claims" of one-third owner of farm as sanction for failure to appear for her deposition in county commission's condemnation action. Court made no finding that owner's failure to attend her deposition was willful or in bad faith, court never weighed actual prejudice to commission, effective of less drastic sanctions, or made any analysis of parties' situation, and court's order, in which it agreed to "strike the claims" of owner, was meaningless, as it was unclear what word "claim" meant in context of condemnation case.

Trial court did not have authority to take judicial notice of condemnation commissioners' reported value of owner's one-third interest in farm in county commission's condemnation action, Owner filed objection to commissioners' report within ten days, and, once objection was filed, parties were entitled to have just compensation ascertained by jury.

Genuine issue of material fact as to just compensation due to owner for her one-third interest in farm precluded summary judgment for county commission in its condemnation action.

Junk-Rated U.S. Municipalities Shine Brighter With Record Low Rates.

NEW YORK/CHICAGO — Record low interest rates so far have failed to spur a wave of new borrowing in the $3.7 trillion U.S. municipal debt market, with one exception: its weakest borrowers are seizing the opportunity to prop up their finances at costs they can afford.

As of July 19 total municipal debt issuance this year fell 1.6 percent to $227 billion from the same period last year. However, new borrowing rather than refinancing of existing debt is up 12.5 percent at $88.8 billion, with lower-rated debt rising the most, according to Thomson Reuters data.

An analysis of the data shows the total amount of municipal junk bonds rated by S&P Global Ratings at BB-plus or below issued this year rose 170 percent to $1.2 billion over the same period in 2015. (Graphic: http://tmsnrt.rs/29Zs6oO)

Many higher-rated issuers are using the rock-bottom rates to refinance old debt, but have been slow in boosting borrowing for new projects because of a lengthy approval process and many

communities' reluctance to take on new burdens.

Those that struggle financially face similar problems, but some simply need to borrow to keep going and many are able to issue revenue bonds, which do not require voter approval.

Some cash-strapped areas, including Illinois and low-rated Chicago, can also issue bonds for new spending without taxpayer approval at the ballot box.

Some struggling cities, states or individual projects "have to borrow to keep going," said Matt Posner, principal of public finance research firm Court Street Group.

With muni bond rates at record lows, junk and low investment-grade rated issuers are trying to exploit what could be a rare window of opportunity before any market reversal makes borrowing costs prohibitive again.

"Issuers with lower ratings are taking advantage of the very tight spreads and nearly insatiable demand for any paper that has any hint of additional yield," said James Dearborn, head of muni investing at Columbia Threadneedle.

One example is California's Loma Linda University Medical Center, which planned to double its outstanding debt to pay for renovations to meet state seismic safety requirements.

In September 2015, Fitch Ratings cut the center's rating to junk at BB-plus, and by April it sold $948 million of debt. The biggest tranche maturing in 2056, carried a 5.25 percent coupon and sold at a premium to yield 4.70 percent. Today those bonds trade much higher, driving the yield down to 3.24 percent.

Similarly, in February, Chicago's Board of Education sold bonds rated B-plus for capital improvements and refinancing. The 7 percent, 28-year bonds were sold at a big discount but have since risen above par value.

More borrowing is under consideration, district CEO Forrest Claypool said.

Public-private projects – including an upgrade of New York's LaGuardia Airport – have also contributed to the uptick, Posner said. Many such projects contain a municipal bond portion rated in the triple-B range, the lowest-investment category, which also grew as rated by Moody's Investors Service, the data show.

Lower-rated borrowers are also refinancing old debt faster than investment-grade issuers.

The value of junk-rated refunding bonds grew 248 percent to $1.9 billion, Thomson Reuters data show, while the total slipped 9 percent to $138 billion.

More deals are in the works. In the junk category, Detroit will issue about $615.5 million of refunding bonds in the next couple of weeks to save an estimated $37 million in its first general obligation offering since exiting the largest ever U.S. municipal bankruptcy in December 2014.

Chicago, downgraded to "junk" last year by Moody's, plans to sell up to $1.25 billion of general obligation bonds this quarter. Illinois, the lowest rated U.S. state, could refund up to $2 billion of bonds.

By REUTERS

JULY 26, 2016, 1:24 A.M. E.D.T.

(Reporting by Hilary Russ in New York and Karen Pierog in Chicago; Additional reporting by Robin Respaut in San Francisco; Editing by Daniel Bases and Tomasz Janowski)

Fitch: Rating Changes May Be On the Horizon for Some U.S. Ports.

Fitch Ratings-New York-25 July 2016: Increased rating activity is possible for stand-alone U.S. ports over the next 12 months, according to Fitch Ratings in its latest U.S. Ports Peer Review.

During the past 12 months, Fitch revised Outlooks on three ports among the 16 it rated publicly during the period. Ratings adjustments may follow during the next review cycle as Fitch considers resolution for these credits with either a Positive or Negative Rating Outlook. That said, Fitch maintains Stable Outlooks on roughly 75% of its port sector and does not envision movement of any great magnitude in the coming months. Credit risk is still relatively low among U.S. ports thanks in part to their cash flow resiliency amid volume fluctuations during economic downturns. As such, ratings for most ports continue to fall in the 'A' rating category.

Since its last U.S. Ports Peer Review, Fitch revised the Rating Outlook for the Alabama State Port Authority to Negative from Stable; the North Carolina State Ports Authority to Positive from Stable; and the Port of Palm Beach to Positive from Stable. Fitch also maintained the Positive Outlook on the Hillsborough County Port District.

Ports with the highest Fitch ratings are typically those with a strong underlying market or franchise driving demand, overall stability of cash flow through contractual agreements, or tariff policy and healthy financial metrics. Conversely, Fitch's weakest rated ports include those serving weaker markets with competition for cargo, less contractual protection for revenues or thinner financial metrics.

Fitch's latest 'Peer Review of U.S. Ports' is available at 'www.fitchratings.com'

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Moody's: Investment Risk Grows as U.S. Public Pensions Continue Pursuing High Returns.

New York, July 25, 2016 — The ability of US state and local governments to absorb adverse market performance by their pension funds has been constrained by rising costs associated with past unfunded liabilities, Moody's Investors Service says. At the same time, high return seeking by public pension funds increases risk of investment losses in any given year.

Over the long term, most public pension portfolios are designed to attain annual returns over 7% to offset rising employee retirement costs. To achieve these targets, state and local government pension funds must invest in potentially volatile assets. For example, public pension funds generally allocate close to 50% of assets to public equities, although allocations can vary substantially by plan.

"US public pension assets declined in six separate years from 2000-2015, and even governments with comparatively well-funded pensions can face budget risk if returns do not match expectations" Thomas Aaron, a Moody's Vice President — Senior Analyst says in "State and Local Governments — US: Even Comparatively Well-Funded Public Pensions Carry Risk of Volatile Investments."

Moody's says this was illustrated when the largest US public pension fund, the California Public Employees' Retirement System (CalPERS, Aa2 stable), experienced investment losses in four separate fiscal years from 2000 to 2015, with a 24% loss in 2009 representing its most dramatic single-year drop.

"Exposure to pension investment volatility is a credit risk because governments must be able to withstand the downside when short-term asset risk materializes, while still delivering public services and repaying debt. Government budgets are already under increasing strain because of the unfunded liabilities that have materialized over roughly the last 15 years," Aaron says.

While governments can shift pension asset allocations to lower investment risk, this translates to higher government pension contribution requirements, because discount rates are linked to assumed asset performance. It also translates to higher reported liabilities under GASB rules. CalPERS notably opted to begin de-risking its pension portfolio last year, but at a very gradual rate in order to avoid cost spikes.

The report is available to Moody's subscribers at

https://www.moodys.com/researchdocumentcontentpage.aspx?docid=PBM_1028742.

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Bloomberg Brief Weekly Video - 07/28

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

Watch the video.

July 28, 2016

Cincinnati's Worst Stadium Deal Ever Seeks Lower Borrowing Costs.

The near record-low borrowing costs in the municipal-bond market may buy Cincinnati relief from what was labeled one of the worst stadium deals for taxpayers.

Hamilton County, Ohio, plans to borrow $322 million next week to refinance debt taken on more than a decade ago to build new home fields for the Bengals National Football League team and the Reds Major League Baseball team. It's projected to save about $65 million — freeing up money for promised property-tax cuts that were scaled-back as the cost of the project soared.

"We're going to restore as much of the tax cuts as we can," said Chris Monzel, president of the board of county commissioners.

Tumbling municipal bond yields are providing a financial perk to local governments, allowing them

to cut the left-over bills from even long finished projects. Oakland, California-area officials last year refinanced debt for the home of the National Basketball Association's Golden State Warriors, which the team is planning to leave. Last month, El Paso, Texas, refinanced almost a third of the debt it issued for a minor league stadium three years ago, when the interest rates it had to pay prompted a political outcry.

The savings in Cincinnati are still just a fraction of the stadiums' costs, which more than doubled to over $1 billion. Most of the expense was covered by county taxpayers, who approved a half-percentage point sales-tax increase 20 years ago in return for a promise that real estate levies would eventually be cut. The Taxpayers Protection Alliance, a Washington group that opposes subsidies for professional sports arenas, said the Bengals's Paul Brown Stadium is among the most costly for taxpayers, given how much of the county budget it consumed.

"They're taking baby steps in trying to cut the cost to taxpayers," said David Williams, the alliance's president. "They've spent hundreds of millions of dollars on these stadiums and seen no economic benefits."

In recent years, the Cincinnati stadiums have cost the county some $70 million a year, or about 8 percent of its spending, according to financial statements. That includes debt service, costs for the teams, property-tax cuts and payments to schools in lieu of taxes.

Hamilton County voters approved the sales-tax increase in March 1996, with the stadiums promoted as a way to revive the area along the Ohio River. The county borrowed $623 million beginning in 1998 with municipal bonds, some of which was refinanced in 2006 and 2011. Some more will be refinanced next week.

Public Costs

The football stadium opened in 2000 and Great American Ball Park opened for the Reds in 2003. Stung by two recessions, sales-tax collections grew at about half the annual pace initially projected from 1999 to 2008, county documents show, while the population declined. To cope, the county fired workers, reduced the size of the property-tax cut and sold its hospital. Voters refused to approve more spending for a needed jail.

Public costs for the Cincinnati stadiums now exceed $1 billion in 2010 dollars, according to Judith Long, an associate professor of sports management at the University of Michigan, who who tabulated expenses for stadiums for a book titled "Public Private Partnerships for Major League Sports Facilities."

The stadiums are about a half-mile apart near a riverfront development called The Banks. The $2.5 billion development has grown more slowly than expected, but has revived the riverfront with restaurants, bars and residential space, spurred in part by subsidies paid for with the sales tax for the stadiums.

The question now for county officials is whether the savings on lower debt service is enough to restore any services after cutting taxes, said John Bruggen, county budget director. The decisions will be up to the county commission.

"They probably won't make any decisions immediately," he said. "This is a small piece of a big equation."

Bloomberg Business

by Darrell Preston

July 28, 2016 — 2:00 AM PDT

Muni Bonds Poised for First Loss in 13 Months After Brexit Rally.

The municipal-bond market's one-year winning streak is taking a breather.

State and local-government debt has lost 0.25 percent in July, headed for the first monthly decline since June 2015, Bank of America Merrill Lynch data show. The drop marks a pullback after the securities rallied in June by the most in 17 months as investors rushed into the safest assets amid concern about the impacts of the U.K.'s vote to exit the European Union.

"It's just a give back from Brexit," said Adam Buchanan, senior vice president of sales and trading at Ziegler, a broker-dealer in Chicago. "The reason the month is down is because Brexit drove the market artificially high for a short period of time."

The bull run in tax-exempt securities had sent prices to record highs as investors plowed money into municipal mutual funds, with the Federal Reserve holding off on raising interest rates since the quarter-point increase in December. While state and local debt returns are still up 4.2 percent this year, on track for the third straight annual gain, some investors are locking in profits, speculating future returns may be muted.

Municipal yields, which move in the opposite direction as price, climbed to the highest in more than a month this week. By the start of this week, benchmark 10-year yields were 1.48 percent, the highest since June 23, according to data compiled by Bloomberg. The yield for the Bond Buyer 20 Index last week edged up to 2.87 percent after slipping to as little as 2.8 percent earlier this month, the lowest since at least 1961.

A retreat is normal after this "stellar" run, said Phil Fischer, the head of municipal research at Bank of America Merrill Lynch.

"This is not Armageddon," Fischer said. "It's not a bad idea for people to pause and take a look at their portfolios."

With borrowing costs low, state and local governments have increased sales of debt before the Fed boosts rates again. The increase in the supply of new securities has been a drag on the market during the second half of July, said Dan Solender, head of municipals at in Jersey City, New Jersey for Lord Abbett & Co., which manages $20 billion of the debt.

U.S. policy makers left rates unchanged during Wednesday's Fed meeting while noting that the risks to the economy have subsided. Investors project a 26 percent chance that policy makers will hike rates at the next meeting in September, according to pricing interest-rate futures markets.

There are about $12 billion of bond sales scheduled over the next 30 days, the most in three weeks, according to data compiled by Bloomberg. The actual amount might be higher as some deals are made public only days ahead of time.

Still, there's been plenty of cash flooding into the market. Investors have added money to municipal-bond mutual funds for 42 straight weeks, according to Lipper US Fund Flows data. Inflows reached $1 billion in the week ended July 20, following $1.22 billion the previous week.

"Our demand is so strong, and we still have some good relative value versus other markets," said Solender. "For now, that's definitely still drawing interest to our market."

Bloomberg Business

by Elizabeth Campbell

July 27, 2016 — 2:00 AM PDT Updated on July 27, 2016 — 11:41 AM PDT

States, Cities Mount U.S. Election-Year Push for Infrastructure.

The nation's mayors and governors are hoping the next president will do what even record-low interest rates haven't: jumpstart investment in America's roads, water works and mass-transit systems.

On the sidelines of the Democratic National Convention in Philadelphia, where Hillary Clinton Thursday night accepted the party's nomination, state and local government officials said they need more federal support to finance work on infrastructure. Even with borrowing costs in the municipal-bond market holding near the lowest ever, governments squeezed by the recession have been leery of running up debt or persuading voters to support tax increases necessary to pay it back.

"We need to sell the American people on the value of investing in infrastructure," Terry O'Sullivan, general president of the Laborers' International Union of North America, said. He spoke at a meeting sponsored by Bloomberg Politics and Building America's Future, a coalition of elected officials that's co-chaired by Michael Bloomberg, founder and majority owner of Bloomberg LP, the parent company of Bloomberg News.

U.S. spending is projected to fall about $1.4 trillion short of the $3.3 trillion needed through 2025 for airports, highways and other infrastructure, according to the American Society of Civil Engineers. While President Barack Obama spurred spending on public works by helping cover the interest on about $188 billion of state and local debt, the program lapsed in 2010. Democrats have been unable to revive it because of Republican opposition in Congress.

Both presidential candidates have said the country needs to do more. Clinton pledged to spend $275 billion over five years and set up a national infrastructure bank to help fund large-scale projects, a proposal Obama advanced only to see it stall for lack of Republican support. Donald Trump, the Republican nominee, in his July 21 acceptance speech said “our roads and bridges are falling apart,” though he’s offered few details for how he’d fix them.

New York Mayor Bill de Blasio, a Democrat, said “there’s a chance to get at least a core few things on the first run of the agenda” that would boost federal involvement in local public works. He said both parties find “tremendous commonality” over the issue.

The slide in interest rates has prodded state and local governments to increase their borrowing, though the pace of bond sales remains below the peak reached in 2010 and most are being issued to refinance higher-cost debt. There have been about $97.5 billion of municipal bonds issued this year for new projects, up from $87 billion in the same period a year earlier, according to Bank of America Merrill Lynch.

The municipal bond market has the capacity to finance far more, said Sean McCarthy, co-founder of Build America Mutual, which insures local-government debt, during a panel discussion in Philadelphia. Investors have added money to municipal-bond mutual funds for nearly a full straight year, according to Lipper US Fund Flows data, with $783 million coming in during the week ended July 27.

“Capital is waiting to be put to work on those new projects,” said McCarthy.

Some of the needed investment has been delayed because of the economic and political pressure to cut spending, which governments nationwide have faced since the onset of the recession. While the economy began growing again in June 2009, states and cities continued to be dogged by budget shortfalls for years because of the toll it took on their tax revenue. When governors released spending plans this year, 15 proposed cutting taxes while 13 sought to increase them, according to the National Association of State Budget Officers.

“There is a distrust that the government’s not going to do a good job spending money, particularly with roads and bridges,” said Rhode Island Governor Gina Raimondo, a Democrat who successfully pushed through a $1.1 billion infrastructure plan after taking office last year. “They see what they think of as waste– projects taking too long, projects being done inefficiently.”

Bloomberg Business

by Romy Varghese

July 29, 2016 — 2:00 AM PDT Updated on July 29, 2016 — 8:14 AM PDT

More Defaults Likely to Come: What Puerto Rico Owes on Aug. 1.

It’s that time again for Puerto Rico bondholders.

The commonwealth and its agencies owe about $346 million in bond payments on Aug. 1, most of which goes toward repaying sales-tax supported debt. The deadline follows the island’s July 1 default on nearly $1 billion of principal and interest, the largest such payment failure in the history of the $3.7 trillion municipal bond market.

While sales-tax investors are set to be repaid with funds already in the bond trustee's account, the Government Development Bank, which defaulted in May, faces another payment deadline. Some Puerto Rico entities started skipping payments a year ago, leading up to the commonwealth missing $780 million due on general obligations at the start of the month.

Puerto Rico and its agencies racked up $70 billion of debt after years of borrowing to paper over budget shortfalls. President Barack Obama on June 30 enacted a law to create a federal control board that will oversee any debt restructuring and monitor the island's budgets. It also prohibits creditors from suing the commonwealth for repayment of debt.

A breakdown of what's coming due:

Puerto Rico Sales Tax Financing Corp.: About $256 million of principal and interest. The bonds, called Cofinas because of their Spanish acronym, are repaid from the island's sales tax. When the commonwealth's fiscal year begins on July 1, the first collections are directed toward repaying the debt before flowing into the island's general fund. The bond trustee already has the funds to make the Aug. 1 payment, according to S&P Global Ratings. Cofina has $15.2 billion of debt outstanding.

Government Development Bank for Puerto Rico: $28.5 million of interest. The bank, which used to serve as the island's fiscal agent before its liquidity dwindled, defaulted May 1 on nearly $400 million that was due. The GDB is under an emergency period where withdrawals are limited to programs that provide essential services. It has $5.1 billion of debt outstanding.

Puerto Rico Pension-Obligation Bonds: $13.9 million of interest due each month. The taxable debt was sold to bolster the island's nearly depleted pension fund. The bonds are repaid from contributions that the commonwealth and municipalities make to the retirement system. Puerto Rico has yet to default on the $13.9 million monthly interest payment. It has $2.9 billion of bonds outstanding.

Puerto Rico Aqueduct and Sewer Authority: $2.5 million of interest. The island's main water provider, called Prasa, is looking to issue debt through a new agency to raise $900 million for capital projects and to repay contractors. Prasa may also restructure as much as $1.1 billion of existing bonds. It paid $135 million to investors on July 1 and negotiated with creditors to delay another $12.7 million due on commonwealth-guaranteed Prasa bonds. It has $4 billion of bonds outstanding.

General-obligations: $1.3 million of interest. Puerto Rico defaulted on its general obligations on July 1, the first time a state-level borrower skipped payment on its direct debt since the 1930s. The island's constitution stipulates that the government must repay general obligations before other expenses. Governor Alejandro Garcia Padilla has said the island must preserve funds to cover essential services. The commonwealth has $13 billion of general obligations.

Puerto Rico Infrastructure Financing Authority: $700,000 of interest. Called Prifa, the agency has sold the island's rum-tax bonds. Prifa defaulted on a Jan. 1 interest payment and $77.1 million of principal and interest on July 1. It has $1.9 billion of bonds outstanding.

Puerto Rico Highways & Transportation Authority: $600,000 of interest. The highway agency repays its debt with gas-tax receipts and toll revenue. The authority paid almost all principal and interest due on July 1 from reserve funds already held by the bond trustee. Future payment are uncertain because Puerto Rico has redirected a portion of the agency's revenue to the general fund, according to S&P. HTA has $6.4 billion of bonds and notes outstanding.

Bloomberg Business

by Michelle Kaske and Sowjana Sivaloganathan

July 29, 2016 — 11:22 AM PDT

U.S. Mayors Hope for a 'Golden Moment' for Infrastructure.

PHILADELPHIA — After the presidential election, the United States may see a “golden moment” to push for increased federal and state spending to fix America’s crumbling infrastructure, according to Democratic mayors speaking a policy meeting at Philadelphia on Tuesday.

The briefing, sponsored by the National League of Cities and Build America Mutual, was held at City Hall in the shadow of the Democratic National Convention.

Former Pennsylvania Gov. and Philadelphia Mayor Ed Rendell, New York City Mayor Bill DeBlasio, Atlanta Mayor Kasim Reed, Tampa Mayor Bob Buckhorn, and Pittsburgh Mayor Bill Peduto all talked about the importance of renewed and increased infrastructure spending and the benefits it holds for both the economy and for the American people.

Also on a panel discussion were Franklin Templeton’s Sheila Amoroso and New York City Transportation Commissioner Polly Trottenberg. The group also heard from NLC President Melodee Colbert Kean, NLC CEO Clarence Anthony and BAM CEO Sean McCarthy.

McCarthy laid out the scope of the problem, saying that the American Society of Civil Engineers recently estimated that there is a $1.4 trillion gap between the nation’s infrastructure funding needs over the next 10 years and the current resources being made available to pay for them.

But he was optimistic that this will change.

“Don’t let the scale of the numbers that we are talking about scare you,” he said, “This is a problem that can be solved.”

Rendell said that “we need to start spending money soon,” recommending a plan of $2 trillion over 10 years, which includes state, federal and private funds. “We can do this,” he said, adding that the best method for financing infrastructure was through the sale of municipal bonds.

Rendell also touted Build America Bonds, saying the BABs program created by the federal government as part of the fiscal stimulus package during the Great Recession was “very successful.”

De Blasio stressed the urgency of moving forward in 2017, during the first year of a new presidential administration and a new Congress.

“I think we have an extraordinary opportunity ahead of us,” he said. “I can say there’s a combination of factors that could come into play that might be a ‘golden moment’ for a new level of infrastructure development. There are outcomes that could open the door for a reconsideration of a federal role in infrastructure.”

De Blasio said there’s a chance to get at least a core few things on the federal agenda that might be acted upon during this “golden moment.”

Mayors of both parties are banding together to push the message to state and federal officials that the nation must greatly increase its infrastructure spending or it won’t be able to compete

economically, de Blasio added.

“What we need we need right now is will and ability,” Reed said. “You need the political will to decide that we really aren’t going to wait on the federal conversation, we are going to do both at the same time. And I think that you need the ability because we’re going to need a partnership between the public and private sector.”

Reed said the federal government has “an amazing role to play, but we need to be more focused, from our own standpoint, on these public-private partnerships.”

Buckhorn said “infrastructure matters” and that the United States will be economically weaker if it doesn’t invest in fixing and maintaining its roads and bridges, sewers, tunnels, ports and airports. He said infrastructure means employment, citing the Port of Tampa, which directly or indirectly supports 80,000 jobs.

Peduto said the changing nature of technology was an important component in infrastructure planning. Advances such as the rise of driverless cars, will change infrastructure needs of cities in the future.

Amoroso said that “infrastructure financing in the United States is vitally important.”

She said that “two thirds of the infrastructure in the United States is built using municipal bonds and it is a market that is heavily retail driven, that is unlike any another market where they’re primarily institutional investors.”

She also stressed importance of Congress preserving the tax-exemption for municipal bonds for these investors. She described the tax-exemption as a circle of life, which “encourages individuals to invest in their communities where they earn a return that helps keep financings costs low. So it’s a win-win situation for the state and local governments.”

The Bond Buyer

By Chip Barnett

July 27, 2016

TAX - OHIO

Innkeeper Ministries, Inc. v. Testa

Supreme Court of Ohio - July 27, 2016 - N.E.3d - 2016 WL 4009986 - 2016 -Ohio- 5104

Nonprofit corporation filed an application for a charitable-use exemption for property the corporation owned.

The Tax Commissioner denied a charitable-use exemption to property. Corporation appealed. The Board of Tax Appeals reversed. The Tax Commissioner appealed.

The Supreme Court of Ohio held that:

- Corporation’s use of property as a free retreat for religious leaders did not qualify the property as a church retreat, and
- Property caretakers personal and permanent residential use of property militated against a finding

of charitable use.

Nonprofit corporation's use of property as a free retreat for religious leaders did not qualify the property as a church retreat, for the purpose of application for a charitable-use exemption for property. The property was not owned by a church, and the property contained the residence of caretakers.

Property caretakers personal and permanent residential use of property militated against a finding of charitable use, in action seeking a charitable-use exemption for property owned by nonprofit corporation that was used as a retreat for religious leaders.

The Board of Tax Appeals should have required proof that the primary purpose of the property was charitable hospitality, after evidence established the residential use of the property by property caretakers, before it could determine whether to a grant a charitable-use exemption for property. While there was evidence that the property was offered as a retreat for religious leaders, there was no information as to how many individuals stayed at the property, how many individuals the property could accommodate, and whether individuals were turned away from the property.

MSRB Holds Quarterly Board Meeting.

Washington, DC – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) held its quarterly meeting July 27-28, 2016 where it advanced several substantive rulemaking proposals and engaged in corporate and financial oversight matters in preparation for the start of the MSRB's upcoming fiscal year.

Operating Plan and Budget
The Board discussed and approved the organization's operating plan and budget for the fiscal year that begins October 1, 2016. The plan includes numerous objectives consistent with the MSRB's strategic goals and its mission to protect investors, state and local government issuers, other municipal entities, obligated persons and the public interest. The Board's discussion of the MSRB's budget included an extensive analysis of the MSRB's organizational reserves, resulting in the approval of a $5.5 million rebate distribution of excess reserves to brokers and dealers who paid any underwriting, transaction or technology fees during the first nine months of FY 2016. The excess reserves result from underwriting and trading volumes exceeding budgeted levels as well as careful management of expenses. The rebate will be distributed proportionately in September, relative to the fees paid. Details of the MSRB's operating plan will be announced at the start of its fiscal year.

Mark-Up Disclosure
At its meeting, the Board acted on multiple initiatives related to improving transparency in the municipal bond market and the activities of dealers and municipal advisors. It voted to file with the Securities and Exchange Commission (SEC) a rule proposal that would require municipal securities dealers to disclose on retail customer confirmations the amount of the mark-up in a class of same-day principal transactions. The proposal is also to include related guidance on the establishment of the prevailing market price used to calculate mark-ups. The mark-up disclosure proposal, which has been under development for several years, seeks to enhance the transparency of investor transaction costs and dealer compensation in the municipal securities market. The MSRB will continue to coordinate with the Financial Industry Regulatory Authority (FINRA) on its parallel confirmation disclosure initiative for transactions in corporate bonds.

“Providing investors with information about how much it costs to transact in municipal bonds has been a goal of this Board for several years,” said MSRB Chair Nat Singer. “Transparency around dealer compensation will allow investors to assess their transaction costs and use that information in their decision-making.”

Bank Loan Disclosure

In another transparency-related issue, the Board discussed comments received on a concept release to improve disclosure to investors of direct purchases and bank loans by municipal securities issuers. The Board continues to believe that disclosure of alternative financings is important for assessing a municipal entity’s creditworthiness and evaluating the impact of these financings on existing and potential investors. However, in light of comments received in response to the concept proposal, the Board will not pursue rulemaking at this time but will continue to raise awareness about the issue among regulators and market participants, and encourage industry-led initiatives that support voluntary disclosure best practices. In order to facilitate the filing of bank loan disclosures on EMMA, the MSRB has been working with issuer representatives to enhance the submission process. The MSRB will soon release changes to the website that improve this process by issuers and also enhances the ability of investors to locate available bank loan disclosures.

“Our concerns about the need for improved disclosure of bank loans and other financings by municipal entities and obligated persons has not diminished whatsoever,” Singer said. “While we acknowledge that MSRB rulemaking is not the best approach at this time, we continue to urge market participants to consider this shortcoming in our market.”

Customer and Client Complaints

As part of its effort to update certain MSRB rules, the Board agreed to file with the SEC amendments to MSRB Rules G-8 and G-9, on recordkeeping and retention, and to MSRB Rule G-10, on delivery of the investor brochure. The changes modernize requirements for dealers’ handling of complaints by customers and simplify the process by which dealers provide customers with regulatory information. The amendments also establish requirements for municipal advisors’ handling of client complaints and establish a process for municipal advisors to provide municipal entity and obligated person clients with regulatory information. Separately, the Board agreed to extend, as relevant, to municipal advisors existing guidance for dealers under MSRB Rule G-32, on the use of electronic media to deliver to and receive information from customers.

ABLE Programs

In other municipal advisor rulemaking, the Board agreed to file with the SEC for immediate effectiveness two rule interpretations related to municipal advisors that provide advisory services to sponsors or trustees of Achieving a Better Life Experience (ABLE) programs. The proposed interpretation to MSRB Rule G-42, on duties of non-solicitor municipal advisors, will explicitly provide that current guidance applicable to 529 college savings plans and local government investment pools is equally applicable to interests in ABLE programs. The interpretation to MSRB Rule G-44, on supervisory and compliance obligations of municipal advisors, will clarify that municipal advisors to sponsors or trustees of 529 plans or ABLE programs and other municipal fund securities are subject to Rule G-44’s supervision requirements. The Board also agreed to file with the SEC for immediate effectiveness a proposed change to MSRB Rule G-45, on reporting of information on municipal fund securities, to delay until the reporting period ending June 30, 2018 the date submissions are due from underwriters of ABLE programs.

Definition of Underwriter

In its final regulatory action, the Board agreed to file an amendment to MSRB Rule G-34, which details when underwriters and financial advisors must apply for the assignment of a CUSIP number for a new issue of municipal securities. If approved by the SEC, the amendment would harmonize

the definition of underwriter in Rule G-34 with that of MSRB Rule G-32, which defines underwriter as “a broker, dealer or municipal securities dealer that is an underwriter as defined in Securities Exchange Act Rule 15c2-12(f)(8), including but not limited to a broker, dealer or municipal securities dealer that acts as remarketing agent for a remarketing of municipal securities that constitutes a primary offering.” The MSRB has historically interpreted the underwriter definition in Rule G-34 to include placement agents and dealers that purchase securities from an issuer as principal, and the proposed amendment codifies the rule’s original intent.

EMMA and Market Transparency
The Board discussed an update to its 2012 Long-Range Plan for Market Transparency Products and agreed to defer until its strategic planning session in January 2017 action on an updated plan. The Board did address the potential addition of third-party market indicators, including yield curves, to the MSRB’s Electronic Municipal Market Access (EMMA®) website and agreed that the associated benefits for investors and issuers warrant adding such yield curves to EMMA.

Date: August 1, 2016

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Muni Volume Hit by 'Whip-Sawing' Yields.

After two months of increased year-over-year volume, long-term municipal bond issuance plunged 27% in July.

Total monthly volume shrank to $26.07 billion in 880 transactions from $35.62 billion in 1,091 transactions in July of last year, according to data from Thomson Reuters. It was the lowest total for the month of July since 2011, when it was $24.91 billion.

Refundings, which have been strong for the majority of the year due to persistent low interest rates, declined 27.7% to $9.39 billion in 324 deals from $12.99 billion in 395 deals.

“Issuance was down almost across the board, and I think it would be incorrect to extrapolate a trend using just one month’s data,” said Vikram Rai, CFA and head of municipal strategy at Citi. “It is true that typically issuance in July can be down anywhere from 5% to 15% versus the monthly average for the year, though this is not always true.

“This time around I think issuers, like most of us, were distracted by the extreme market volatility following the Brexit event and were leery of coming to market when yields were whip-sawing,” Rai said, referring to the financial market’s reaction to Great Britain’s June 23 vote to leave the European Union.

New-money deals fell 17.4% in July to $12.38 billion in 504 deals from $14.98 billion in 586 deals during the same period last year.

“There was the timing of the fourth of July that had some impact but the main issue is that issuers continue to be not aggressive with the market despite low yields, as they did not want to take on additional debt,” said Dan Heckman, senior fixed income strategist at U.S. Bank Wealth Management. “The reality is that we are still reminiscent of the finical crisis, and for tax payers and

municipalities, it still continues to be difficult environment. There is also lack of infrastructure spending, and it continues to be difficult in general for new issues to gain a lot of traction."

Heckman also cited summer doldrums and a slowdown ahead of a presidential election as reasons for the reduced muni volume.

"I think going forward we will see more and more refundings and I am hopefully that by the end of 2016, beginning of 2017, you will see issuers getting more aggressive in terms of taking on new debt," he said. "We thought this month would be light, but it took us by surprise just how light it was."

Combined new-money and refunding issuance dropped by 43.8% in to $4.29 billion from $7.64 billion.

Issuance of revenue bonds decreased 23.1% to $16.87 billion, while general obligation bond sales dropped 32.7% to $9.20 billion.

Negotiated deals were lower by 30.1% to $19.04 billion, while competitive sales increased by 6.2% to $6.81 billion.

Taxable bond volume was 52.3% lower at $1.51 billion, while tax-exempt issuance declined by 23.8% to $24.02 billion.

Minimum tax bonds issuance slipped to $544 million from $948 million.

Private placements sank to $227 million from $1.96 billion.

Zero coupon bonds increased to $118 million from $26 million.

"The spike in zero coupon issuance is surprising and it seems like issuers are tapping into the demand for longer duration bonds," said Rai.

Bond insurance declined 22.4% for the month, as the volume of deals wrapped with insurance dipped to $1.33 billion in 100 deals from $1.71 billion in 118 deals.

Variable-rate short put bonds dropped 54.7% to $455 million from $1.00 billion. Variable-rate long or no put bonds rose to $417 million from $298 million.

Bank qualified bonds decreased 5.6% to $1.63 billion from $1.72 billion.

Among sectors, only health care and public facilities posted year-over-year gains, despite fewer deals this month. Public facilities gained 32.7% to $933 million in 38 transactions from $700 million in 39 transactions and health care improved 54.8% to $3.69 billion in 33 deals from $2.38 billion in 52 deals.

All of the other sectors had a decrease of at least 18.6%, except for housing which slipped 2.5%.

As for the different types of entities that issue bonds, only three saw positive year over year changes. State governments improved 63.6% to $1.48 billion from $908 million, counties and parishes gained 93.6% to $2.54 billion from $1.31 and direct issuers inched up to $130 million from $105 million.

All other entities saw a decline by at least 10%, with the largest decline coming from cities and towns, which dropped 57.6% to $3.88 billion from $9.15 billion.

California is the top issuer among states for the year to date, followed by Texas, New York, Florida and Pennsylvania.

The Golden State so far this year has issued $34.61 billion, with the Lone Star State right at its heels with $32.41 billion. The Empire State follows with $26.44 billion. The Sunshine State is in third with $11.29 billion and the Keystone State rounds out the top five with $10.35 billion.

“We do not expect issuance to pick-up materially; this is true for new money issuance and refunding issuance. But, we do expect at least refundings to remain robust for the remainder of the year,” Rai said. “Our estimate for gross issuance for 2016 remains unchanged at $413 billion, split almost evenly between new money and refundings. Net issuance is likely to be $45 billion.”

The Bond Buyer

By Aaron Weitzman

July 29, 2016

U.S. Muni Regulator Scraps Pursuit of Bank Loan Disclosure Rule.

The Municipal Securities Rulemaking Board (MSRB) said on Monday the U.S. muni market’s self-regulating group would not pursue “at this time” a rule to facilitate disclosure of bank loans taken out by states, cities, schools and other bond issuers.

The board, which regulates muni dealers, bond underwriters and financial advisors, but not state and local government issuers, has been trying to devise a way to boost disclosure of such private loans because they add to an issuer’s overall debt burden and could include terms impairing the rights of bondholders.

The MSRB’s decision likely means that most investors would be deprived of this information. The regulator said in March that only a small number of issuers had disclosed the loans and other private debt sales on its Electronic Municipal Market Access or EMMA website.

“The board continues to believe that disclosure of alternative financings is important for assessing a municipal entity’s creditworthiness,” MSRB Executive Director Lynnette Kelly told reporters on a conference call.

But feedback from market participants indicated a rule would not necessarily capture all bank loan activity by muni bond issuers, according to Kelly. She said the board would instead continue to push for voluntary disclosure, while making it easier for issuers to submit bank loan information on EMMA.

“We preserve our ability in the future to do rule-making, but we wanted to give it a little more time,” Kelly said.

At its meeting last week, the MSRB voted to send a proposed rule to the U.S. Securities and Exchange Commission aimed at enhancing transparency of transaction costs charged to muni bond investors by dealers, Kelly said. While the board is self-regulating, its rules are subject to approval by the SEC.

“Providing investors with information about how much it costs to transact in municipal bonds has been a goal of this board for several years,” MSRB Chair Nat Singer said in a statement. “Transparency around dealer compensation will allow investors to assess their transaction costs and use that information in their decision-making.”

Kelly said the MSRB was also considering adding market indicators to its EMMA website, including yield curves that would be provided for free by private-sector vendors.

Reuters

(Reporting by Karen Pierog; Editing by Richard Chang)

Mon Aug 1, 2016 3:05pm EDT

Bias in the Municipal Bond Market.

Does a sullied past haunt a bond issuer’s future?

In April, something remarkable happened in the otherwise sleepy world of public money. Orange County, Calif., long considered a problem child in local public finance, announced a plan to return to the municipal bond market.

At the start of the 1990s, the county made some big bets on an early form of financial derivatives — not unlike those at the heart of the 2008 financial market crisis — and it lost. It suffered major financial damage and eventually declared bankruptcy. But now the county is looking to borrow once again, and investors are primed to snatch up its new bonds at eye-poppingly high prices.

Financially speaking, Orange County is back in a big way.

The Orange County story illustrates one of the great debates in finance. Municipal bond investors are willing to look past the county’s sordid past and focus instead on its financial future, namely its strong balance sheet, solid credit rating and growing tax base. This suggests that investors only care about future cash flows. But don’t forget that the county waited 20 years to test the market. Somebody clearly believed it needed a long time to shake its problem-child reputation.

So is the financial past prologue, or not? Some recent evidence suggests that in the municipal bond market — unlike most other capital markets — past perceptions have big financial consequences.

True believers say financial markets are fair because they’re forward-looking. If investors focus too much on the past, they’ll miss moneymaking opportunities. For instance, if a city lands a big economic development project or renegotiates its pension obligations, then any new bonds it issues should be met with higher demand and sell at higher prices. An investor who fixates on that city’s past bond prices will miss out on a surefire investment. So in theory, at least, past prices shouldn’t matter.

How does this theory play out in the municipal bond market? In a recent paper I examined how the interest rates on a local government’s past bond issues affect the interest rates on its future bond issues. I analyzed data on more than 35,000 “full faith and credit” bonds over the past decade. The results were striking. I found that all else being equal, for every 1 percent increase in a government’s past interest rates, the interest rate on its new bonds will be about 10 basis points (or

.10 percent) higher. Put differently, past investor perceptions alone account for about 10 percent of current investor perceptions. Behavioral economists call this particular type of bias “anchoring” on past information.

There’s bad news and good news here. The bad news is that anchoring is expensive for issuers. On a 25-year, $100 million bond, for example, 10 additional basis points can mean about $4 million in additional interest payments. Consider also that municipal bond interest rates have generally declined over the past decade. This means that many local governments’ borrowing costs have been tethered to higher interest rates in the recent past.

This bias is also disconcerting because it’s hard to explain. A cynic might argue that anchoring happens because bond investors are lazy. Instead of carefully evaluating a government’s financial future, they just crib off of past prices. Of course, it’s not that simple. More than 50,000 governments have municipal bonds outstanding, and most of those sell new bonds every few years at most. At the moment there are no federal rules about the timing and content of local governments’ financial reports. In that environment it can be difficult to find recent financial information and even more difficult to find fresh prices on a government’s bonds. Municipal bond investors aren’t lazy. When information is hard to find, they’re just humans subject to bias.

The good news is that finance professionals can take steps to correct that bias. This is yet another reason for local governments to invest in a robust, comprehensive program of public disclosure. As Orange County shows us, it’s important for investors to know where a jurisdiction is, not where it was.

GOVERNING.COM

BY JUSTIN MARLOWE | AUGUST 2016

California Treasurer Cracks Down on Pay to Play.

PHOENIX – California State Treasurer John Chiang announced policies Wednesday designed to limit what he calls questionable municipal bond industry bankrolling of local bond election campaigns.

Chiang announced that municipal finance firms seeking state business will be required to certify that they will make no contributions to local bond election campaigns.

California officials are concerned with “pay to play” tactics in which bond counsel, underwriters, and financial advisors are offering to fund or provide campaign services in exchange for contracts to issue the bonds once they are approved by voters. Chiang’s move was backed by a coalition of county treasurers and tax collectors.

Those campaign payments or services, often made in connection with local school bond ballot measures, could violate state laws governing the use of bond proceeds and public funds, according to a recent California Attorney General’s opinion. That opinion, which was not legally binding on courts, rested on 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.

“There are unscrupulous Wall Street firms offering to fund local bond campaigns in exchange for lucrative contracts,” Chiang said in a statement. “Not only are these pay-to-play arrangements

unlawful, they rip-off taxpayers and endanger the integrity of school bonds, which are vital tools for building classrooms and meeting the educational needs of our communities."

The new policy on bond campaign contributions applies to firms and their employees, and includes both cash and-in kind service contributions made either directly or through third parties. Firms that fail to make the pledge will be removed from the state's official list of acceptable vendors and barred from participating in state-issued bonds.

The California Association of County Treasurers and Tax Collectors expressed "solidarity" with Chiang, and California Forward, a nonpartisan group that works for government efficiency, also praised the move.

"Public trust should not be compromised in an effort to secure voter support for local bond projects," said James Meyer, the group's president.

Robert Doty, the president and proprietor of AGFS, a municipal securities litigation consulting firm in Annapolis, Md. who previously worked in California, said a few prominent California underwriter firms might be affected, but believes most have stopped making such contributions.

Doty said such ballot campaign contributions are "a particularly sleazy activity that makes most market participants uncomfortable."

Common Cause, another advocacy group, blasted pay-to-play as undemocratic.

"Pay-to-play government contracts have no place in a democracy," the group said in a statement. "School bond underwriting contracts should go to the most qualified firm, not the one that agrees to make the biggest ballot measure campaign contribution."

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

In 2013 twelve dealer firms asked the Municipal Securities Rulemaking Board to crack down on the behavior, which registrants are required to report to the board.

California currently has 66 underwriters, 26 law firms, and 13 advisory firms in the Treasurer's muni bond business pool.

The Bond Buyer

By Kyle Glazier

July 27, 2016

Calif. Treasurer to Boot Bond Counsel That Back Campaigns.

SACRAMENTO — California Treasurer John Chiang announced Wednesday that he will bar municipal finance professionals—including attorneys—from working on state-issued bond sales if they and their firms continue bankrolling local bond election campaigns.

The move is an attempt to curb so-called pay-to-play politics in the industry, which has been plagued for years by accusations that law firms, advisors and underwriters make generous campaign contributions—mostly to school bond committees—with expectations of securing work preparing and selling the debt approved by voters. Such arrangements can inflate fees and create conflicts of interest for finance firms, the treasurer said.

“There are unscrupulous Wall Street firms offering to fund local bond campaigns in exchange for lucrative contracts,” Chiang said in a prepared statement. “Not only are these pay-to-play arrangements unlawful, they rip-off taxpayers and endanger the integrity of school bonds.”

In a letter sent to firms on Wednesday, Chiang asked them to submit by Aug. 31 “affirmative statements” that neither they nor their partners or employees will contribute to fundraising, polling, get-out-the-vote efforts or any other type of advocacy work on behalf of a general obligation bond campaign. Those that don’t could be tossed out of the treasurer’s public finance pool, Chiang said. That pool currently includes 26 law firms authorized to serve as bond counsel.

It’s difficult to calculate how much money a firm could lose by leaving the state pool. The amount of work an underwriter or legal group receives fluctuates greatly depending on the size and number of offerings in the works in any given year as well as the intricacies of the debt vehicles, Deputy Treasurer Tim Schaefer said.

But being a firm qualified by the treasurer’s office carries a sort of stamp of approval that’s valuable in securing other work.

“That’s our hammer,” Schaefer said.

Public finance leaders with Orrick, Herrington & Sutcliffe, historically one of the biggest players in bond counsel work in California, declined through a spokesman to comment on Chiang’s letter. Messages left with three other law firms that are members of the treasurer’s pool—and have also contributed in recent years to local school bond campaigns—were not returned.

The treasurer’s directive has the backing of the association representing county tax collectors and treasurers. In most counties, treasurers by law or custom serve as the agent for school bond sales, Schaefer said. Good government groups Common Cause and California Forward also endorsed the new rules.

“Our hope is by cobbling together this coalition that we can persuade our local governments, especially school districts, to be more discerning,” Schaefer said.

In the past, leaders of firms that provide bond counsel services have said that they make political contributions based on long-standing working relationships, not in expectation of some financial windfall.

“We are building a relationship,” then-Orrick chairman Ralph Baxter told the Recorder. “How would an elected official feel if we don’t make a contribution? Of course we think about that.”

In January, Attorney General Kamala Harris issued an opinion concluding that it’s illegal for a school district to contract with a municipal finance firm for election services in exchange for guaranteeing that firm post-election bond sales work. Most arrangements aren’t so black and white, said Schaefer, who founded a public finance consulting firm in Orange County and has spent decades in the industry.

“It lives in the shadows and it’s circumstantial evidence,” he said. “But there is enough anecdotal

evidence that we think it's a problem and it needs to be addressed."

Cheryl Miller, The Recorder

July 27, 2016

IRS Updates Section 118 Safe Harbor For Transfers To Public Utilities: Grant Thornton

The IRS has issued guidance (Notice 2016-36) broadening and modifying the safe harbor election under Section 118(a) that provides that certain transfers of property from energy generators to public utilities are contributions to capital instead of income.

Section 61 generally states that gross income includes all income from all sources, but Section 118(a) provides an exception for contributions to the capital of a corporation. However, Section 118(b) excludes any contributions in aid of construction (CIAC), so CIAC is considered income under Section 61.

To encourage the development of the national power grid and markets for the generation, transmission and distribution of power, the IRS created a safe harbor so that qualified facilities and power generators could transfer property to a public utility to tie into the grid without the transfer's creating income for the public utility. The original guidance and its subsequent modifications (Notices 88-129, 90-60 and 2001-82) focused on traditional energy sources.

Notice 2016-36 broadens the scope of the prior notices to be more accessible for wind and solar generators to tie into the grid without transfers of property creating gross income for the public utility.

Article by David Auclair

Last Updated: July 25 2016

Grant Thornton LLP

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

Why the SEC Says it Can't Fight a Challenge to a Pay-To-Play Rule.

WASHINGTON — The Securities and Exchange Commission is arguing it can't fight a lawsuit challenging a revised rule to curb municipal securities pay-to-play activity because the fiscal 2016 appropriations act prohibits it from spending money on any rules governing political contributions.

The Sixth Circuit Court of Appeals in Cincinnati, where the suit is pending, has responded by halting proceedings until it can issue an order on the SEC's motion for dismissal of the suit. The SEC is arguing that the restrictions, along with federal statutes, prevent the three state Republican parties from challenging it over the latest revisions of the Municipal Securities Rulemaking Board Rule's G-

37 on political contributions.

Under the changes to Rule G-37, municipal advisors, similarly to dealers, will be barred from engaging in municipal advisory business with an issuer for two years if the firm, one of its professionals, or political action committee controlled by either the firm or an associated professional, makes significant contributions to an issuer official who can influence the award of municipal advisory business.

The revised rule contains a de minimis provision like the original rule. It would allow a municipal finance professional (MFP) or a municipal advisor professional (MAP) to give a contribution of up to $250 per election to any candidate for whom he or she can vote without triggering the two-year ban.

The Tennessee Republican Party, Georgia Republican Party, and New York Republican State Committee claim Rule G-37 is unconstitutional because its political contribution language forces municipal advisor and dealer employees to choose between doing their jobs and exercising their right to support political candidates. The state parties also argue that Congress did not empower the SEC or MSRB to regulate political contributions and instead made such regulation the exclusive jurisdiction of Congress and the Federal Election Commission.

In bringing their suit against the SEC and MSRB, the three state GOP groups relied on a provision of the Securities Exchange Act of 1934 that allows for appeals court review of a “final order” of the commission, according to the SEC lawyers. The parties also cited sections of the Administrative Procedure Act (APA) that would allow for court review of the MSRB rule if it can be proved that an SEC “agency action” took place.

The SEC’s motion to dismiss the suit argues that there was neither a “final order” from the commission nor any “agency action” leading up to the rule’s approval.

The Dodd-Frank Act states the SEC has 45 days after the date a proposed MSRB rule is published to approve, disapprove, or decide to take more time to decide on the rule. If the commission does none of those, the rule is deemed approved at the end of the 45-day period.

SEC lawyers said the commission, after publishing the proposed changes, did not take further action on the rule because of the restrictions in the fiscal 2016 appropriations act. The act prohibited the SEC from using any funds to “finalize, issue, or implement any rule, regulation, or order regarding the disclosure of political contributions, contributions to tax exempt organizations, or dues paid to trade associations.”

But under Dodd-Frank, the SEC’s inaction meant the revised rule was subsequently deemed approved 45 days after the commission published it. It is scheduled to take effect on Aug. 17.

“The commission did not approve or disapprove the proposed rule change, nor did it institute proceedings to determine whether to disapprove it, within the relevant time frame,” said the SEC lawyers. “The commission did not issue an order regarding the amendments to Rule G-37 and it did not publish any further notice regarding the rule.”

The commission never met the definition of “agency action” as laid out in the APA, according to the commission’s lawyers. The act defines agency action to include “the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent denial thereof, or failure to act.”

“Except for ‘a failure to act’ … each ‘agency action’ requires an affirmative and discrete act ‘of an agency,'” the SEC lawyers argue, something that did not happen during the course of approval.

The lawyers defended against the possible applicability of the "failure to act" portion by pointing to three Supreme Court cases that determined a failure to act means the agency did not take an action it was required to do and could be compelled to do by a court.

The definition does not apply to the SEC in this case because the state Republican groups are not asking the court to force the commission to take an action and even if they were, the court could not do so because of the appropriations act, the SEC's lawyers wrote.

A lawyer for the three Republican state groups said they plan to file a response within the next few days and do not believe the court will grant the SEC's motion.

The MSRB has maintained that Rule G-37 is a "vital measure promoting the integrity" of the muni market and has said it intends to "vigorously defend the policies it believes should be in place to address quid pro quo corruption and the appearance of this type of corruption."

Rule G-37 was previously challenged after the SEC first approved it for dealers in 1994. Alabama bond dealer William Blount filed suit against the MSRB and SEC, arguing the rule violated his constitutional right to free speech. The D.C. Circuit Court rejected that argument in a 1995 ruling, saying the rule was "narrowly tailored to serve a compelling government interest." The Supreme Court declined to take up Blount's appeal after the ruling.

The Republican groups from New York and Tennessee that are currently opposing G-37 also unsuccessfully challenged an SEC-approved pay-to-play rule covering investment advisors. The U.S. Court of Appeals for the District of Columbia dismissed that lawsuit in August 2015 on a technicality, finding the two groups missed the 60-day deadline to challenge the rule after it went into effect.

The Bond Buyer

By Jack Casey

July 27, 2016

The Brownfield Gold Rush: Municipalities Give Contaminated Properties New Life.

Innovative local government leaders throughout the country are taking advantage of state and federal incentives to transform former landfills and contaminated industrial properties and waste sites into energy-producing wind and solar projects. Two examples of municipalities giving such contaminated properties new life are discussed in this article – redeveloping once polluted properties into solar installations in New Bedford, Massachusetts and revitalizing a former Bethlehem Steel plant into renewable energy projects in Lackawanna, New York.

Turning Environmental Liabilities into Environmental Assets

Brownfields are a challenge for municipalities. In many cases, these properties have been idle and under-utilized for decades due to the environmental stigma that has hindered their redevelopment for productive use. At first glance, these sites may not appear to be suitable candidates for siting commercial and utility-scale renewable energy facilities. But many of these properties have development potential that finally can be realized, thanks to a favorable regulatory and financial environment.

Many state and federal programs, such as the Environmental Protection Agency's "Re-Powering America's Land Initiative," are spurring redevelopment through streamlined regulatory approvals, expedited permitting, reduced land acquisition costs, and financing and tax incentives. In fact, according to EPA, as of 2014, more than 135 renewable energy projects have been installed on 128 contaminated properties with a total capacity of more than 773 megawatts (MW).

The location of these properties in urban and industrial neighborhoods also plays a vital role in their redevelopment. Brownfields, including former industrial sites and municipal and hazardous waste landfills, are frequently located close to crucial infrastructure, such as electric transmission lines and substations, roads and water supply. Often, they comprise large land areas suitable for renewable energy development, and they already may be zoned and permitted to accommodate such redevelopment.

In addition to financial incentives, EPA offers liability protection to those who meet requirements under federal statutes like the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act. Many states offer similar programs. Protections of this nature can help overcome environmental stigma that may attach to contaminated properties and prevent their redevelopment for productive use.

New Bedford's Whale of a Transformation

In the past several years, New Bedford, Massachusetts, once America's whaling capital, has tapped both state and federal incentives to reinvent itself as a major generator of solar power. New Bedford is just one of several Massachusetts communities developing renewable energy projects on contaminated lands in partnership with local utilities, private investors, and solar energy companies. The state's Solar Renewable Energy Credit program has certainly helped, requiring utilities to buy electricity from solar installations, and providing specific incentives for renewable energy on landfills and brownfields.

The coastal southeastern Massachusetts city now has more than 16 MW of solar capacity installed or under construction, and is ranked second only to Honolulu, Hawaii for the most solar installed per capita. The city obtains 50 percent of its energy from solar, and is on track to buy two-thirds of all its energy from solar projects.

Several of the solar installations are on once-polluted properties, including a 500 kilowatt facility on a two-acre revitalized brownfield site at New Bedford High School. The city's latest effort – a 1.8 MW installation on a 10-acre former toxic waste site – opened last fall and is expected to save the city $2.7 million in energy costs over its 20-year projected lifetime. The city still has one remaining project under construction – a 3.7 MW system in the New Bedford Business Park.

Since taking office in 2012, Mayor Jon Mitchell has spearheaded the city's green strategy. The city's solar projects are aimed not only at cutting local government's utility bills and saving taxpayer dollars, but are part of a comprehensive environmental program to both clean up contaminated properties and reduce fossil fuel consumption. When complete, the combined solar energy projects will save the city government millions of dollars over the next 20 years through the availability of less expensive means of energy.

Former Bethlehem Steel Plant Gets New Life

Last fall in Lackawanna, New York, the City Council approved the installation of 13,000 solar panels on a portion of a former Bethlehem Steel plant site. When the steel mill shut down in the 1980s, the badly polluted 1,600-acre property sat dormant for two decades, before returning to productive use

under the New York Department of Environmental Conservation's Brownfield Cleanup Program. Now, the facility, which is operated by Apex Energy, will be one of the largest solar photovoltaic (PV) installations in New York State upon completion.

And, it will be the neighbor of one of the largest urban wind energy projects in the world – a 30-acre site also reclaimed from the sprawling, contaminated steel mill site. The two-phase Steel Winds project operated by Sun Energy and Apex Energy boasts 14 wind turbines with a capacity of 35 MW – enough clean electricity to power about 9,000 homes. The project has added hundreds of thousands of dollars in annual tax revenue to surrounding communities and school districts.

Risk Factors Must be Addressed

While brownfields may provide property owners and renewable energy developers with significant opportunities, such investments also carry risks. Therefore, project risk assessments and mitigation strategies must be addressed.

As with many other real estate opportunities, success depends on location, location, location. It is essential to identify the right brownfields property. Site studies are needed to determine the required level and cost of remediation to satisfy the environmental regulators, as well as the appropriate conditions for redevelopment, such as proximity to infrastructure, and the amount of available acreage on which to place the energy generation facilities. For example, solar projects often require more than 20 acres to be financially viable.

Another risk factor is liability. Risks must be addressed and managed. EPA and state environmental authorities have developed incentive programs with a variety of discretionary enforcement policies and property-specific documents to encourage site cleanups and facilitate contaminated property transactions and revitalization. Also, it may be more prudent to choose a property where remediation has been completed and the owner has received a "no further action letter" from the state regulatory agency. Further, the liability risk can be managed or mitigated, for example, through indemnity clauses in purchase and sale agreements or leases that allocate liability to the owner or responsible parties, as well as through environmental insurance policies to cover future unknown risks.

Before proceeding with a renewable energy project, it is important to determine whether a site is or may be subject to institutional or engineering controls that require approvals from appropriate regulatory agencies. And, a renewable energy project likely will need financing. Many traditional banks and equity providers may be reluctant to finance a project on a brownfield property. It is critical to identify financing partners who both understand the liability protections available to project lenders, and who are willing to support such projects.

If undertaken with the right combination of due diligence, creativity, incentives, and liability protections, the redevelopment of a brownfield into a renewable energy facility can provide a significant win-win proposition for many local communities.

Clean Technica

By Jeffrey M. Karp, Jerome C. Muys Jr., and Van P. Hilderbrand Jr.

July 21st, 2016

Jeffrey M. Karp, Jerome C. Muys Jr. and Van P. Hilderbrand Jr. are environmental law attorneys with Sullivan & Worcester. Email: jkarp@sandw.com; jmuys@sandw.com; vhilderbrand@sandw.com.

Newport to Draft Ballot Measure Seeking Tighter Restrictions on Tax Increases and Bond Issues.

Newport Beach leaders took a step forward Tuesday on a charter amendment proposed for November's ballot that aims to tighten controls over tax increases and debt issuance.

The measure would ask local voters to consider whether the city charter should require at least five of the seven City Council members to vote in favor of a general tax increase before an increase could be placed on the ballot for voter consideration. Currently, four council members' votes are required.

Voters also would be asked whether they want to require voter approval before the city can use a certificate of participation, a financial instrument for issuing bonds to fund capital improvements. A COP was used in funding part of the Civic Center project.

The City Council voted 4-3 on Tuesday night to direct staff to craft the proposed charter amendment, known as the Newport Beach Taxpayer Protection Act, for placement on the Nov. 8 ballot. Council members Ed Selich, Tony Petros and Keith Curry dissented.

The council signed off last year on one aspect of the measure, requiring a supermajority council vote to approve tax increases, which Curry spearheaded.

However, on Tuesday, Mayor Pro Tem Kevin Muldoon asked his colleagues to also consider adding the restriction on capital improvement bonds.

"In this case, hypothetically, the Civic Center would not exist unless a majority of the people of Newport Beach said they wanted to do a certificate of participation," Muldoon said. "It is meant to put the power back in the hands of our voters."

Councilman Scott Peotter, who in June floated a similar proposal to restrict bond debt, supported Muldoon's idea.

Certificates of participation are a common way that municipalities finance the acquisition of land and public infrastructure. COPs are paid for from a government's existing revenue stream, unlike general obligation bonds, which result in tax increases and therefore require a public vote, according to city Finance Director Dan Matusiewicz.

Curry strongly opposed adding Muldoon's proposal to the Taxpayer Protection Act.

"Three out of four cities in California have the provision that I proposed as law already; not a single California jurisdiction has the proposal that Mr. Muldoon has as part of their law," Curry said.

Matusiewicz cautioned against Muldoon's proposal during the council meeting, saying it would be an extremely bad idea to cut off that avenue of funding.

Muldoon said he wasn't proposing to remove COPs altogether, and he accused Matusiewicz of being biased.

"I'm going to cut it there, because I see your bias and I understand," Muldoon said. "The opposition does not want the voters to decide."

Matusiewicz said Wednesday that requiring all COP plans to become ballot initiatives would add

uncertainty to financial planning, as well as time and costs associated with ballot measures.

“Managing finances by ballot initiative … can hinder objectivity in financial decisions,” Matusiewicz said. “Ballot initiatives all too often become politically charged and unpredictable.

“We have a highly educated constituency, but they generally don’t have the time or interest to get into the minutia of mundane public infrastructure projects. Instead, people tend to rely too heavily on less-objective fliers on a given subject.”

The draft measure will go before the City Council on Aug. 9 for final consideration in an effort to make the Aug. 12 deadline to place it on the ballot.

The Los Angeles Times

by Hannah Fry

July 31, 2016

Bondholders of the Lost Ark: Squire Patton Boggs

When most bond advisors think of the types of projects that bond proceeds may be used for, they think of roads, bridges, hospital or university buildings, etc. I think it is safe to say that very few bond advisors visualize an ark, let alone a replica of Noah’s Ark. However, the City Council of Williamstown, Kentucky did just that. I guess that makes them visionary.

On December 23, 2013, the City of Williamstown issued $62,000,000 of Taxable Industrial Building Revenue Bonds (the “Bonds”) to finance in part a “biblically-themed educational and entertainment complex, to include a replica of the Ark of Noah and related facilities”. Per the Official Statement of the Bonds, which is available on EMMA-MSRB, the Bonds were issued under §§103.200 to 103.285 of the Kentucky Revised Statutes. In general, these provisions of Kentucky law permit cities and counties in Kentucky to issue industrial development bonds for projects that will promote economic development within the Commonwealth. So far so good, because successful theme parks most likely promote economic development in their surrounding communities.

When you delve into the details, however, it becomes a little less clear how the owner of the biblical theme park qualified under Kentucky law as a proper conduit borrower of the proceeds of these types of bonds. For example, the relevant provisions of the Kentucky Revised Statutes provide that a city or county may issue industrial development bonds in order to decrease the cost of purchasing or constructing “any industrial building or pollution control facility”. The definition of “industrial building”, interestingly, includes both facilities used by a nonprofit educational institution and a recreation or amusement park, which I assume is how the owner of a biblical theme park qualified to borrow the proceeds of the Bonds.

The biblical theme park is called Ark Encounters. Unlike the lost Ark of the Covenant in the well-known movie, “Raiders of the Lost Ark”, this ark will not be hard to locate (it’s also unlikely to melt the faces of those who peer inside). According to the website of Ark Encounters, the replica of Noah’s Ark was built according to the dimensions given in the Bible, making it 510 feet long, 85 feet wide, and 51 feet high. This means it is about five stories high and almost as long as one-and-a-half

football fields. According to the website, the ark is the largest timber-framed structure in the world. The ark apparently is full of exhibits, including displays of Noah's family and many cages containing animal replicas. Interestingly, at some point, Ark Encounters must have considered housing live animals in the ark, because one of the risk factors listed in the Official Statement for the Bonds is that the "animals that will be in the borrower's care will be important to the Project, and these animals could be exposed to infectious diseases". This is probably not a risk factor that shows up in too many Official Statements.

One obstacle that the owner of Ark Encounters encountered in building its theme park was uncertain financing. For example, the owner had received approval in May of 2011 for a tourism tax credit from the Kentucky Tourism Sales Tax Credit Program. The Official Statement for the Bonds, however, notes that this decision may be challenged as a violation of the Establishment Clause in the U.S. Constitution. (Although the interest on the Bonds is taxable from a federal income tax standpoint, the interest is exempt from Kentucky income tax.) The owner's concern in this regard was warranted, and on December 10, 2014, the owner's qualification for the tourism tax credit was revoked at a cost of approximately $18 million. Apparently, the Kentucky officials were concerned that Ark Encounters had evolved from a tourism attraction to an extension of the owner's ministry, and had reason to believe that the owner intended to discriminate in hiring based upon religion.

Despite the financial uncertainty that the owner of Ark Encounters encountered, the biblical theme park opened a few weeks ago. That is good news for the bondholders of the lost ark, because the debt service on the Bonds will be paid from park revenues.

Squire Patton Boggs

by Cynthia C. Mog

USA July 27 2016

Federal TIGER Grants Provide $500 Million for Local Projects.

DALLAS – Road, rail, and transit projects in 32 states and two U.S. territories will receive $500 million from the eighth round of a stimulus-era competitive federal grant program.

The 44 projects to be funded by the Transportation Investment Generating Economic Recovery (TIGER) grants were selected from 585 applications totaling more than $9.3 billion, Transportation Secretary Anthony Foxx told reporters in a conference call on Friday.

The highly competitive TIGER grants support projects that are often difficult to fund through conventional transportation programs, including road and bridge projects that span several jurisdictions, Foxx said.

"For the eighth year running, TIGER will inject critical infrastructure dollars into communities across the country," he said. "This unique program rewards innovative thinking and collaborative solutions to difficult and sometimes dangerous transportation problems."

The fiscal 2016 grants include $193 million for road projects, $97 million for transit, $87 million for passenger and freight rail, and $54 million for ports and maritime improvements, Foxx said.

"A great TIGER program doesn't just improve transportation," he said. "It expands economic

opportunity and transforms a community."

The $500 million of TIGER grants will support $1.73 billion of transportation infrastructure improvements because each $1.00 of a TIGER grant can leverage up to $3.50 in other public and private investments, Foxx said.

The first seven rounds of the TIGER program provided $5.1 billion of grants to 421 projects in all 50 states, the District of Columbia, and Puerto Rico. The latest round includes projects in Guam and the U.S. Virgin Islands.

More than 7,300 applications seeking a total of $143 billion have been submitted since the TIGER program began in 2009, the Transportation Department said.

TIGER is not included in the Fixing America's Surface Transportation (FAST) Act that became law in early December. The grants must be renewed each year by Congress despite efforts by Democrats to make it a multiyear program.

The Senate has passed a 2017 transportation appropriations bill that would provide $525 million for TIGER next year, but a measure adopted by the House Appropriations Committee in May approved a cut in TIGER to $450 million.

President Obama's proposed $73 billion transportation budget that never gained traction with lawmakers would have increased TIGER funding to $1.25 billion in fiscal 2017.

The largest grant this year is $25 million to the Chicago Transit Authority to upgrade an existing "L" train station and restore a segment of a historic track structure.

Flint, Mich., will receive a $20 million TIGER grant to rebuild city streets that will be torn up as the city moves ahead with a program to replace lead water pipes.

Pittsburgh will use its $19 million TIGER grant to put a cap over a below-grade portion of Interstate 579 to connect a residential district with the downtown area. The project includes a new bus stop, improvements to streets, and sidewalk upgrades.

Other grants include $10 million to Brownsville, Texas, for rehabilitation of a bus maintenance facility and the purchase of eight hybrid-fueled buses, $17.7 million for a highway freight interchange in Scott County, Minn., and $6.2 million for a river port in Little Rock, Ark.

The Bond Buyer

By Jim Watts

July 29, 2016

S&P: U.S. State And Local Government Credit Conditions Outlook: Economic Growth Outlook Dims Amid Rising Global Uncertainty.

Economic data since March remain consistent with S&P Global Ratings' forecast for continued slow growth. The United Kingdom's vote in late June to leave the European Union added to an already uncertain global economic setting and is likely to weigh indirectly on U.S. GDP. Consequently, we

have lowered our real GDP growth forecast for 2016 to 2.0% from 2.3%. The effects are likely to dissipate over time and result in only a modest revision to our forecast for 2017 growth to 2.4% from 2.5%. Fortunately for state and local governments, the key drivers of U.S. economic growth—consumer spending and the housing sector—are largely a function of domestic demand. Nevertheless, the uptick in uncertainty stemming from Brexit and slow GDP growth in the first quarter has led us to raise our risk of recession estimate over the next 12 months to 20%-to-25% from 15%-to-20%.

For most state and local governments, the new fiscal year began on July 1, in the wake of financial market shockwaves unleashed by the Brexit vote. Although equity markets initially tumbled in the immediate aftermath of the U.K. vote, they subsequently rebounded. Still, the tendency for markets to experience bouts of volatility has become a theme for 2016. This has cast a modest pall over the revenue outlook for state governments in particular, which tend to be more reliant on personal income taxes than their local government counterparts. Most states still project that tax revenues will increase in fiscal 2017, but at a slower pace than in 2015 and 2016. We also perceive that state revenue forecasts are subject to greater risk as a consequence of the increased financial market volatility. In addition, market volatility that struck in late June is likely to undermine investment returns for state and local government pension systems with a July 1 fiscal year. The California Public Employees' Retirement System (CalPERS), for instance, reported that its investments earned just 0.6% for fiscal 2016, far short of its 7.5% assumed rate of return. We expect the trend toward weaker investment returns seen in fiscal 2015 and 2016 will translate to upward pressure on pension contributions for state and local governments, further squeezing their fiscal positions.

Overview

- Our revised forecast anticipates slower economic growth in 2016, at 2.0% from 2.3% as of March;
- The risk of recession has increased to 20% to 25% from 15% to 20%;
- Key supports to economic growth remain consumer spending and the housing market;

Continue reading.

27-Jul-2016

Think Tank Warns of Downsides to P3 Noncompete Clauses.

Many developers seek to incorporate noncompete clauses in their P3 agreements to ensure their project investments will deliver an expected rate of return. However, one think tank cautions public agencies to consider what unforeseen changes could occur over the life of a project that may cause these provisions to turn what was a beneficial project into a public liability.

Noncompete clauses are designed to discourage the government from developing projects or policies that could compete for or in other ways reduce revenues the developer expects to earn from the project, the Center for American Progress explains in a July 27 report. Examples include provisions that penalize an agency for building a free road that could lure drivers away from a toll road the developer is building or passage of a law that suddenly imposes a statewide cap on the amount of fees that a toll road operator can impose.

Many developers see noncompete provisions as a way of decreasing their financial risk, regardless of the economic or political changes their public partners may initiate or endure. These agreements lock in financial stability for the private partner but this guarantee may come at the expense of the

public partner's bottom line.

The center cites Chicago's decision in 2008 to lease many of its parking meters to a private company for 75 years in exchange for a one-time payment of $1.15 billion. Under the deal, the city retained some say over which and how many parking spaces it leased to the company but this flexibility came at a price. The city government agreed to pay a fee for making any policy or regulatory changes that might reduce the company's parking fee revenues, such as adding public parking spaces close to the leased spaces, reducing parking fines below an agreed-upon level, reducing the number of spaces the company controls or relocating a company-leased parking space from a high- to low-demand area. Under the terms of this agreement, Chicago has thus far paid the firm $31 million for making these types of changes — at a period during which its population, and therefore, its tax base was on the decline.

"This suggests that the city would have been better off simply borrowing the sum it received through the deal. Issuing municipal debt would have provided needed capital at a fixed price without locking the public into an agreement that provides a low-risk, near monopoly position for a private concessionaire," the center explains.

Because many P3 agreements stretch for decades, "government negotiators are forced to try to foresee all future possible scenarios — an essentially impossible task," the report warns. The strict nature of many of these agreements lock governments into terms and conditions that can ultimately can work against rather than for the public good.

For this reason, policymakers should avoid noncompete clauses whenever possible. If noncompete clauses are deemed necessary, the state must ensure that the concessionaire accepts a lower rate of return that reflects the reduced revenue risk the provision provides," the center advises.

NCPPP

August 1, 2016

NCPPP Launches Fall Schedule for P3 Bootcamp.

NCPPP is bringing its popular P3Bootcamp training course to five cities this fall. P3Bootcamp offers basic information geared toward newcomers to the P3 field, but also covers current developments and insights tailored for seasoned professionals who are looking for the latest perspectives on the ever-changing P3 landscape.

This intensive day-and-a-half course, taught by seasoned professionals who are experts in their fields, is designed to teach public- and private-sector leaders how and why successful partnerships work and proven strategies for assembling and managing highly effective projects.

Courses will be offered in:

- Phoenix on Sept. 27-28
- Boston on Oct. 11-12
- Miami in November, in conjunction with a to-be-announced NCPPP conference
- Jackson, Miss., on Nov. 16-17
- Chicago on Dec. 13-14

NCPPP also has begun planning P3Bootcamp offerings for early 2017.

For more information about P3Bootcamp, visit the course website.

If you have any questions about the schedule, are interested in sponsoring a course or would like to host a 2017 P3Bootcamp, please contact Deputy Director Paul Kalomiris at pkalomiris@ncppp.org.

July 29, 2016

Social Finance Publishes New Report: Social Impact Bonds: The Early Years.

On July 5th, 2016, the Social Finance global network launched its first white paper on the state of the Social Impact Bond/Pay for Success market. The paper looks back to the launch of the first Social Impact Bond in Peterborough in 2010 to chart the growth of this emerging global movement. Results from the early projects confirm the value of using this innovative financing mechanism to deliver better outcomes for vulnerable individuals.

Read the report.

Manufacturing Finance: Bonds & Tax Increment Supporting the Industrial Renaissance.

August 16, 2016
@ 1:00 pm Eastern

With the improving economy, many state and local development finance agencies are reporting a resurgence in manufacturing. However, manufacturing has changed in the past decade and new financing tools are needed to support this opportunity for job growth and investment. This month's CDFA // BNY Mellon Development Finance Webcast Series will unlock the financing tools that support new, expanding and relocating manufacturers. From financing growth opportunities and emerging industries to developing industrial parks and robust infrastructure, this webcast will give you the resources you need to drive manufacturing in your community.

Click on the Register button below to confirm your participation and receive login information. Registration is free and open to all interested stakeholders.

REGISTER

A Summary of the Final Regulations on Non-Issue Price Arbitrage Restrictions: Squire Patton Boggs

On July 18, 2016, the Treasury Department published final regulations on non-issue price arbitrage restrictions (the "**Final Regulations**") in the Federal Register. The Final Regulations finalize regulations proposed in 2007 and 2013 (collectively, the "**Proposed Regulations**"). Click here for a copy of the Final Regulations, and read below for a high-level summary of them. We will in

subsequent posts be publishing more detailed analysis of specific provisions in the Final Regulations.

As discussed in a prior post, the Final Regulations apply to bonds sold on or after October 17, 2016 (the "**Effective Date**"). References in this blog post to "Prior Regulations" are references to the Treasury Regulations in effect prior to the Effective Date of the Final Regulations.

The Final Regulations make changes to a number of rules scattered throughout the arbitrage regulations. Below, we take them in order, progressing through the Treasury Regulations. To facilitate your review, at the end of the blog is a comparison table showing certain provisions of the Final Regulations next to the parallel provisions in the Prior Regulations.

Continue Reading.

by Joel Swearingen

July 22, 2016

The Public Finance Tax Blog

Squire Patton Boggs

Puerto Rico Extends Legal, Advisory Contacts After Debt Default.

Puerto Rico extended contracts worth $3.2 million with outside restructuring firms as the commonwealth defaulted on nearly $1 billion of principal and interest on July 1 and federal lawmakers passed legislation to oversee the island's finances.

The commonwealth continued agreements with Cleary Gottlieb Steen & Hamilton LLP and Millstein & Co. on July 1, according to a review of contracts provided by the island's Office of the Comptroller. That same day, Puerto Rico missed payments to general-obligation bondholders, the biggest default ever in the $3.7 trillion municipal-bond market.

Cleary Gottlieb, a New York-based law firm, will earn $2 million through June 30, 2017, for its advice as Puerto Rico seeks ways to reduce its $70 billion debt load. The commonwealth's Fiscal Agency and Financial Advisory Authority is set to pay Millco Advisors LP, an affiliate of Washington-based Millstein & Co., $1.2 million for financial expertise, including $450,000 for possible expenses in any potential lawsuit or investigation regarding the firm's restructuring work with the commonwealth. The one-month contract ends July 31. Millstein has a separate $3 million agreement with Puerto Rico that runs through December and would compensate the firm if a restructuring deal is finalized.

Shannon Lynch, a spokeswoman for Cleary Gottlieb, and Jenni Main, Millstein's chief financial officer, declined to comment.

The two firms have been advising Puerto Rico since February 2014 on how the commonwealth can reduce it obligations and negotiating on its behalf with creditors. President Barack Obama enacted on June 30 a law that creates a federal control board to oversee a restructuring of Puerto Rico debt and to monitor the island's budgets. The next day, the commonwealth defaulted on nearly $1 billion due to bondholders, including $780 million on general-obligation bonds.

Cleary Gottlieb contracts totaled $24.9 million and Millstein agreements were $16.4 million through

June 30, 2016, according to the Office of the Comptroller.

Bloomberg Business

by Michelle Kaske

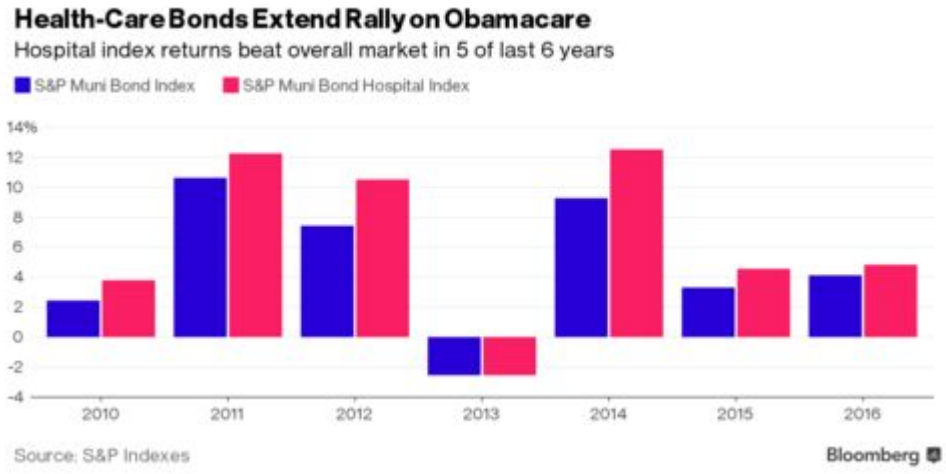
July 28, 2016 — 2:02 PM PDT

Hospital Bond Rally Undeterred by Latest Threat to End Obamacare.

The $250 billion municipal hospital-bond market is proving immune to Donald Trump's plan to eliminate Obamacare.

Sutter Health is among nonprofits tapping demand for the tax-free debt, with the California chain planning to sell $850 million in new securities this week. Health-care bonds are beating the overall $3.7 trillion municipal market for a third straight year as the federal law expanding medical coverage to Americans improves business. Despite the Republican presidential nominee's goal, the rally has been undaunted as investors hunt for yield while rates hold near record lows.

"There's lots of demand with all of the money pouring in," said Mike Quinn, a managing director at Chicago-based investment bank Ziegler, which underwrites bonds for hospitals. "This is a really great environment for health-care borrowers to issue tax-exempt money."



Borrowing costs have tumbled this year with money flooding into the securities amid turmoil in financial markets overseas, pushing the Bond Buyer's 20-year index to as little as 2.8 percent this month, the lowest since the data began in 1961. Debt issued for hospitals has returned 4.8 percent this year, outpacing the 4.1 percent gain for the market overall, according to Standard & Poor's indexes.

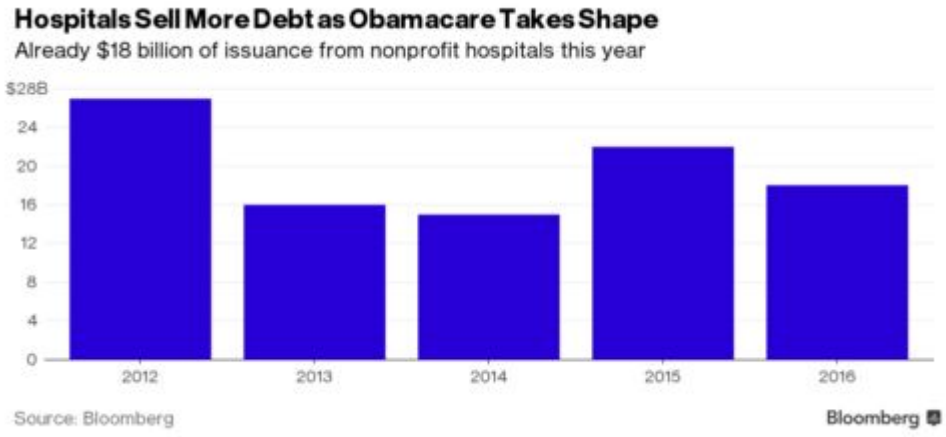
Much of the financial gains from President Barack Obama's overhaul have already emerged, with about 20 million people gaining coverage through private insurance plans or state Medicaid programs since the passage of the law in 2010. Hospitals are now facing the prospect of reduced reimbursements as the government aims to shift from a model where it pays for services to one where it rewards outcomes.

Republicans have repeatedly failed to repeal the law in Congress, and court challenges to its key provisions were turned away by the U.S. Supreme Court. While Trump has pledged to ask Congress to scrap it as soon as he takes office, doing so outright would be difficult politically given how many Americans are now covered by it, Morgan Stanley analysts said in a July 12 report.

For S&P Global Ratings and Moody's Investors Service, U.S. hospitals will manage the risks without undermining their credit ratings. Both companies have stable outlooks on the sector, meaning downgrades and updates will be roughly equal.

"We're about to enter a period with more uncertainty, but the organizations have very strong balance sheets and operations," said Kevin Holloran, an analyst at S&P. "The health-care system in America has proven over time to be very resilient and successful."

After sitting on capital plans as implementation of Obamacare started, hospitals ramped up borrowing last year to retire more costly debt, with sales this year already exceeding those in 2014 and 2013.



Sutter, which is issuing securities Tuesday through the California Health Facilities Financing Authority, is using the proceeds to refinance higher-cost debt and to help fund two new hospitals in San Francisco. Based in Sacramento, it runs 28 acute-care facilities, two recovery hospitals, four medical foundations and 15 home health-care locations.

"We have a consistent operating performance and excellent long-term stewardship of our balance sheet," said Svend Ryge, Sutter's treasurer.

Moody's ranks the debt Aa3, the fourth-highest grade, citing its stable cash flow and its strong presence in California.

The breadth of the company's business in California is a draw, said Todd Sisson, a debt analyst in Charlotte, North Carolina, for Wells Capital Management, which owns Sutter bonds among its $40.5 billion in municipals. While the company may buy some of the new securities, it's limiting holdings of health-care debt because of the price run up and cuts providers face after reimbursement changes begin next year, he said.

"We've got considerable headwinds," Sisson said. "The sector's outperforming at the same time we're seeing the risk increase."

Sutter will see Medicare payments actually increase annually through 2019, bond documents show. Still, “estimates of future impact would not be reliable” from later calculations of reimbursements, according to the statement.

The industry has “immunity” to uncertainty, said S&P’s Holloran. “People still get sick, go to the doctor, get surgeries.”

Bloomberg Business

by Molly Smith and Romy Varghese

July 25, 2016 — 2:00 AM PDT Updated on July 25, 2016 — 6:46 AM PDT

What America Might Look Like If These 6 Issues Are Neglected.

America’s challenges will get worse without the support and commitment of the next administration to city issues

For over a year, the nation – and the world – has been wrapped up in the contest for the highest office in the land. We’ve seen 17 Republican presidential hopefuls whittled down to a businessman billionaire. We’ve seen a political revolution stopped short by a former Secretary of State and First Lady. We’ve seen mean tweets and rowdy stump speeches, #NeverTrump and a Speaker’s endorsement, and a lot about those damn emails.

It’s been a wild ride for sure. But let’s be frank: it’s time to get serious. At the National League of Cities (NLC), our goal is to empower local leaders to do what they do best: create environments that support families and businesses, and strengthen local economies. Cities and towns need a strong partner in the next administration. The candidates must engage in dialogue reflective of how government actually works. We need less talking points, and more policy, or the problems being ignored in 2016 will look easy by the year 2020. Here’s what’s at stake if we don’t:

1. Infrastructure Will Continue to Decline, Hurting American Competitiveness

The future of American infrastructure looks grim. The American Society of Civil Engineers (ASCE) gave the U.S. a D+ for overall infrastructure in 2013. From energy to hazardous waste, the U.S. is just points away from a failing grade in numerous categories. One in nine bridges is structurally deficient; 45 percent of American households have no access to public transportation; an estimated 240,000 water main breaks happen each year – just to name a few challenges.

Today, 80 percent of Americans live in cities, a number which is projected to increase in the next decade. Surging population growth will put stress on already strained infrastructure, causing more damage and hastening decay, even by 2020. While municipal governments are responsible to their constituents, they are not empowered to raise the revenue necessary to invest in long-term solutions. Cities need a strong partner in the next administration to keep infrastructure from falling into further disrepair.

2. Affordable Housing Will Be Increasingly Hard to Find

The market for affordable housing in the U.S. is rapidly shrinking. According to the Joint Center for Housing Studies, the number of new renters will outpace the number of new homeowners

significantly over the next 15 years, raising rental property values and reducing the amount of overall affordable housing. This comes at a time when funding cuts have limited federal and local government investments in the construction of new affordable housing.

Meanwhile, as metro-areas continue to grow, moderate to low-income homes will be forced to find new housing accommodations or contribute more of their salary to rent. In 2013, over half of families with low to moderate-incomes spent over 30 percent of their income on rent, leaving less money for essentials like groceries and healthcare, not to mention savings accounts, retirement funds or other wealth-building systems. The next administration must work with cities to ensure safe, affordable and accessible housing remains a core element of the American Dream.

3. Natural Disasters Will Become More Challenging to Manage

Climate change affects cities differently across the U.S., but as average temperatures and sea levels rise, environmental and natural challenges will become more frequent and more devastating. Recently, Hurricane Sandy left between $10 and $15 billion in damages to infrastructure and private property. Cities located in the Gulf and along the Atlantic face threats to basic amenities like clean water and energy, a sector the U.S. Department of Energy reported will be particularly vulnerable to future storm damage.

In a different part of the country, the National Climate Change Assessment found that changes in rainfall and high temperatures will affect the lives and economies of 56 million people in the South and Southwest. Drought has decimated water supplies and changing weather patterns will make it difficult to predict precipitation, increasing competition for resources amongst cities. To prevent further loss, cities need significant investment in climate-resilient architecture and construction.

4. Local Economies Will Lack Skilled Workers to Drive Economic Growth

There are two different storylines playing out in cities: economic conditions are improving for some, but stagnating or worsening for others. While addressing rising inequality may require multiple policy solutions, what we do know is the changing nature of the economy, from advances in technology to shifts in the global market, underscore the need for proactive and effective workforce development.

According to city leaders, new businesses and business expansions are the most widespread positive drivers of local economic health. However, labor force challenges threaten to stymie this business growth and the economic benefits that would follow. City leaders report that the misalignment between available workforce skills and the skills employers' need is the most widespread concern facing local economies. This concern will only grow if we fail to tackle the challenge.

5. The Opioid Epidemic Will Devastate More Families

Drug overdose is the leading cause of accidental death in the U.S., with 47,055 lethal drug overdoses in 2014. Opioid addiction is driving this epidemic, with 18,893 overdose deaths related to prescription pain relievers, and 10,574 overdose deaths related to heroin in 2014 (CDC 2015 Report). From 1999 to 2008, overdose death rates, sales, and substance use disorder treatment admissions related to prescription pain relievers increased in parallel. The overdose death rate in 2008 was nearly four times the 1999 rate; sales of prescription pain relievers in 2010 were four times those in 1999; and the substance use disorder treatment admission rate in 2009 was six times the 1999 rate.

By 2020, if we don't stem the tide, these troubling trends will continue. In the U.S., we have reduced

the number of smokers, the number of teen pregnancies, and the number of new HIV/AIDS infections over time. The lessons from these public health challenges can be applied to the present opioid drug epidemic. To make real progress in the fight against opioid addiction, all levels of government must work together in partnership.

6. More Lives Will Be Lost to Gun Violence

The U.S. has the highest homicide-by-firearm rate of any developed country. In 2015 alone there were 52,606 gun-related incidents resulting in 13,344 deaths. While Congress fails to address this epidemic, communities suffer the violent consequences. In 2020, we can expect wide-spread gun violence to be a persistent tragedy of life in America if don't take action.

To reduce gun violence, legislation that regulates the possession of firearms is essential. NLC supports universal background checks on purchasers of guns, banning the sale of firearms to those on the terror watch list, and a 30-day waiting period for the purchase and transfer of all firearms. Within the past four years, we have witnessed tragedies in Newtown, CT, Aurora, CO, and Orlando, FL. There is no evidence that continued inaction from the federal government will end the violence. If the status quo is maintained, we will see continued loss of life in our communities.

The challenges cities face in the next four years are immense, but not insurmountable—and they can't be solved by one level of government. In the next president, we need not only a leader, but a listener and collaborator. Whether Trump or Clinton, the future of our nation depends on what happens in cities.

Show your support and sign onto our Cities Lead campaign.

National League of Cities

by Carolyn Coleman

About the Author: Carolyn Coleman is NLC Senior Executive and Director of Federal Advocacy. Follow her on twitter at @CColeman_Cities.

Where Are the P3s We Need?

We ought to be doing what many other countries are doing: making far more use of public-private partnerships for infrastructure.

Public-private partnerships may seem like the latest innovative way to finance crucial public needs, but P3s have been around for a while — quite a long while. In a recent Governing Guide to Financial Literacy, Justin Marlowe describes a Revolutionary War public-private partnership as a key factor in George Washington's defeat of the British. After a grim winter spent at Valley Forge, where soldiers starved and died of disease, the Continental Congress authorized a reorganization of the army's supply system and gave private contractors wide latitude in managing the logistics.

As successful as this arrangement was early in our history, we make far less use of such partnerships today than many other developed countries do. A study by the U.S. House Transportation and Infrastructure Committee found that while more than $61 billion was spent on highway P3s in this country from 1989 to 2013, that amount represented just 1.5 percent of the costs of all highway projects completed during that period.

Why such a small percentage? Well, it isn't for lack of need. A 2015 Governing Institute survey found that half of state and local public officials believe lack of infrastructure investment is their most significant financial problem. Traditionally, governments have tapped tax-exempt bond markets to provide low-cost capital. But access to this market can be restricted for a variety of reasons, including limited bonding capacity or poor credit ratings, so P3s have the potential to bring in private-sector money to jump-start projects that might not happen otherwise. In countries that make strong use of them, P3s typically constitute about 5 to 10 percent of overall investment in infrastructure.

To be sure, there are hurdles to creating public-private partnerships. For starters, they require authorizing legislation. While most of the early P3s centered on transportation (California was first to pass legislation in 1989, followed by Florida and Missouri the next year) projects today can cover virtually every type of public infrastructure. P3 legislation varies state to state, and the National Conference of State Legislatures provides a detailed table of the specific types of authorized projects (including highways, toll bridges, buildings, and water and sewer systems) for each jurisdiction. As of this January, 33 states, Puerto Rico and the District of Columbia had enacted some form of legislation enabling P3s.

Given the gap between existing infrastructure needs and available funds, it's not surprising that a number of recent papers and reports offer analyses and recommendations to help catalyze the use of P3s. This May, the Bipartisan Policy Center issued "Bridging the Gap Together: a New Model to Modernize U.S. Infrastructure," which outlines the core principles of a new American model for investing in infrastructure centered on P3s. Those principles include public benefits identified and clearly stated; investment decisions based on a full life-cycle evaluation; project benefits, cost and risks completely accounted for and made publicly transparent; sharing by public- and private-sector partners of risks, costs and benefits; and comparing the costs of action against the costs of not investing.

In a recent paper, the West Coast Infrastructure Exchange points out that financing is just one of an entire set of project costs. The report segments these costs across the entire lifecycle of a project and describes how, through incentives, a focus on performance can integrate design, construction and maintenance responsibilities and counterbalance the higher cost of private capital to reduce overall project budgets.

That paper highlights British Columbia, with a relatively long history of using this performance-based P3 model, as a best-practice example: Since 2002, the province has completed 45 projects totaling $17 billion (with over $7 billion from the private sector). All of the projects were delivered on or before their due dates, and none had cost increases stemming from design or construction mistakes.

To be sure, developing a public-private partnership that's likely to succeed requires considerable public-sector expertise. But there is a growing body of resources available to government officials. Organizations such as the National Governors Association and the American Association of State Highway and Transportation Officials, for example, offer interactive courses and peer-to-peer workshops on infrastructure financing. The U.S. Department of Transportation offers technical assistance and resources for states. And three states — Florida, Texas and Virginia — have established dedicated agencies to help promote and evaluate P3 opportunities. Virginia has long been considered a leader in this approach, and its website is worthy of review.

Clearly there's a case for more use of P3s and other innovative approaches to meeting our growing infrastructure needs. The American Society of Civil Engineers' last infrastructure report card, issued in 2013, gave a grade of D-plus to the overall condition of the nation's infrastructure, citing

conditions that are well known not only to public officials but also to the public: a backlog of overdue maintenance and a pressing need for modernization. ASCE's next report card is due out this year. Will our grade be better? If not, that will certainly drive home the point that doing nothing has a cost.

GOVERNING.COM

BY BOB GRAVES | JULY 26, 2016

Why the MSRB is Shortening its Dealer Closeout Timeframes.

WASHINGTON – The Municipal Securities Rulemaking Board wants to cut in half a proposed requirement to mandate municipal securities transactions be closed out within 20 days of settlement after dealer groups pushed for the shorter timeframe.

The MSRB proposed a move to a 10-day closeout requirement, with the option for a one-time 10-day extension if the buyer of the municipal security consents, in a partial amendment with the Securities and Exchange Commission. The 10-day requirement, which the MSRB proposed on Monday, would join other proposed changes to MSRB Rule G-12 on uniform practice that the MSRB filed with the SEC for approval on May 11.

"Shortening the close-out period from 20 calendar days, as stated in the original proposed rule change, to 10 calendar days will further reduce the risk and cost associated with interdealer [failures]," the MSRB said in its amendment.

The partial amendment mirrors suggested alterations that the Securities Industry and Financial Markets Association and Bond Dealers of America had proposed.

"We emphasize in our [comment] letter and the MSRB states in its amendments that failed transactions don't get better with age," said Leslie Norwood, associate general counsel and co-head of munis for SIFMA. "To that end, we are very pleased that the MSRB is taking this step to give investors greater certainty and reduce the risk and cost for regulated broker-dealers."

John Vahey, director of federal policy for BDA, said BDA's members "are pretty satisfied with the way the rulemaking is going."

Under the MSRB's current Rule G-12, there is no specific time requirement for closeouts, only a recommendation that any dealer that fails to deliver securities to another dealer by the agreed upon settlement date close out those interdealer trade failures within 90 days of the settlement date.

When the MSRB first proposed changing the rule, it recommended there be a requirement that failures be closed out no later than 30 days after settlement. SIFMA responded to that proposal by suggesting the MSRB instead require a closeout within 15 days of settlement with the possibility of an extra 15 days if the buyer consents.

The MSRB then changed its proposal to require a closeout within 20 days after the settlement date, citing both concerns that smaller dealers would be overburdened by a shorter timeline and a desire to ensure all dealers operated under the same, fixed timeline.

SIFMA said the concerns weren't warranted and again argued the time period was too long. Both

SIFMA and BDA then recommended the 10-day timeline with the possibility of a 10-day extension.

The dealer groups also brought up other issues, with SIFMA saying it would be “extremely helpful” to know whether a dealer should have the authority to close out a position by returning it to the seller when a customer with a self-directed account won’t agree to do so. BDA asked for further clarification on the closeout process for accounts transferred to a dealer through the Automated Customer Account Transfer Service (ACATS). ACATS facilitates the transfer of securities from one trading account to another at a different brokerage firm or bank.

The MSRB said in a footnote in its partial amendment that both concerns are “beyond the scope of the original proposed rule change and current proposed rule change.”

In addition to the changes to the timeline for resolving interdealer failures, the MSRB is also asking the SEC to approve proposals that would allow the purchasing dealer to start close-out procedures within three business days of the settlement date, a change from the current 10-business-day window. The MSRB proposal would also change the earliest day for execution to four days after electronic notification instead of the rule’s current 11 days after notice by telephone.

While the time period for close-outs would be significantly shortened, the three interdealer options for remedying a failed transaction would remain the same through the transition. The purchasing dealer could choose a “buy-in” and go to the open market to purchase the securities. It could also choose to accept securities from the selling dealer that are similar to the originally purchased securities in a number of areas. Lastly, the purchasing dealer could require the seller to repurchase the securities along with payment of accrued interest and the burden of any change in market price or yield.

The MSRB plans to give dealers a 90-day grace period after SEC approval to come into compliance with the changes.

The Bond Buyer

By Jack Casey

July 26, 2016

Ohio Airport Financing May Depend on New Political Subdivision Rule.

WASHINGTON – Four Ohio Congressmen are raising concerns that the Internal Revenue Service and Treasury Department’s proposed definition of a political subdivision would jeopardize funding for a $35 million terminal improvement project planned for Akron-Canton Airport.

The project is in the design phase, and will require bond funding for construction to begin as early as the spring or summer of next year, Rick McQueen, president and CEO of the airport, told The Bond Buyer on Monday. The IRS’ new definition of political subdivision could have national implications, he said.

Reps. Jim Renacci, R-Ohio; Bob Gibbs, R-Ohio; Tim Ryan, D-Ohio; and Dave Joyce, R-Ohio, wrote a two-page letter to the IRS during the agency’s comment period earlier this year. Should the rules be finalized in their current proposed form, the Congressmen said, Ohio’s regional airports – specifically the Akron-Canton Airport – may be hampered in their ability to issue tax-exempt bonds

to fund infrastructure improvements.

“If at any time the IRS determines that the issuer is operating in a way that either does not provide a significant public benefit, or that provides more than an incidental benefit to any private party, then the status of all of the issuer’s bonds issued after the effective date of the regulations would be in jeopardy,” the Congressmen wrote.

McQueen said that the airport wrote to the IRS earlier this year asking the agency to clarify its issues with airport authorities under current regulations. The IRS responded roughly a month and a half ago with a standard letter that they would be reviewing the airport’s comments, he said.

“It’s not just airport authorities impacted in the state of Ohio, but also other multi-jurisdictional boards throughout the country,” McQueen said. “There are a lot of people that could be impacted by this. My concern is the organizations that aren’t aware of this potential change.”

Whether an entity qualified as a political subdivision has historically been based on whether it had the right to exercise a substantial amount of at least one of three sovereign powers: eminent domain, taxation and policing.

But the now-controversial regulations the IRS and Treasury proposed in February would add two new requirements: political subdivisions must serve a governmental purpose “with no more than an incidental private benefit” and they must be governmentally controlled.

In their two-page letter to the IRS and Treasury, the Congressmen said they were concerned that the Akron-Canton Airport’s “critical” $35 million terminal improvement project could be “negatively impacted” by the new requirements.

The Akron-Canton Airport, located roughly halfway between the two cities with portions in both Summit and Stark counties, is the only commercial airport in Ohio governed by an airport authority.

Its eight-member board includes four members appointed by the Stark County Commissioners and four appointed by the Summit County Executive and approved by council.

In their letter to the IRS, the Congressmen stress that most of Ohio’s airport authorities, including that of Akron-Canton Airport, control their own budgets rather than the airport’s appointing authorities or the counties they operate in.

It is an independent political subdivision of the state and not a component unity of any other government entity, according to the congressmen. Because both counties the airport lies in appoint an equal number of board members, the authority “does not appear to meet the single entity control requirement,” they added.

They said that many Ohio airport authorities issue tax-exempt bonds for purposes that could be construed as private benefit, such as parking garages that could also benefit the private sector. Under current IRS and Treasury regulations as well as Ohio state law, these types of incidental private benefits satisfy the public purpose requirements, making any related private benefit permissible, the congressmen said.

“We are concerned … with the IRS’s future interpretation of this new ‘limited private benefit’ test, which may also pose a federal question and may not follow state law,” the letter read.

McQueen said the situation is urgent for the Akron-Canton Airport project.

“We’re dealing with a building that is 54 years old,” McQueen said. “We will need to have bond capabilities to fund this. It’s very difficult to come up with that money upfront to build the project.”

The terminal improvement project is part of a 20-year, $240 million master plan approved by the Federal Aviation Administration in 2015. The last bonds issued by the Akron-Canton Regional Airport Authority came in 2007, when $16.2 million in bonds were issued to finance terminal and gate improvements, according to the Municipal Securities Rulemaking Board’s EMMA website.

McQueen said he couldn’t provide a cost estimate comparing the airport’s ability to issue bonds under current regulations versus the proposed rules.

“I can’t tell you the difference today if it were to be a tax-exempt versus non tax-exempt funded project, but obviously when you’re doing a governmental project you try to be as fiscally responsible as possible,” McQueen said. “But it would increase the cost for debt service no doubt.”

The proposed rules have largely been met with opposition from groups including the Government Finance Officers Association and the Securities Industry and Financial Markets Association, which have said the rules could potentially upend the muni market. Several port and airport authorities, water and sewer issuers, and utility associations were also among those that submitted written comment to the IRS expressing concerns over what the proposed rules could mean for their tax-exempt status.

The IRS and Treasury received 132 comments during the public input period, which lasted from February through late May. The agencies held a public hearing on June 6, where several market groups called for the withdrawal or re-proposal of what they felt were unnecessary or unfair proposed rules.

During the hearing, Thomas Devine, general counsel for the Airports Council International – North America, said what he called “non-problematic” entities like airport authorities had a “bullseye” on their backs.

John Cross, the Treasury Department’s associate legislative tax counsel, has said that the new rules were proposed in response to concerns over who was controlling political subdivisions. Despite IRS audits that found some private entities were wielding significant control over political subdivisions, Cross said that the agency is not targeting airports.

IRS officials could not be reached for comment Monday as to when the proposed regulations could be finalized.

The Bond Buyer

By Evan Fallor

July 25, 2016

The Municipal Bond Industry Responds to Tax Foundation’s Recent Paper.

Last week, the Tax Foundation released a paper titled, “Reexamining the Tax Exemption of Municipal Bond Interest,” which argued that lawmakers should consider reforming the current tax treatment of municipal bond interest. Apparently, the municipal bond industry is less than thrilled

with our report: yesterday, *The Bond Buyer* published an article titled, "Why the Tax Foundation Report on Munis is 'Woolly-Headed,' " which quotes several individuals who take issue with our analysis.

Here are a few selections from the article:

> Advocates for maintaining the tax-exempt status of municipal bonds are firing back after a Tax Foundation report last week concluded lawmakers should consider limiting, reforming or eliminating the muni exemption…
>
> "This is a classic woolly-headed, ivory tower analysis," said Chuck Samuels, a member of Mintz, Levin, Cohn, Ferris, Govsky and Popeo. "Tax exempts might cause state and local governments to over-invest in infrastructure? Does anyone feel like their pot holed, overcrowded roads, mass transit and airports are over-invested?"…
>
> John Vahey, director of federal policy for Bond Dealers of America, also disagreed with the opinion that municipalities may be prone to overinvesting in infrastructure. "We think the notion that there is an overinvestment in infrastructure in the U.S. generally right now is a fallacy," Vahey said. "You just need to point to the glaring need to rebuild roads and bridges as well as grades and reports by engineering organizations that analyze the condition of infrastructure."

Most of the negative reactions in the article seem to be directed at one specific argument in the paper: that the tax exemption of municipal bond interest could lead state and local governments to overinvest in infrastructure. To illustrate this concern: it would be socially wasteful for a state government to spend $10 million on a highway project that delivers only $9 million in economic benefits, but the state government might undertake such an investment if the federal government provided it with a $1.5 million subsidy, in the form of a tax exemption.

As an aside, I'll note that this is not an imaginary, theoretical concern. State and local governments have spent over $6 billion on pro football stadiums since 1995, despite questionable public benefits. There is an entire book about how states and localities spend far too much money building new convention centers.

But the individuals quoted in *The Bond Buyer* article seem entirely unconcerned with the possibility that states and localities might invest in infrastructure projects with high costs and low benefits. Instead, they are worried about the opposite scenario: that state and local governments are currently passing up urgent opportunities to invest in infrastructure projects with high benefits and low costs.

Here's my question: if there's a "glaring need" for more infrastructure investment, why aren't state and local governments already filling that need? If there are urgent infrastructure projects with high potential benefits and low costs, why do state and local governments need a federal subsidy to invest in them?

I suspect that the reason why state and local governments aren't investing as much in infrastructure as Chuck Samuels and John Vahey would like is because *state and local voters aren't willing to foot the bill*. And there's the rub.

Supporters of the federal tax exemption of municipal bond interest are essentially making the case that 1) state and local voters are missing a great opportunity to reap large economic benefits at minimal costs, and that 2) the federal government should step in to nudge their decision-making in the right direction, by continuing to subsidize their infrastructure spending.

This is an entirely valid argument, but it assumes that the federal government has a better understanding of what infrastructure should be built than state and local voters do. If this is the case, why have the federal government subsidize state and local infrastructure projects? Why not argue for the federal government to increase its own direct spending on infrastructure?

In other words, it is either the case that 1) the federal government has a better idea of what infrastructure should be built, and it should purchase the infrastructure itself, or 2) state and local governments have a better idea of what infrastructure should be built, and the federal government should not subsidize them. Either way, a federal tax exclusion for municipal bond interest seems like an unideal policy.

Notably, no one quoted in *The Bond Buyer* article yesterday took issue with the other central claim in the Tax Foundation's report: that the current tax exemption of municipal bond interest is a poorly designed, inequitable, and inefficient tool for subsidizing state and local infrastructure.

The Tax Foundation

By Scott Greenberg

July 27, 2016

Many U.S. States, Cities, Missing Chance of Lifetime to Borrow.

NEW YORK/SAN FRANCISCO — The 1923 middle school building in Oregon's Corbett School District is so old that horses and trailers were used to dig the basement. It floods every winter, the building has no sprinkler system, and there is asbestos and lead paint in some spots.

Yet this May, voters struck down, for the fourth time, a plan to sell bonds that would pay for a new building, passing up an opportunity to finance the new school at a cost that may never be so low again.

Corbett is not alone. The amount of debt sold so far this year in the $3.7 trillion market for U.S. municipal and state debt is less than in 2015 despite record-low borrowing rates.

The yield on top-rated municipal 30-year bonds hit a bottom of 1.93 percent on July 6. That is far below the 3.27 percent of a year earlier and even below the comparable Treasury yield thanks to an income tax exemption granted to U.S. investors on the interest earned on most muni bonds.

There are several reasons why municipalities are slow in exploiting what could be a rare window of opportunity created by historically low global rates and investors' intense hunt for higher returns.

For one, municipal borrowers have to clear hurdles including those at the ballot box, which makes it hard for them to respond quickly to changing market conditions.

Some communities are also still aching from recession-era budget cuts and remain reluctant to take on new debt service costs, however low they may be. Some are hemmed in by sluggish economies, big pension liabilities – which crowd out new projects – or both.

"Apart from the very large states and cities that typically are the leaders … (others) are still not sure that they have the backing of the voting population or the economic resources to expand their

spending," said VanEck Global portfolio manager James Colby, who buys municipal debt for the firm's muni exchange traded funds.

For example, voters in Travis County, Texas, narrowly rejected a $287 million bond that would finance a replacement for an old, overcrowded courthouse in Austin, in part because of concerns that the chosen location might be too expensive.

New Jersey halted many state-funded road and bridge projects this month after lawmakers failed to extend the program that funds them because of a continuing battle over how to hike gasoline taxes to pay for new transportation spending.

Dysfunctional politics and fiscal strain also derailed last year's budget in Illinois, which was a full year late, and in Pennsylvania, where a nine-month budget impasse left public schools struggling to stay open.

LESS DEBT

As a result, municipalities and states issued $227 billion in debt between January 1 and July 19, down 1.6 percent compared with the same period of 2015, according to Thomson Reuters data. The lion's share of tax-exempt debt has been issued to refinance older bonds at lower rates, rather than fund new projects. (Graphic: http://tmsnrt.rs/29MmnHb)

Yet besides big issuers, in economically robust states, such as California and New York, it is America's most troubled borrowers that have increased new borrowing.

Some are selling bonds now because buyers who previously shunned them are piling in looking for extra yield. Other communities must borrow to cover running costs or finish essential projects.

With negative yields in Germany and Japan and a global hunt for fixed income assets because of market volatility, some foreign investors are also buying U.S. municipal bonds, even though they do not get any tax benefits.

"We're the best name in town right now in a very low-yield environment," Blair Ridley, municipal bond portfolio manager at Deutsche Asset Management, said during a recent webinar.

Municipal bond funds recorded consecutive net inflows for the last 42 weeks, according to Lipper data, with inflows this year so far reaching $36 billion, compared with $13.8 billion for the whole of 2015.

Yet prospective issuers still face voter resistance.

"It's a result of the credit crisis, an aversion to debt, and trying to right size the balance sheet," said Peter Hayes, head of municipal bonds at BlackRock.

In Corbett, since the $11.9 million bond proposal was voted down, officials in the 1,100 student school district 20 miles east of Portland are now considering a costlier private loan that does not need voter approval.

"I keep telling people the interest rates are so low," Superintendent Randy Trani said. "But it's not happening."

Some voters did not want to demolish a historical building. Many are also over the age of 50 and are averse to more costs, Trani said.

“They have no connection to the school at all. It’s hard to get them to vote to pay more taxes.”

By REUTERS

JULY 26, 2016, 6:18 A.M. E.D.T.

(Reporting by Hilary Russ in New York, Robin Respaut in San Francisco and Karen Pierog in Chicago; Additional reporting by Rory Carroll in San Francisco; Editing by Daniel Bases and Tomasz Janowski)

Atheist Group Sues Kansas City, Missouri, Over Baptist Convention.

(Reuters) – An atheist group has sued Kansas City, Missouri, charging that plans to use $65,000 in tourism tax dollars to assist in an upcoming Baptist convention violates guarantees in the U.S. Constitution separating church and state.

The lawsuit, filed on Friday in U.S. District Court by American Atheists Inc against officials including Kansas City Mayor Sly James, asks a federal judge to block the city from spending taxpayer dollars to support the event.

It contends that using tax dollars to help Modest Miles Ministries Inc, prepare for the National Baptist Convention USA Inc, would advance a religious purpose in violation of American Atheists’ right to be of state-supported religion, as provided for under the “establishment clause of the First Amendment of the U.S. Constitution.

In April, the city approved to pay $65,000 in municipal funds from the Neighborhood Tourist Development Fund to the ministry to help transportation costs, the lawsuit said. The conventions is scheduled to be held Sept. 5-9 in Kansas City.

Kansas City spokesman Chris Hernandez declined to comment on the pending lawsuit. But a contact has not been signed for the funds to be released, and standard contract language excludes religious use of any funding, Hernandez said.

About 10,000 people are expected to attend the convention, which was previously held in the city in 2010, 2003 and 1998, the Kansas City Star reported.

By REUTERS

JULY 26, 2016, 5:33 P.M. E.D.T.

(Reporting by Justin Madden in Chicago; Editing by Scott Malone and Alan Crosby)

Chicago Deficit Narrows Despite Pension Uncertainty.

CHICAGO — Chicago’s budget deficit could reach a 10-year low next year despite unresolved funding questions for its largest and most underfunded pension system, according to an annual financial analysis released by the city on Friday.

The report projected that fiscal 2017 expenditures will exceed revenues by $137.6 million, representing a 40 percent reduction from 2016 and the narrowest gap since 2007, when the city deficit stood at $64.5 million.

“This is the result of hard work and difficult decisions, which have put Chicago on path towards long-term financial stability after decades of mismanagement,” Mayor Rahm Emanuel said in a statement.

Emanuel’s administration attributed the improvement from the fiscal 2016 deficit of $232.6 million, in part, to “health-care cost reductions, lease consolidations and energy efficiency programs.” An infusion of new dollars also will help cover 2017 obligations for three of the city’s four pension funds.

Last fall, the city approved a record $543 million property-tax increase to be applied to Chicago police and fire pension funds, and won final approval last spring to spread out state-mandated payments despite opposition from Republican Governor Bruce Rauner.

In May, Emanuel reached an agreement with city laborers to steer $40 million per year from a 2014 increase in the Chicago’s 911 telephone surcharge to save their pension fund from insolvency.

A plan to rescue the Municipal Employees’ Pension Fund from insolvency has not been finalized. Covering more than 50,000 active and retired city workers, the municipal fund is forecast to run out of money within 10 years and carried $18.6 billion in unfunded liabilities at the end of 2015, up from $7.13 billion in 2014.

In June, Standard & Poor’s warned the city, which had $33.8 billion in unfunded liabilities spread over all four pension funds, could face additional bond-rating downgrades unless it makes comprehensive changes to the municipal fund.

In a conference call with reporters, Chicago Budget Director Alex Holt predicted on Friday an announcement regarding a new revenue source for the municipal fund would be forthcoming within the next two weeks but declined to offer details, saying only “everything is on the table.”

The 2017 financial analysis released Friday forecast that budget gaps would continue through fiscal 2019, when the city’s deficit could range between $144.1 million and $780.1 million.

By REUTERS

JULY 29, 2016, 4:33 P.M. E.D.T.

(Reporting by Dave McKinney; Editing by Jonathan Oatis)

Cash-Strapped Chicago Schools Pay Big Premium in $150 Million Bond Deal.

CHICAGO — Chicago’s cash-starved public schools borrowed $150 million to pay for capital projects in a privately placed deal with a yield of 7.25 percent, the nation’s third largest school district announced on Friday.

The 30-year bonds were priced 513 basis points over Municipal Market Data’s benchmark triple-A scale, indicating Chicago Public Schools continues to pay a big penalty to sell debt.

The system said the unlimited tax general obligation bonds that mature in December 2046 would not be used to balance CPS' budget.

J.P. Morgan purchased the bonds, which were sold under an existing authorization from CPS' school board.

"Today, CPS sold $150 million in bonds for capital projects at a significantly more favorable interest rate than its last issuance," Ron DeNard, CPS' senior vice president of finance said in a prepared statement. "These bonds will fund critically needed capital work."

CPS' last bond sale for $725 million in February represented one of the biggest "junk" bond offerings the municipal market has seen in years and carried an 8.5 percent interest rate.

That 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.

The district said it would make public a preliminary official statement on the deal announced on Friday by Sept. 2.

CPS faces a lingering $300 million deficit for the fiscal year that began July 1. The system also may lose an additional $215 million in state funding that was approved by Republican Governor Bruce Rauner and the Democratic-led state legislature in June on the condition a statewide pension-reform package pass by January.

There has been no tangible movement on a deal to reel in pensions for state government workers and retirees and teachers after a May 2015 Illinois Supreme Court ruling that invalidated a 2013 pension-cut law opposed by public-sector unions.

By REUTERS

JULY 29, 2016, 6:03 P.M. E.D.T.

(Additional reporting by Karen Pierog; Editing by Bernard Orr)

SIFMA Submits Comments to the SEC on FINRA and MSRB Proposed Rules.

SIFMA submitted comments to the Securities and Exchange Commission (SEC) on the Financial Industry Regulatory Authority's (FINRA) Rule Filing SR-FINRA-2016-024 and the Municipal Securities Rulemaking Board's (MSRB) Rule Filing SR-MSRB-2016-09. MSRB and FINRA are proposing to create new Real-time Transaction Reporting System (RTRS) and Trade Reporting and Compliance Engine (TRACE) academic historical trade data products that would include anonymized dealer identifiers.

The RTRS and TRACE Academic Data Products would be made available only to institutions of higher education. SIFMA continues to support the MSRB's and FINRA's efforts to improve market transparency to investors and promote regulatory efficiency. Both FINRA and the MSRB have made a number of modifications to the proposals to address our concerns and we have provided comments on those modifications.

While we appreciate FINRA's and the MSRB's responsiveness on a number of aspects, we believe that the proposals, in some cases, could provide additional protections without impeding the goals of promoting academic access and research. SIFMA's comments include concerns about the scope of data available, data aging requirements, anonymizing dealer identities, and concerns about the potential for reverse engineering.

Read the letter.

July 28, 2016

- IRS PLR: City's Purchase of Interest in Electric Generating Facility Won't Result in Private Business Use of Bonds.
- IRS Releases Final Arbitrage Regulations (Unrelated to Issue Price): Squire Patton Boggs
- Municipal Bank Loans and Direct Placements SIFMA Seminar: October 25, NYC
- Customizing EMMA® Issuer Homepages.
- MSRB Files Amendment to Proposal to Modernize Close-Out Procedures.
- Hawkins Advisory: (Annual Qualified Mortgage Information)
- Fed's Final Treatment of Municipal Securities as High-Quality Liquid Assets Disappoints the Industry: Butler Snow
- Bill to Raise Issuer Limit For Bank-Qualified Bonds Offered in Senate.
- And finally, Ingrate Superheroes is brought to you this week by *Kinsey v. City of New York*, in which Mr. Kinsey climbed a five-story building, jumped, and lived to sue the City of New York for allowing him to escape an ambulance and engage in said stunt. Incroyable all around. Your editor's superhero alter-ego is Punctual Man. He's the first person on the scene, but then just stands there terrified and, let's face it, probably wets himself.

Technology Is Monitoring the Urban Landscape.

SAN FRANCISCO — Big City is watching you.

It will do it with camera-equipped drones that inspect municipal power lines and robotic cars that know where people go. Sensor-laden streetlights will change brightness based on danger levels. Technologists and urban planners are working on a major transformation of urban landscapes over the next few decades.

Much of it involves the close monitoring of things and people, thanks to digital technology. To the extent that this makes people's lives easier, the planners say, they will probably like it. But troubling and knotty questions of privacy and control remain.

A White House report published in February identified advances in transportation, energy and manufacturing, among other developments, that will bring on what it termed "a new era of change."

Much of the change will also come from the private sector, which is moving faster to reach city dwellers, and is more skilled in collecting and responding to data. That is leading cities everywhere to work more closely than ever with private companies, which may have different priorities than the government.

One of the biggest changes that will hit a digitally aware city, it is widely agreed, is the seemingly prosaic issue of parking. Space given to parking is expected to shrink by half or more, as self-driving cars and drone deliveries lead an overall shift in connected urban transport. That will change or eliminate acres of urban space occupied by raised and underground parking structures.

Shared vehicles are not parked as much, and with more automation, they will know where parking spaces are available, eliminating the need to drive in search of a space.

“Office complexes won’t need parking lots with twice the footprint of their buildings,” said Sebastian Thrun, who led Google’s self-driving car project in its early days and now runs Udacity, an online learning company. “When we started on self-driving cars, we talked all the time about cutting the number of cars in a city by a factor of three,” or a two-thirds reduction.

In addition, police, fire, and even library services will seek greater responsiveness by tracking their own assets, and partly by looking at things like social media. Later, technologies like three-dimensional printing, new materials and robotic construction and demolition will be able to reshape skylines in a matter of weeks.

At least that is the plan. So much change afoot creates confusion.

“We know for sure that there will be a lot of physical changes to our cities,” said Timothy Papandreou, the chief innovation officer for the San Francisco Municipal Transportation Agency. “Streets will be redesigned. There will be lots more real-time data. Automation will be everywhere. But it’s also crazy: Things are changing so quickly that we can’t pretend to have all the answers.”

One reason for confidence in a radically changed future is that much of it is already here. The city’s Uber and Lyft, the Boston-based auto-sharing company Zipcar and things like corporate shuttle buses have shown new ways for urban dwellers to use vehicles. Skylines in cities like London and Shanghai are full of unusually shaped buildings, thanks in part to computer-assisted design.

Rare robots can build with bricks, or monitor and rebuild the underground water, sewage and electrical pipes that make a city functional. It is hard to find a new municipal vehicle that does not come with a tracking system.

To the planners, innovations like automatic cars that learn people’s habits are simply an extension of trends. Mr. Papandreou said 13 companies are testing automated vehicles in the city. “We’re inviting start-ups to come in and work on the problems we have,” he said.

The city is developing a policy for drone-based deliveries. Emergency medical goods, transported from an airport to a hospital, are likely to be first, he said. But consumer goods may eventually be delivered by air.

Besides drones, the abundance of vehicles now on urban sidewalks, including motorized wheelchairs, scooters and hoverboards, is another intimation of the variety of ways people and things are expected to move, as digital technologies make these modes of transportation cheaper. Likewise, temporary offices and pop-up stores may foreshadow an urban landscape that changes faster than ever.

One danger of the new city may be the age-old faith that technology makes things better, and more tech is best.

“The danger of big dramatic projects is that they become the equivalent of urban renewal or the kind of sweeping things Robert Moses did for cars in New York that created dysfunction,” said Paul

Saffo, a technology forecaster. “The best thing tech could do now is rescue us from the car-centric cities we built after 1930.”

The new techno-optimism is focused on big data and artificial intelligence. “Futurists used to think everyone would have their own plane,” said Erick Guerra, a professor of city and regional planning at the University of Pennsylvania. “We never have a good understanding of how things will actually turn out.”

He recently surveyed the 25 largest metropolitan planning organizations in the country and found that almost none have solid plans for modernizing their infrastructure. That may be the right way to approach the challenges of cities full of robots, but so far most clues are coming from companies that also sell the technology.

“There’s a great deal of uncertainty, and a competition to show they’re low on regulation,” Mr. Guerra said. “There is too much potential money for new technology to be regulated out.”

The big tech companies say they are not interested in imposing the sweeping “smart city” projects they used to push, in part because things are changing too quickly. But they still want to build big, and they view digital surveillance as an essential component.

“Digital infrastructure is like plumbing or electricity. You can’t just have point-by-point solutions,” said Rick Huijbregts, managing director of the Americas division of the computer networking company Cisco Systems. “Cars have to talk to other transit, to traffic lights, to law enforcement.”

Is that creepy? “Our next generation, born after 1995, doesn’t know a life without computers,” he said. “They don’t know a way of living without this.”

THE NEW YORK TIMES

By QUENTIN HARDY

JULY 20, 2016

How to Save Public Pensions, No Federal Bailout Needed.

It isn’t unprecedented for the feds to spur local pension reform. Kennedy and Reagan both did.

The pensions of states and local governments are, collectively, trillions of dollars in the hole. This debt is crippling budgets and will dump an enormous burden on future generations. Yet state and local politicians have proven that they cannot, or will not, solve the problem. The federal government ought to step in. But how?

Instead of bailing out these pensions, Congress should pass a law allowing states and local governments to reduce promised benefits—something that is now illegal under some states’ statutes or constitutions. Congress should stipulate that pension plans must be in very bad shape to qualify for relief, and the politicians in charge of them would have to voluntarily seek it. Most important, pensions should be required to uphold their original intent: to keep retirees who can no longer support themselves out of poverty.

Even with those restrictions, significant savings could be made. Many pensions allow retirement at

age 55; states and local governments could mandate that benefits cannot be drawn until age 65. Payments could be capped at 150% of the median income in the local jurisdiction. Automatic cost-o--living increases that now exceed expected inflation could instead be tied to increases in the median income.

Troubled plans should qualify for relief only if their funding ratio falls below 50% and has failed to improve over the past five years. These are the plans that are in fiscal quicksand and cannot be saved without significant changes.

Local governments must also be required to terminate their defined-benefit plans. These should be replaced with defined-contribution plans, like 401(k)s or 403(b)s, or active employees could be enrolled in Social Security. Responsible officials are already taking this step: The board of the Tennessee Valley Authority voted in May to switch to a 401(k)-type plan and lower the cap on cost-of-living adjustments.

Once these steps are taken, the local government should be required to fully fund the remaining pension liability with a tax increase. That should be the deal: To receive the relief of reducing promised benefits, they must agree to solve the pension problem once and for all.

What would this look like in practice? Let’s say that a retired firefighter in a troubled pension plan is set to receive $70,000 annually. If that is below 150% of the median income in his local jurisdiction, under federal relief his annual benefits would never be subject to the cap, since they would rise as the local median income increases.

What about a retired cop who became a city councilman and later a county supervisor—an extreme, but not unheard of, case? The cop would not be able to collect three pensions and would have his benefit reduced to meet the cap. Both the firefighter and the politician would have to wait until turning 65 to receive benefits.

No one wants to see his benefits reduced. Yet keep in mind that a retiree who receives a $75,000 pension for 30 years, with 3% compounded cost-of-living adjustments, gets total payments of more than $3.4 million. This has become common in cities like Chicago.

I am not the first person to suggest federal intervention. Rep. Devin Nunes (R., Calif.) proposed withholding federal aid to government entities that don’t accurately report pension funding. That would be a step forward but would not solve the problem of underfunding.

Diana Furchtgott-Roth of the Manhattan Institute has proposed a law that would allow local governments to seek relief from pension debt in bankruptcy court. But this leaves too much discretion to judges and could lead to wildly different outcomes. Plus, such open-ended relief would be fiercely fought by public-employee unions every step of the way.

Federal intervention is not unprecedented. The Windfall Elimination Provision of the Social Security Act, an amendment that was passed in 1983, allows the federal government to reduce Social Security payments when recipients also receive pensions from public employment. This has curbed double-dipping and protected the Treasury.

Nor should a new plan for federal relief be seen as a purely partisan issue. In 1961 President John F. Kennedy established the Committee on Corporate Pension funds. This eventually led to the Employee Retirement Income Security Act of 1974, which outlawed abuses and forced private firms to put required money into their pension plans each year.

The plan outlined here would create a consistent and concrete path toward making pensions

manageable for taxpayers. At the same time, it would protect retirement income for those unable to support themselves. The next president and Congress should take action to allow local governments to address this monumental problem—which gets worse by the day.

THE WALL STREET JOURNAL

By ED BACHRACH

July 17, 2016 7:22 p.m. ET

Mr. Bachrach is the founder and chairman of the Center for Pension Integrity.

A President Trump Would Be Obstacle to Municipal Bonds' Bull Run.

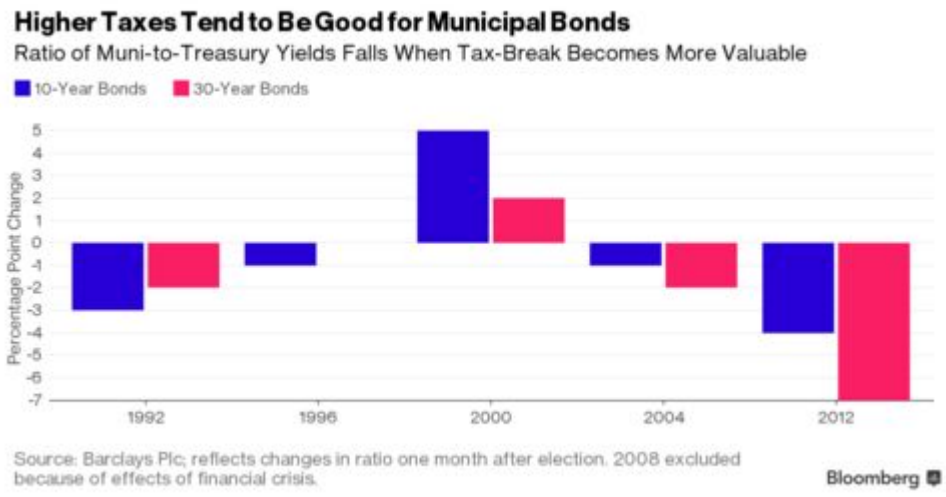
The municipal-bond market's rally is facing election year headwinds from Donald Trump.

The real estate developer and reality television star, who accepted the Republican presidential nomination Thursday night, has proposed slashing the top individual income-tax bracket from 39.6 percent to 25 percent, the lowest since 1931. That would sharply reduce the incentive to own tax-exempt bonds, whose yields have slipped to record lows as investors pour money into the safest assets and central banks hold down interest rates.

"He has a pretty aggressive tax reduction plan," said Mikhail Foux, head of municipal strategy at Barclays Plc in New York. "Taxes going down is always bad for munis compared to Treasuries."

U.S. presidential elections can have outsized significance for the $3.7 trillion municipal market — a haven of buy-and-hold investors looking for tax-free income — because they often result in changes to tax policy. Typically, Republicans cut taxes on the highest earners, while Democrats raise them.

The benefit of owning state and local-government bonds over other fixed-income securities declines when levies are reduced and increases when they rise. Yields — which move in the opposite direction as price — fell relative to U.S. Treasuries after Bill Clinton's victories in 1992 and 1996, and again after President Barack Obama's re-election in 2012, according to Barclays. They increased after Republican George W. Bush's victory in 2000, which led to tax cuts.



Top-rated 10-year municipal bonds yield 1.47 percent, or about 93 percent of what Treasuries with comparable maturities offer. For an investor in the top income-tax bracket, the tax equivalent yield is 2.6 percent, or about 1 percentage point more than Treasuries with the same maturity. At a top bracket rate of 25 percent, the tax-equivalent yield is 1.96, or about 0.5 percentage point more than Treasuries.

Municipal bonds have gained every year but one since President Barack Obama took office in 2009, according to Bank of America Merrill Lynch indexes, as the Federal Reserve held interest-rates near zero and taxes were raised on the highest earners.

Trump's plan is estimated to cut federal revenue by $9.5 trillion and swell the debt by $11.2 trillion over the next decade, according to the Tax Policy Center, a joint venture of the Urban Institute and Brookings Institution. The proposal may be scaled back: he's expected to release a revised plan that calls for reducing the top rate to between 28 percent and 33 percent, closer to what House Speaker Paul Ryan has endorsed, according to the Washington Post.

The demand for municipal bonds could also be eroded by Hillary Clinton's proposals, though not by nearly as much. While her plans include higher taxes on incomes over $5 million, she has also endorsed establishing a minimum 30 percent levy on filers earning more than $1 million and capping the value of tax exemptions, which could reduce the tax-breaks given to owners of the debt.

Municipal yields could increase by more than 1 percentage point under Trump's original plan and 0.35 percentage point under Clinton's, assuming prices are driven by investors in the highest tax bracket, according to Morgan Stanley's chief municipal strategist Michael Zezas.

But demand from lower-income investors could offset some of that: About 45 percent of returns that reported tax-exempt interest had adjusted gross incomes less than $200,000, according to the Internal Revenue Service. And enacting major tax overhauls are difficult, regardless of who controls Congress.

"It's extremely difficult to get the consensus required for what might be called fundamental tax reform," said Phil Fischer, the head of municipal research at Bank of America Merrill Lynch. "Nobody knows what that is any more."

Barclays' strategists predict that if Trump wins, the GOP would likely control Congress but wouldn't have a super-majority in the Senate. After an initial period of volatility and a flight to safer assets, 10-year Treasury rates could rise as much as 0.5 percentage point because of fiscal stimulus generated by individual and corporate tax cuts. With municipal rates forecast to increase even more, that may lead investors to pull money from mutual funds that invest in state and local debt.

"We can expect outflows when rates increase significantly," Foux said. "That's historically what we see."

Bloomberg Business

by Martin Z Braun

July 22, 2016 — 2:00 AM PDT Updated on July 22, 2016 — 7:09 AM PDT

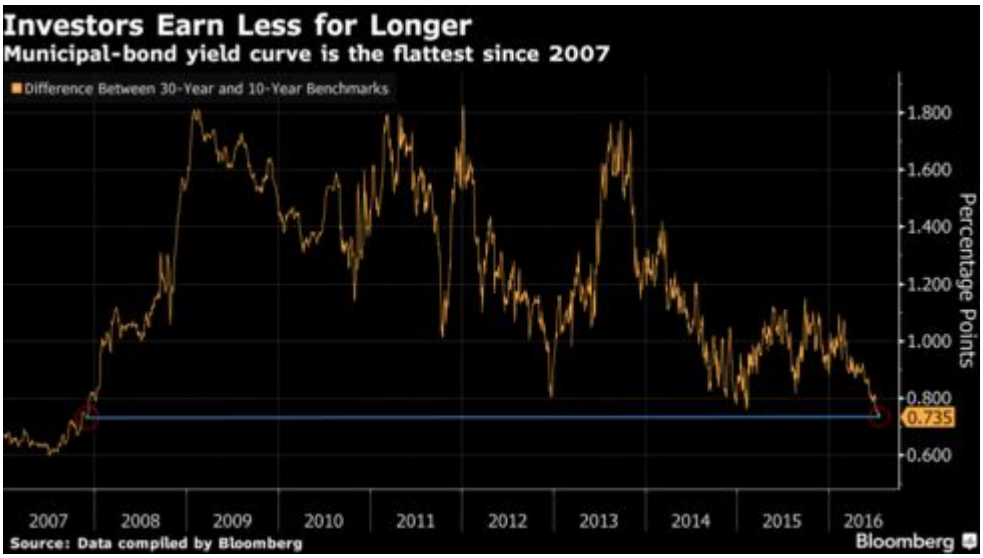
Bloomberg Brief Weekly Video - 07/21

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

Watch the video.

9:51 AM PDT
July 21, 2016

Muni-Bond Yield Curve Is the Flattest Since November 2007: Chart



The gap between short- and long-term yields in the $3.7 trillion municipal-bond market is the narrowest in more than eight years. Benchmark 30-year munis yielded 0.735 percentage points more than 10-year securities on Wednesday, the smallest difference since November 2007. This means that investors are earning less for the risk of holding securities with longer maturities.

Bloomberg Business

by Elizabeth Campbell

July 21, 2016 — 7:57 AM PDT

Sell Oppenheimer Funds on Puerto Rico Risk, Ameriprise Says.

Ameriprise Financial Inc., one of the world's biggest asset managers and financial planning firms, is advising clients to sell OppenheimerFunds municipal-bond funds that hold Puerto Rico debt in the aftermath of the island's record default.

Oppenheimer holds the most Puerto Rico debt among municipal mutual funds, according to Morningstar Inc. As the commonwealth works to reduce its $70 billion debt load through bondholder

losses, Oppenheimer funds that hold commonwealth bonds may need to cut dividends or see changes in the value of their portfolios, Jeffrey Lindell, senior research analyst at Ameriprise, wrote in a Monday report.

“As Puerto Rico bond defaults accelerate, the mutual funds may have to cut dividend rates as bond interest payments are missed,” Lindell wrote. “The net asset value of the mutual funds could also be volatile as the price of Puerto Rico bonds reacts to speculation and news, or as potential principal haircuts occur.”

Oppenheimer held $3.5 billion of Puerto Rico securities across 19 funds, as of March 31, the most among municipal mutual funds, according to Morningstar Inc. Dan Loughran, who started the firm’s Rochester funds in 1994 and oversaw its $24 billion of muni-bond funds, transitioned into an advisory role on July 1 and will retire from the company at the end of September.

Fund Strategy

Loughran’s departure and the risk of losses on Puerto Rico debt led Ameriprise to advise clients to seek less risky options, Lindell wrote in the report.

“The Rochester team maintains a steady hand and constantly focuses on the long term,” said Kimberly Weinrick, a New York-based spokeswoman for OppenheimerFunds. “With the passage of Promesa, it was an opportune time for Dan to retire and to pass responsibility for managing the Rochester team to his longstanding trusted colleagues,” Scott Cottier and Troy Willis, she said.

OppenheimerFunds is known for its strategy of pouring money into the riskiest areas of the $3.7 trillion municipal market in pursuit of big returns. Over the years, its funds have purchased tobacco bonds, real-estate development deals roiled by the housing-market crash and debt issued by Puerto Rico. Its high-yield fund returned nearly 15 percent over the past year, beating 98 percent of its peers, according to data compiled by Bloomberg.

Debt Restructuring

Investors anticipate much of the commonwealth’s debt will be restructured. President Barack Obama on June 30 enacted a law, called Promesa, that creates a federal control board to oversee any restructuring and monitor the commonwealth’s budgets. The next day, Puerto Rico defaulted on nearly $1 billion of principal and interest, the largest such payment failure ever in the municipal bond market.

The price of commonwealth securities tumbled after Governor Alejandro Garcia Padilla in June 2015 said the island was unable to repay its obligations on time and in full. The island piled on debt through years of borrowing to paper over budget deficits as its economy failed to grow.

Minneapolis-based Ameriprise, which oversees $800 billion of assets, recommends clients sell their investments from 16 different Oppenheimer muni funds. Potential replacements include municipal portfolios of Nuveen Asset Management, Eaton Vance Management, BlackRock Inc. and Columbia Management Investment Advisers, the company said in the report.

The one Columbia fund that Ameriprise recommends, the Columbia AMT-Free New York Intermediate fund, is managed by Columbia Management Investment Advisers, which has a global brand name of Columbia Threadneedle Investments. Columbia Threadneedle is the global asset management group of Ameriprise.

Bloomberg Business

by Michelle Kaske

July 19, 2016 — 1:54 PM PDT Updated on July 19, 2016 — 2:49 PM PDT

Taper Tantrum Memory Doesn't Fade for MainStay Muni Fund Manager.

MainStay Investments is increasing the percentage of cash held in its municipal bond mutual funds as a hedge against the risk of investor redemptions if the outperforming tax-exempt market turns.

It's $2.7 billion high yield muni fund has raised its cash level to as much as twice its normal range for liquidity, said David Dowden, a managing director who helps oversee about $19 billion of local debt at Princeton, New Jersey-based MacKay Municipal Managers, the fund's sub-adviser. The fund had about 9.6 percent of its portfolio in cash-equivalents as of April 30, the most in two years.

"When everyone suddenly gets all on the same side of the trade, that makes for a very dangerous situation," Dowden said during an interview last week. "That's what we saw in June of '13."

U.S. state and local-governments have taken in cash for 41 straight weeks, according to Lipper U.S. Fund Flows data, as anxiety that the Federal Reserve would raise rates receded and investors sought out the higher tax-adjusted yields and lower volatility than they can find elsewhere. During that period, munis have posted a total return of 5.8 percent, compared with a broader bond market gain of 4.2 percent, according to Bank of America Merrill Lynch index data.

The $45 billion inflow since October has helped replace the cash lost during the "Taper Tantrum" of June 2013. Investors pulled $65 billion from muni funds between June 2013 and January 2014 after then-Fed Chair Ben Bernanke jarred bond investors with plans to scale back asset purchases. The broad sell-off in the bond market highlighted a liquidity squeeze in the muni market, which was hit harder than Treasuries. Between June and the end of August 2013, yields on 30-year AAA rated municipal bonds rose almost 1.5 percentage point.

The level of liquidity risk is lower than in 2013. Banks are more willing to step in and buy and investors are less prone to yank money because munis are producing income, said Dowden. The U.K. vote to leave the European Union has lowered the likelihood that the Fed will raise interest rates before the U.S. elections in November. Muni prices rose following "Brexit" as investors clamored to safety.

As the yield curve flattened, Mainstay has focused its buying on bonds maturing from 12 to 25 years rather than long-term debt maturing in 25 to 30 years, which are more sensitive to changes in yields. Mainstay's High Yield Municipal Bond Fund has returned 7 percent this year, beating 77 percent of its peers, according to data compiled by Bloomberg.

"The reality is that incremental yield can be burned away very quickly in a price move," Dowden said.

The market pulled back last week as investors balked at yields that reached record lows and data on manufacturing and retail sales bolstered optimism in the economy. Yields on top-rated 30-year municipal bonds rose to 2.17 percent from 2.09 percent, the biggest weekly increase since February, according to data compiled by Bloomberg.

Some high yield managers are boosting their cash position for a different reason: they can't find securities that offer value in a market that has run-up more than 12 percent in the last year.

"There's so much cash in and everyone's buying because they have to buy," said Matt Dalton, chief executive officer of Rye Brook, New York-based Belle Haven Investments, which oversees $5 billion of municipal bonds. Belle Haven is the sub-adviser for Transamerica's High Yield Muni Fund, which had had 13 percent of its assets in cash as of April 30.

"We're content with having more cash than we'd like to because of the dearth of opportunities," Dalton said.

Bloomberg Business

by Martin Z Braun

July 19, 2016 — 2:00 AM PDT Updated on July 19, 2016 — 7:16 AM PDT

Former Citi Auction-Rate Banker Heeds Lessons of Market Collapse.

At the advent of the financial crisis nearly a decade ago, former Citigroup Inc. banker Robert Novembre, who managed the firm's desks handling auction-rate securities, saw firsthand the disruption caused when banks withdrew support.

Dozens of banks stopped being buyers of last resort for auction-rate securities and variable-rate demand debt, leaving investors with bonds they couldn't sell and borrowers with little control of the interest rates on their debt. The $200 billion auction-rate securities market shriveled and Citigroup was among the banks that reached settlements with state and federal regulators to resolve claims they misled investors. The variable-rate market limped on in a smaller state.

Now Novembre, 47, plans to apply the lessons to a new alternative trading system for variable-rate debt. Within weeks, his Clarity BidRate Alternative Trading System, a division of Arbor Research & Trading LLC, expects to launch its first variable-rate demand deal as part of an enterprise designed to cut costs for state and local governments by getting bids from investors rather than relying on banks to remarket the debt.

"It's a very antiquated market that functions in the shadows," Novembre said. "But there's a conflict of interest in pricing because the banks are protecting their own balance sheets. Banks aren't pushing down the rates any more because they don't want to own the bonds."

The need for more competition has been shown of late as yields have come off historic lows of about 0.01 percent and soared to about 0.40 percent since the Federal Reserve raised its benchmark rate in December for the first time in almost a decade.

During the height of the market freeze, the weekly re-set rate on the index climbed as high as 7.96 percent.

Despite interest rates that are still low historically, the variable-rate demand market has been shrinking since the collapse of first auction-rate securities and then variable-rate demand obligations after sub-prime contagion brought down insurers and buyers of last resort in the muni market. Many banks and investors were stuck with debt they couldn't sell, while some issuers were forced into

costly interest rate penalties and expensive restructuring. The variable-rate market stood at $222 billion and the auction-rate market was $27 billion in March 2014, according to the Municipal Securities Rulemaking Board.

Now with rates potentially poised to rise, Moody's Investors Service and others have predicted that borrowers may renew interest in the variable-rate structure to cut borrowing costs. New U.S. Securities and Exchange Commission rules requiring tax-exempt money-market funds to use floating net asset calculations also are encouraging more use of variable-rate debt.

The Securities Industry and Financial Markets Association, which represents banks and broker-dealers, supports the system of remarketing agents that "has served the market well for decades," said Michael Decker, managing director and co-head of the municipal finance division, in an e-mail. He declined to comment specifically on Novembre's company. That said, the association does "welcome market innovations that contribute to efficiency," Decker said.

Novembre, who worked for 18 years for Citi and oversaw about $170 billion of auction-rate securities, variable-rate demand obligations and tender-option bonds when the variable-rate markets collapsed starting in 2007, said his bank and others were glad to buy bonds to support the markets until it became a risk to their capital. Under variable-rate arrangements, remarketing agents aren't required to buy back the debt but did so voluntarily to support the market.

Trading Platform

With variable-rate demand obligations, issuers pay for so-called liquidity facilities, or buyers of last resort, that buy back the bonds when investors don't want them, something that can happen when the yields are reset.

During the global market turmoil, many buyers panicked and tried to unload the bonds because of fears generated by a freeze in fixed-income markets such as mortgage-backed securities. Following the auction-rate debacle in 2008, variable-rate demand obligations tumbled as buyers faced losses.

"There was a lot of fear," said Novembre. "People quickly started putting the bonds to the bank. The banks were no longer using their balance sheets to support the market."

Today, he said, that is still true because "dealers are loathe to deploy their balance sheets" amid increased regulation since the financial crisis.

By updating the market with an electronic-trading platform that replaces the traditional remarketing arrangement, Clarity is providing a place where buyers and sellers can make bids and offers for bonds that investors don't want to hold with more complete information about the market, he said.

Remarketing Role

"There is too much negotiation involved in setting yields now," he said. "There is an element of human decision making in setting the yields, instead of the actual market place competition."

Under his system, Clarity takes over the remarketing role, but instead of setting rates, buyers and sellers can see all the bids and offers and make their own bids and offers on an on-line trading platform during a remarketing period — up until the period for reselling the bonds closes.

"We take all the subjectivity out of it," he said. "Issuers are put in a position of competitive pricing."

Bloomberg Business

by Darrell Preston

July 18, 2016 — 2:00 AM PDT Updated on July 18, 2016 — 7:32 AM PDT

MUNICIPAL ORDINANCE - CALIFORNIA

Lone Star Security and Video, Inc. v. City of Los Angeles

United States Court of Appeals, Ninth Circuit - July 7, 2016 - F.3d - 2016 WL 3632375 - 16 Cal. Daily Op. Serv. 7251

Owners of mobile advertising billboards brought actions alleging that municipal ordinances for four cities, prohibiting the parking of mobile advertising billboards on public streets, violated free speech, due process, and privileges or immunities protections in federal and California Constitutions.

After consolidating actions, the United States District Court granted summary judgment to cities. Billboard owners appealed.

The Court of Appeals held that:

- Ordinances were content neutral;
- Ordinances were narrowly tailored to cities' significant interests in eliminating visual blight and promoting safe and convenient flow of traffic; and
- Ordinances left open ample alternative communication channels.

City ordinances that limited advertising signs that could be affixed to motor vehicles, and prohibited non-motorized mobile advertising billboards on public streets, were content neutral, and thus permissible under First Amendment if they were narrowly tailored and left open ample alternative communication channels. Ordinances' regulation of "advertising" signs was directed to activity of displaying message to public, not particular content that might be displayed, and there was no suggestion that ordinances applied differently to political endorsements than to commercial speech, for example.

Content-neutral city ordinances that prohibited non-motorized mobile advertising billboards on public streets were narrowly tailored to cities' significant interests in eliminating visual blight and promoting safe and convenient flow of traffic, and thus ordinances were permissible under First Amendment if they left open ample alternative communication channels. Cities believed mobile billboards detracted from cities' aesthetics, billboards reduced on-street parking, were likely to impair pedestrians' and drivers' visibility, and posed safety risk to motorists who were forced to veer around them, and cities' goals would be achieved less effectively absent prohibition because billboards could be moved in and out of jurisdiction with ease.

Content-neutral city ordinances that limited motorized mobile billboards were narrowly tailored to cities' significant interests in eliminating visual blight and promoting safe and convenient flow of traffic, and thus ordinances, which prohibited non-permanently affixed advertising signs and permanently affixed signs that were larger than vehicle's dimensions, were permissible under First Amendment if they left open ample alternative communication channels. Cities believed mobile billboards detracted from cities' aesthetics, temporary signs posed danger to pedestrians and motor vehicles because of risk they would come detached, and signs larger than vehicles were more likely to obstruct traffic and impede drivers' field of vision.

Content-neutral narrowly tailored city ordinances, which limited advertising signs that could be affixed to motor vehicles and prohibited non-motorized mobile advertising billboards on public streets, left open ample alternative communication channels, and thus ordinances were permissible under First Amendment. Messages could be disseminated through myriad other channels, such as stationary billboards, bus benches, flyers, newspapers, or handbills, or by painting signs on vehicles or attaching decals or bumper stickers.

ANNEXATION - INDIANA

Town of Reynolds v. Board of Com'rs of White County

Court of Appeals of Indiana - June 16, 2016 - N.E.3d - 2016 WL 3354316

County brought declaratory judgment action against town, arguing that its annexation ordinance was void. County and town moved for summary judgment.

The Superior Court granted county's motion and denied town's. Town appealed.

The Court of Appeals held that county that maintained county roads that were contiguous to parcels annexed by town had standing to challenge annexation on basis that town failed to included the roads, as required by statute. County's maintenance of the roads provided it a direct interest in enforcing the statute.

INFRASTRUCTURE DEVELOPMENT - MICHIGAN

Detroit International Bridge Company v. Government of Canada

United States District Court, District of Columbia - June 21, 2016 - F.Supp.3d - 2016 WL 3460307

Owners and operators of toll bridge and international causeway between the United States and Canada brought action against United States Department of State (USDS), alleging that USDS violated the Administrative Procedure Act (APA), when it approved agreement between state and Canada for construction of new publicly owned bridge between United States and Canada.

USDS moved for summary judgment and owners and operators cross-moved for summary judgment.

The District Court held that:

- Dismissal of action, for failure to join indispensable party, was warranted;
- Public interest exception to procedural rule governing joinder of parties did not apply;
- USDS did not violate Compact Clause when it approved agreement;
- Statute authorizing state to enter into agreement with Canada or Mexico did not require USDS to determine whether agreement was lawfully executed under state law prior to approving agreement; and
- USDS's approval of agreement without determining whether it was valid under state law was not arbitrary and capricious under APA.

State, which entered into agreement with Canada for construction of new, publicly owned bridge between United States and Canada, was necessary party to resolution of claim, asserted by owners and operators of toll bridge and international causeway between the United States and Canada,

alleging that United States Department of State (USDS) violated the Administrative Procedure Act (APA) when it approved agreement between state and Canada, in that agreement was invalid under the state's law, for purposes of determining whether state was indispensable party under rule governing required joinder of parties. State had an interest in validity of agreement, and its absence could impair or impede its ability to protect that interest.

Joinder of state, for purposes of determining whether state was indispensable party, was not feasible, in action brought by owners and operators of toll bridge and international causeway between the United States and Canada, against United States Department of State (USDS), alleging that USDS violated Administrative Procedure Act (APA) when it approved agreement between state and Canada for construction of new publicly owned bridge between United States and Canada, in that agreement was invalid under the state's law. State was entitled to sovereign immunity from suit under Eleventh Amendment, and that immunity had neither been abrogated by Congress in statute authorizing state to enter agreement with Canada or Mexico for construction of bridge, conditioned on its approval by Secretary of State, nor waived by explicit authorization in state law.

District court would dismiss, for failure to join an indispensable party, action brought by owners and operators of toll bridge and international causeway between the United States and Canada, against United States Department of State (USDS), alleging that USDS violated that Administrative Procedure Act (APA) when it approved agreement between state and Canada for construction of new publicly owned bridge. State was necessary party to resolution of owners' and operators' claim, joinder of state was not feasible because state enjoyed sovereign immunity from suit under Eleventh Amendment, state would be prejudiced by judgment rendered in its absence, and there was no way district court could avoid prejudice that would result from invalidating agreement in state's absence.

Public interest exception to procedural rule governing joinder of parties, which allows a district court to find that a necessary party is not indispensable whenever the plaintiff seeks to vindicate a public right, did not permit district court to find that state was not indispensable party in suit brought by owners and operators of toll bridge and international causeway between the United States and Canada, against United States Department of State (USDS), based on allegations that agreement was invalid under state's law. Case did not implicate matter of transcending importance of that type that prompts courts to apply exception, it did not require joining of an infeasibly large number of parties, and it would invalidate the rights negotiated in agreement between state and Canada.

United States Department of State (USDS) did not violate Compact Clause when it approved agreement between state and Canada for construction of new, publicly owned bridge between United States and Canada, regardless of whether agreement was valid under state law.

United States Department of State (USDS) was not arbitrary and capricious, in violation of the Administrative Procedure Act (APA), when it approved agreement between state and Canada, for construction of new, publicly owned bridge between United States and Canada, pursuant to statute authorizing a state to enter agreement with Canada or Mexico for construction of bridge, conditioned on its approval by Secretary of State. Even if USDS did not determine whether agreement was valid under state law prior to approving agreement; statute directed USDS to review an agreement's impact on foreign policy and the national interest, and did not direct USDS to analyze complex issues of state or foreign law.

United States Department of State (USDS) was not arbitrary and capricious, in violation of the Administrative Procedure Act (APA), when it relied on opinion of state's governor and attorney general to confirm legality of, rather than conduct its own review of legality of, agreement between state and Canada, for construction of new, publicly owned bridge between United States and

Canada, prior to approving of the agreement, pursuant to statute authorizing a state to enter agreement with Canada or Mexico for construction of bridge, conditioned on its approval by Secretary of State.

To extent that United States Department of State (USDS) originally may have suggested that legislative authorization was required prior to its approval of agreement between state and Canada for construction of bridge between United States and Canada, it never articulated a formal policy or position to that effect, and did not adopt a longstanding policy that engendered serious reliance interests, and it was thus not required, under Administrative Procedure Act (APA), to provide good reasons for approving construction without legislative approval, pursuant to statute authorizing a state to enter agreement with Canada or Mexico for construction of bridge, conditioned on its approval by Secretary of State.

BALLOT INITIATIVES - NEBRASKA

Bernbeck v. Gale

United States Court of Appeals, Eighth Circuit - July 14, 2016 - F.3d - 2016 WL 3769481

Initiative petition sponsor brought action against Nebraska Secretary of State, challenging the constitutionality of the provisions of the Nebraska constitution governing the distribution and signature requirements for placement of initiatives on the ballot.

Following bench trial, the United States District Court for the District of Nebraska entered judgment in favor of sponsor, and the court granted in part and denied in part sponsor's motion for attorney fees. Secretary of State appealed.

The Court of Appeals held that:

- Sponsor lacked standing to bring equal protection claim based on claim that provisions burdened his individual voice and vote as a petition circulator, and
- Sponsor lacked standing to bring equal protection claim based on claim that provisions made his vote less meaningful than vote of any other Nebraska voter in any other county.

Initiative petition sponsor lacked standing to challenge constitutionality of provisions of Nebraska constitution governing distribution and signature requirements for placement of initiatives on the ballot, as a violation of the Equal Protection Clause because requirements allegedly diluted, cheapened, and debilitates sponsor's individual voice and vote as a petition circulator, where sponsor did not have an injury in fact because his claim rested on a desire to engage in future conduct at an unspecified and indefinite time, as sponsor did not attempt to follow requisite procedures he challenged and it was not a situation in which attempt to comply would have been futile.

Initiative petition sponsor lacked standing to challenge constitutionality of provisions of Nebraska constitution governing distribution and signature requirements for placement of initiatives on the ballot, as an equal protection violation as it allegedly made his vote less meaningful than the vote of any other Nebraska voter in any other Nebraska county, where sponsor did not have injury in fact as there was no evidence that sponsor was registered to vote in Nebraska and thus could not have

claimed to have been injured as a resident of Omaha in parity between his petition signature and those of registered voters in other counties.

IMMUNITY - NEW YORK

Kinsey v. City of New York

Supreme Court, Appellate Division, First Department, New York - July 5, 2016 - N.Y.S.3d - 2016 WL 3582397 - 2016 N.Y. Slip Op. 05344

Individual who suffered from bipolar disorder brought action alleging that city police officers and emergency medical technicians (EMT) negligently failed to restrain him and allowed him to escape from ambulance, and later caused him to fall from building.

The Supreme Court, Bronx County, entered summary judgment in defendants' favor, and plaintiff appealed.

The Supreme Court, Appellate Division, held that:

- Officers and EMTs owed no special duty to plaintiff, and
- City was protected by governmental immunity from liability for damages.

City police officers and emergency medical technicians (EMT) owed no special duty to mentally ill individual other than that owed to public generally, and thus city, officers, and EMTs were not liable in negligence based on officers' and EMTs' failure to restrain him and allowing him to escape from ambulance.

Decisions of city police officers and emergency medical technicians (EMT) in response to 911 call regarding individual who suffered from bipolar disorder were discretionary in nature, and thus city was protected by governmental immunity from liability for damages arising after individual escaped from ambulance, and later fell from building.

EMINENT DOMAIN - NEW YORK

City of New York v. 2305-07 Third Avenue, LLC

Supreme Court, Appellate Division, First Department, New York - July 5, 2016 - N.Y.S.3d - 2016 WL 3582237 - 2016 N.Y. Slip Op. 05352

City commenced proceeding to condemn properties in connection with urban renewal project.

The Supreme Court, New York County, denied property owners' motion to dismiss, and they appealed.

The Supreme Court, Appellate Division, held that city's petition was timely.

Three-year time period for city to commence condemnation action commenced on date on which Court of Appeals dismissed property owners' appeal from appellate division's order confirming city's determination and findings to acquire property interests and dismissed condemnee's appeal, rather than on date of appellate court's order.

MUNICIPAL ORDINANCE - PENNSYLVANIA

Com. v. Ansell

Superior Court of Pennsylvania - July 15, 2016 - A.3d - 2016 WL 3903204 - 2016 PA Super 151

After a magistrate found defendant guilty of two counts of parking in a no parking zone, defendant filed a summary appeal.

The Court of Common Pleas also found him guilty. Defendant appealed.

The Superior Court held that:

- Commonwealth was not required to prove that township performed a traffic study prior to enactment of ordinance which made parking unlawful, and
- Evidence was sufficient to conclude that road on which defendant parked was a highway.

"No Parking" sign erected by township was entitled to presumption of validity, and therefore, in unlawful parking prosecution, Commonwealth was not required to prove that township performed a traffic study prior to enactment of ordinance which made parking unlawful, where defendant came forward with no evidence that township failed to perform the study.

Evidence was sufficient to conclude that road on which defendant parked was open to the public for vehicular traffic, and therefore, road was a "highway" for purposes of unlawful parking prosecution, despite testimony from defendant's brother that there was no documentation to show township acquired the road. Whether the road was dedicated to township was not a relevant factor in determining highway status, brother also testified that there was no signage designating the road as private and that cars traveled along the road to get to homes situated along the street, officer testified that the road was maintained by township, township erected street sign showing name of road, and there was no evidence that the road was not open to members of the public.

Key question in determining whether a local authority has appropriately erected an official traffic-control device that prohibits or restricts parking within its boundary is whether the regulated area constitutes a highway open to the public for vehicular traffic.

PUBLIC CONTRACTS - PENNSYLVANIA

A. Scott Enterprises, Inc. v. City of Allentown

Supreme Court of Pennsylvania - July 19, 2016 - A.3d - 2016 WL 3908965

General contractor sued city for breach of contract seeking to recover its losses caused by city's suspension of public highway project.

The Court of Common Pleas entered judgment for contractor. Both parties appealed. The Commonwealth Court affirmed in part and reversed in part. City appealed.

The Supreme Court of Pennsylvania held that jury finding of bad faith does not require trial court to impose a statutory penalty and award attorney fees under prompt payment provisions of Procurement Code; disapproving *Dep't of Gen. Servs. v. Pittsburgh Bldg. Co.*, 920 A.2d 973, *A.G. Cullen Constr. Inc. v. State Sys. of Higher Educ.*, 898 A.2d 1145, and *Pietrini Corp. v. Agate*

Construction Co., 901 A.2d 1050.

Prompt payment provisions of Procurement Code, providing that the court may award a penalty equal to 1% per month of the amount that was withheld in bad faith, allows, but does not require, the court to order an award of a statutory penalty and attorney fees when payments have been withheld in bad faith, and the court's determinations in this regard are subject to review for an abuse of discretion.

Trial court's explanation in its opinion in support of order, that an award of a penalty and attorney fees under prompt payment provisions of Commonwealth's Procurement Code was unwarranted because general contractor's testimony, respecting damages relating to city's suspension of public road project, was "conflicting", without more, was insufficient to support its outright denial of an award following jury's finding of bad faith in general contractors breach of contract action, warranting remand.

EMINENT DOMAIN - VIRGINIA

Virginia Electric and Power Company v. Hylton

Supreme Court of Virginia - June 16, 2016 - S.E.2d - 2016 WL 3361731

Electric utility filed petition for condemnation against property owner.

The Circuit Court granted owner's motion to dismiss and awarded costs and attorney's fees. Utility appealed.

The Supreme Court of Virginia held that:

- Owner waived his objection to trial court's jurisdiction;
- Separate value of coal reserves on the property was not admissible;
- Evidence related to potential surface mine was not admissible; and
- Whether there was unity of use between property and neighboring tracts was for jury to determine.

Property owner failed to timely raise objection to trial court's jurisdiction over electric utility's condemnation matter based on utility's alleged failure to make bona fide offer to purchase property, and therefore owner waived objection. Owner's answer and grounds of defense did not contain any mention of terms "object," "objection," or "jurisdiction," owner elected to proceed with empanelment of jury for determination of just compensation, and denials in owner's answer and grounds of defense were based on sufficiency of utility's offer, which could not be considered objection to bona fides of offer.

Separate value of coal reserves on property to be condemned was not admissible in electric utility's condemnation action against property owner. Even if modern techniques allowed for more accurate calculations related to coal reserves, such valuations invited speculation and conjecture, as they were based on conditions which did not, in fact, exist on condemned land at time of taking and future circumstances that may or may not have occurred, and there was no indication of when and if coal would actually be mined and, if it was, what price of coal would be at that time.

Evidence related to potential surface mine on property to be condemned was not admissible in electric utility's condemnation action against property owner. At time of taking, surface mine did not exist on property nor had one been contemplated, it was only in course of discovery that plans for

surface mine were developed, and any award of damages based upon consideration of value created by hypothetical surface mine would necessarily have been speculative.

It is for the jury to determine the ultimate question of unity of lands, or its absence, and to determine whether that unity, and its loss by reason of the taking, ultimately affects the value of the remainder.

Pimco: The Impact of Lower Oil Prices on the Municipal Bond Market.

David Hammer, Head of Municipal Bond Portfolio Management, discusses the impact of lower commodity prices on high yield municipal bonds, and why energy producers may be more concerning than oil revenues.

Watch the video.

For more information, visit www.pimco.com/munis

DAVID HAMMER

JULY 2016

Why IRS Dropped its Challenge to Florida CDD Bonds.

WASHINGTON – The Internal Revenue Service has closed audits and left the tax-exempt status unchanged for $311.28 million of community development district bonds in Florida that started a huge debate about political subdivisions and led the tax agency to propose controversial rules for such districts earlier this year.

More than $246 million of the bonds were issued by the Village Center CDD in 1998, 1999, 2001, 2003 and 2004, but were redeemed in November 2014. Another $65 million of bonds were issued by the Sumter Landing CDD were issued in 2005 but were redeemed in October 2015.

In separate letters to each CDD, the IRS noted the bonds were redeemed and said, “We have concluded that closing this examination without further IRS action supports sound tax administration.”

The IRS actions close the book on long standing audits that sparked a huge ongoing debate between the tax agencies and municipal market participants over how to define political subdivisions that can issue tax-exempt bonds. These two CDDs – commercial districts for a retirement community with more than 100,000 residents in two counties — were organized as political subdivisions under Florida law. The IRS challenged their status in audits, but has now dropped the challenges and closed the audits.

Perry Israel, a lawyer with a private practice in Sacramento who is representing the Village Center CDD, and Richard Chirls, a lawyer with Orrick, Herrington & Sutcliffe in New York City who is representing the Sumter Landing CDD, each said they and their clients are pleased the examinations have been closed.

“They’re absolutely right,” said Israel. “It’s a poor use of IRS resources to continue to go after these bonds when they’ve been paid off for almost two years.”

The Village Center “did taxable refundings [of the bonds], but was still able to reduce its borrowing costs,” he added.

Israel said that he believes the audit of the Village CDD, which began in January 2008 and took more than 8 ½ years to complete, may have been the longest examination ever done in the muni market. Some of those same bonds had also been the subject of an earlier audit that was closed in January 2003 which would make the examination of them even longer.

The IRS was on a slower track with Sumter Landing, but Chirls said, “This is simply an examination that went on much too long. It was, in the end, a waste of resources, staff, administrative time, and actual dollars by the district and the IRS.”

Some muni market participants said the IRS may have been willing to close the audits, realizing they were a drag on resources while the agency was up against a statute of limitations problem. Generally, the IRS can go after taxpayers for payment of taxes due to violations of tax laws or rules three years from the later of the date that taxes are due or the date that taxes are paid.

The Village Center bonds were redeemed in 2014 meaning the latest date a full year of interest would have been 2013, with tax returns to be filed in April 2014. Three years after that would be in April of next year. With this year more than half over, the IRS had still not declared the CDD’s bonds taxable and, if it had, the CDD would have had an opportunity to appeal that finding and go through a lengthy appeals process.

It seems odd that the IRS closed the audits without accepting a payment for settlements. The two CDDs earlier this year told the IRS they would settle the tax dispute for $300,000, the amount they estimated would be the legal fees they would have to pay to continue fighting the IRS. The IRS, which had been pushing for a $1.5 million settlement, never took them up on the offer.

Also, the IRS letters sent to the CDDs are odd in two respects. Both letters said the CDDs were sent Forms 5701, Notices of Proposed Adjustments. But these forms, which notify taxpayers of increased tax liabilities, are not used in the municipal market, bond lawyers said. The CDDs actually received Forms 5701-TEB, or Notices of Proposed Issue that notified them the IRS had preliminarily determined the bonds were taxable.

In addition, the IRS letter to the Village Center CDD noted the agency found the CDD was not a “proper issuer of tax-exempt bonds” and the bonds were private-activity bonds that did not fall in any of the categories that qualify for tax-exemption. The one sent to the Sumter Landing CDD said only that the IRS found the bonds were taxable PABs.

The IRS may not have said that Sumter Landing CDD was not a proper issuer, because it was only the Village Center that received a technical advice memorandum from the IRS chief counsel’s office in May 2013. That TAM said the CDD was not a proper issuer of tax-exempt bonds because its board was and would always be controlled by a developer rather than by residents or others responsible to a public electorate.

However, after an outcry from issuers and bond lawyers that the IRS was trying to change rules retroactively through enforcement actions, the IRS made the TAM prospectively effective. That means the TAM shouldn’t apply to either the Village Center CDD or the Sumter Landing CDD.

The TAM led the Treasury Department and IRS to propose rules in February of this year that would

dramatically change the definition of a political subdivision.

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

Community development districts in Florida, metropolitan districts in Colorado, rural utility districts in California and districts in other states for years have been set up to issue tax-exempt bonds to finance public infrastructure such as roads, sewer and water systems for a variety of development projects. Initially the districts are controlled by developers, but as homes, business parks or shopping areas are built and irrigation systems are set up, the control of boards is passed onto to residents or users such as homeowners, businesses or farmers.

But IRS officials, through audits, found some developers had created political subdivisions and were in complete control of them of years or indefinitely, sometimes issuing tax-exempt bonds for their own benefit.

The proposed rules would add two new additional requirements, besides the sovereign powers one, to the definition. Political subdivisions would also have to serve a government purpose "with no more than an incidental private benefit" and would have to be governmentally controlled.

"The IRS is now properly addressing the perceived problems through a regulatory process that includes proposals, comments and a prospective effective date," said Chirls.

But the proposed rules have taken a beating from municipal market groups and individuals who have sent the IRS more than 130 comment letters slamming them.

The Bond Buyer

by Lynn Hume

July 19, 2016

Hawkins Advisory: (Annual Qualified Mortgage Information)

This Hawkins Advisory is of interest to single-family housing bond issuers.

Read the Advisory.

7/20/2016

S&P Global Ratings' Public Finance Podcast (Higher Education Ratios and PROMESA)

Shivani Singh and Ashley Ramchandani provide an overview of our recent higher education median reports for public and private colleges and universities. Paul Dyson discusses our take on the impact of the recently-enacted Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) on Guam and the U.S. Virgin Islands.

Listen to the podcast.

Jul. 22, 2016

Lessons Learned from Detroit: A Judge's Perspective.

U.S. District Judge Gerald E. Rosen has more experience than most in resolving thorny cases of municipal distress: He was the mediator in the high profile bankruptcy of Detroit. What lessons did he draw from that experience that might apply to future municipal bankruptcies? We put that question to him at our recent Municipal Finance Conference, and he offered what he calls "The Four C's."

Candor

"As we began talking to the creditors and to the city…they were in denial across the board…We said denial…is not a way to move forward. We had to go through that ventilation process in the beginning."

Judge Rosen said he found that both the creditors and the parties were initially unwilling to be honest, with each other and even with themselves. They did not fully accept the dimensions of the structural debt problems and did not recognize the degree to which the city's ability to fund and deliver essential government services was compromised. Working in a state of denial will not advance the interests of the city, he said. Openness and honesty are integral to resolving financial troubles.

Cooperation

"My job as the mediator [was] to get the parties together and the earlier the better."

After listening to accounts of other cases of municipal distress, Judge Rosen suggested that some crises could have been avoided with earlier "facilitation of discussion between the various credit groups and the municipalities."

Creativity

"Every city has human assets, every city has physical assets, every city has revenue assets, so focus on creative ways to leverage those assets."

Detroit struck a "grand bargain" in which the city essentially sold the Detroit Art Museum to a collection of foundations, nonprofits and other donors to raise money for its underfunded pensions. Judge Rosen said that was just one of several creative elements in Detroit's bankruptcy resolution. Of course, the exact solutions to any particular crisis will depend on the circumstances, but the essential element is that "smart people who can get on the same team and look down the road, not just to get their piece of the pie, but to make the municipality healthy so there will be a bigger…pie at the other end."

Courage

"Detroit is really not [just] a series of deals over sixteen months….it's about people from all different walks of life, backgrounds, strata, coming together to put behind them the mistakes and ghosts of

the past."

The Detroit bankruptcy, he said, could have resulted in a decade of litigation that went all the way to the U.S. Supreme Court. But if that had occurred, there would have been nothing left of Detroit. Instead, all the interests came together to "take a leap of faith" to find a solution that was in the best, long-term interests of the city, its creditors, it employees and its people.

Here's a video of Judge Rosen's remarks.

The Brookings Institution

Evan Bursey and David Wessel | July 20, 2016 9:24am

Michigan Cities Team Up to Offset "Fundamentally Unsustainable" Municipal Finance System.

These are trying times for cities in Michigan, thanks in large part to big cuts in state revenue sharing and real estate values that cratered during the economic meltdown.

On top of all that, Proposal A and the Headlee Amendment limits local municipalities' ability to collect taxes.

As a result, many communities say they're out of options. They can't cut any deeper and they can't raise the money needed to provide operations.

Public finance expert Michael McGee has come up with a possible solution: a legal "toolbox" that could allow cities to band together and put up a millage to pay for essential services.

Two cities in Southeast Michigan, Hazel Park and Eastpointe, have teamed up this way. More cities are taking a closer look at this toolbox, including Wayne, where voters will decide in August whether to join up with Eastpointe and Hazel Park.

Listen to our conversation with Michael McGee.

GUEST
Michael McGee is principal and chief executive officer of Miller Canfield. His special area of expertise is public finance.

MICHIGAN RADIO

By STATESIDE STAFF • JUL 19, 2016

TAX - WISCONSIN

Lands' End, Inc. v. City of Dodgeville

Supreme Court of Wisconsin - July 12, 2016 - N.W.2d - 2016 WL 3676935 - 2016 WI 64

Corporation brought action against city challenging property tax assessment, and corporation made offer of settlement.

After the Circuit Court denied corporation's motion for summary judgment and affirmed city's valuation, corporation appealed, and the Court of Appeals reversed. On remand, the Circuit Court awarded corporation interest at 1% plus the prime rate, pursuant to the amended version of the interest statute. Corporation appealed, and city petitioned to bypass the Court of Appeals.

The Supreme Court of Wisconsin held that:

- Applying amended version of statute was not retroactive;
- Applying amended version of statute did not take away or impair corporation's vested rights, overruling *Johnson v. Cintas Corp. No. 2*, 360 Wis.2d 350, 860 N.W.2d 515;
- Corporation's due process rights were not violated;
- Statute providing that actions pending were not defeated by repeal of statute was not implicated; and
- Corporation's equal protection rights were not violated.

It was not retroactive, unfair, unreasonable, or unduly burdensome to plaintiff to apply amended version of statutory rate of interest, which applied when party recovered judgment greater than or equal to amount of its unaccepted offer of settlement, to plaintiff's judgment. Even though version in effect when plaintiff made offer set interest at 12%, while amended version provided rate of 1% plus prime rate, plaintiff had not recovered judgment before amended version took effect, plaintiff's right under amended version of statute at effective date of statute was inchoate, not perfected, not ripened, nor accrued, and amended interest rate compensated plaintiff for approximately market interest rate had judgment recovered been paid immediately.

Plaintiff did not have vested right to statutory 12% rate of interest applicable when party recovered judgment greater than or equal to amount of its unaccepted offer of settlement, which was in effect when plaintiff made its offer of settlement, and therefore amendment to statute that lowered interest rate did not retroactively take away or impair vested rights acquired by plaintiff under existing laws. Plaintiff's entitlement to interest was contingent on subsequent determination that plaintiff was entitled to judgment for greater than or equal to amount of its offer of settlement, and plaintiff did not obtain such determination while 12% interest rate was in effect; overruling *Johnson v. Cintas Corp. No. 2*, 360 Wis.2d 350, 860 N.W.2d 515.

Plaintiff's due process rights were not violated by applying amended version of statute awarding interest when party recovered judgment greater than or equal to amount of its unaccepted offer of settlement, which had interest rate of 1% plus prime rate at time plaintiff recovered judgment, rather than statutory 12% rate that was in effect when plaintiff made offer of settlement. Awarding interest under amended version of statute was not retroactive, and plaintiff did not acquire vested right to 12% interest rate by making offer of settlement, as plaintiff did not recover judgment until after amendment took effect.

Statute providing that actions pending were not defeated by repeal of statute was not implicated by applying amended version of statute awarding interest when party recovered judgment greater than or equal to amount of its unaccepted offer of settlement, which had interest rate of 1% plus prime rate at time plaintiff recovered judgment, rather than statutory 12% rate that was in effect when plaintiff made offer of settlement. Plaintiff's right to interest did not arise until plaintiff recovered judgment, which occurred after statute was amended, and plaintiff's right to recover 12% interest rate was inchoate and contingent on plaintiff first obtaining judgment for as much or more than amount of its offer of settlement.

Rational basis existed for applying amended version of statute awarding interest when party recovered judgment greater than or equal to amount of its unaccepted offer of settlement, which had

interest rate of 1% plus prime rate at time plaintiff recovered judgment, rather than statutory 12% rate that was in effect when plaintiff made offer of settlement, and therefore plaintiff's equal protection rights were not violated. Classes were substantially distinct, as parties that recovered judgment before amendment took effect had vested right to 12% rate while parties that did not recover judgment did not, reducing interest to near-market rates fulfilled various legislative objectives, and tying interest rate to market rates was fair to both plaintiff and defendant.

TAX INCREMENT FINANCING - ILLINOIS

Bank of Commerce v. Hoffman

United States Court of Appeals, Seventh Circuit - July 15, 2016 - F.3d - 2016 WL 3854164

Federal Deposit Insurance Corporation (FDIC), in its capacity as receiver for failed bank, sued mortgagor for breach of $9 million note (including a $1.5 million TIF note) on which mortgagor defaulted, for foreclosure on property mortgaged as security for note, and for judgment against guarantors on note.

Following entry of summary judgment against mortgagor FDIC and guarantor who had guaranteed up to $900,000 of the $9 million loan filed cross-motions for summary judgment. The United States District Court for the Central District of Illinois granted summary judgment to FDIC and to bank, as successor in interest to FDIC. Guarantor appealed.

The Court of Appeals held that:

- Addressing a matter of first impression for the court, federal jurisdiction is not lost when another party is substituted for the FDIC in FDIC litigation, and
- Under Illinois law, the settlement agreement and release signed by guarantor released him from his obligation on a $157,300 loan obtained by guarantor and his wife, but not from the guarantee at issue here.

In Federal Deposit Insurance Corporation (FDIC) litigation, even though the FDIC assigned its interest to another party which was then substituted for the FDIC in the litigation, the case remains "deemed to arise under the laws of the United States," and federal jurisdiction is not lost.

Under Illinois law, settlement agreement and release signed by guarantor released him from his obligation on $157,300 loan obtained by guarantor and his wife, but not from his separate guarantee of up to $900,000 of $9 million loan obtained by mortgagor. Contract was ambiguous, as it contained conflicting language, on the one hand absolving guarantor and wife from liability arising from "the Loan Documents or the Properties" defined as three parcels securing $157,300 loan and nowhere naming mortgagor, while on the other hand generally releasing guarantor and his wife from all liabilities to the Federal Deposit Insurance Corporation (FDIC), as receiver for failed bank that made loan to mortgagor, and its successors, but both guarantor's own testimony and Illinois rules of construction supported interpretation urged by bank, as successor in interest to FDIC, namely, that the more specific provision controlled and guarantor was only released from obligation on $157,300 loan.

MBFA Chairman Steve Benjamin to Speak at DNCC at 8pm Tuesday, July

26th.

On Tuesday, July 26th at 8pm (EST) Columbia, SC Mayor and MBFA Chairman Steve Benjamin is slated to speak on behalf of the U.S. Conference of Mayors at the Democratic National Convention Committee (DNCC). Additionally, the Democratic Party released their platform which includes a section entitled "Building 21st Century Infrastructure." You can read more about it here.

Specifically, the party's platform includes three infrastructure-related provisions related to bonds, including:

- **Support for municipal bonds:** Democrats will continue to support the tax exemption for interest earned on municipal bonds
- **Support for Build America Bonds (BABs):** Democrats will work to establish a permanent provision for BABs
- **Support the creation of an infrastructure bank:** Democrats will create an independent, national infrastructure bank to support critical infrastructure improvements

It should be noted that the statements within the Democratic Platform are very broad and generally do not include a detailed plan for legislative action.

The MBFA will continue to engage with both political parties to advocate for the preservation of the tax-exemption for municipal bonds and stress caution for the implications of proposals that limit or eliminate the tax-exemption before the November election.

We hope this information is helpful. For further information on MBFA or issues raised in this update, please contact info@munibondsforamerica.org.

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MSRB Files Amendment to Proposal to Modernize Close-Out Procedures.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission an amendment to its proposal to update MSRB requirements for municipal securities dealers related to the close-out process of failed inter-dealer transactions. The amendment seeks to shorten the close-out period under MSRB Rule G-12 from 20 calendar days, as stated in the original proposed rule change, to 10 calendar days in order to further reduce the risk and cost associated with inter-dealer fails.

View the amendment.

Why Report Suggests Muni Tax Exclusion Be Limited or Eliminated.

WASHINGTON – Lawmakers should consider limiting, reforming or eliminating the tax exclusion for

municipal bond interest, the Tax Foundation suggested in a report.

The report, called “Reexamining the Tax Exemption of Municipal Bond Interest” was authored by analyst Scott Greenberg.

The report argues that tax-exempt bonds: can encourage municipalities to over-invest in infrastructure; are inefficient when comparing foregone federal government revenue and state and local borrowing costs; and can unfairly benefit taxpayers in higher income brackets.

“The U.S. tax code is badly in need of reform, and any tax reform effort will need to limit or eliminate tax expenditures in order to broaden the federal tax base,” the group said in the report. “As Congress moves forward with discussions about tax reform, it should keep every tax provision on the table, including the exclusion of municipal bond interest.”

The report does not make any recommendations for lawmakers, but suggests they consider the “flaws and drawbacks” of the muni exemption in potential tax reform legislation.

It also asks lawmakers to consider three questions: should the federal government subsidize state and local borrowing; should the subsidy take the form of a tax exclusion; and is the current treatment of muni bond interest efficient and equitable.

Greenberg, who also published analyses on the GOP blueprint for tax reform released in June and the tax reform plan proposed by Rep. Jim Renacci, R-Ohio, earlier this month, said in the 12-page report released on Thursday that the muni exemption is an “unideal policy design” for subsidizing state and local debt because it provides larger benefits for taxpayers in higher income brackets and smaller benefits for those in smaller tax brackets. It also shuts some investors completely out of the muni market such as those who do not pay taxes, foreign investors and pension funds, he added.

Greenberg said that while tax-exempt munis encourage states and localities to invest in infrastructure, they also can cause these governments to over-invest, especially when the tax burdens are placed on nonresidents.

For example, he said if a state is considering spending $10 million on a new highway that will only provide $9 million in economic benefits it may decide not to move forward. But if the state receives a $1.5 million subsidy from the federal government, it may go forward with the project “even though the highway is a socially wasteful investment,” he wrote.

The report also said the “most compelling case” that the tax-exempt standing of munis is inefficient, is that for every dollar of revenue the federal government forgoes because of the muni exemption, state and local governments receive less than a dollar in lower borrowing costs.

Citing a 2015 Treasury Department estimate, the report says the federal government will forgo as much as $617 billion in revenue over the next 10 years by excluding interest on munis. It is one of the largest tax expenditures in the individual income tax code, Greenberg said.

Not all munis are used for public purposes, the report pointed out. State and local governments issued $421 billion in tax-exempt bonds in 2013. Of that figure, $340 billion or 80.6% were governmental bonds and $81 billion of 19.4% were private activity bonds, which benefit private parties. This ratio is fairly typical,” the report said. Between 1991 and 2013 governmental bonds accounted for 75.3% of all tax-exempt bonds issued and the other 24.7% were PABs, it said.

In addition, the report said, the majority of tax-exempt bonds are issued in a few states: California, New York, Texas, Pennsylvania, Illinois, Ohio and New Jersey.

Greenberg told The Bond Buyer that the report stems from the fact that the Tax Foundation researches parts of the tax code that "haven't been sufficiently researched or discussed," before compiling reports like this one.

"My personal opinion was that the conversation about the tax exemption of munis was an important one," he said.

The report was met with opposition from Bond Dealers of America, which warned that even just limiting the muni exemption could increase infrastructure costs by more than 10%. BDA and other muni groups contend munis are cost effective in helping to finance infrastructure projects.

Jessica Giroux, general counsel and managing director of federal regulatory policy for BDA, said that eliminating or limiting the muni exemption would pass increased infrastructure costs onto both those who invest in municipal bonds and taxpayers.

"Stripping the muni tax exemption would have a devastating fiscal impact on local governments and their ability to meet the needs of their citizens," she said. "When put in the context how to reform the federal tax code, this is not a change in the law that we believe many taxpayers would support."

Giroux said that munis are crucial to funding better roads, water systems, schools and "other vital components of daily life."

"There continues to be a tremendous need in every state to repair existing and build new infrastructure," Giroux said. "Municipal bonds continue to be the primary mechanism state and local governments turn to to finance those infrastructure needs."

The Tax Foundation report comes less than a week after BDA sent a letter to House Speaker Paul Ryan, R-Wis., and Rep. Kevin Brady, R-Tex., the House Ways and Means Committee chairman, that says any repeal of the tax exemption for munis would cost state and local governments an additional $495 billion in interest over a ten-year period.

The GOP plan does not mention munis directly, but it calls for limiting or eliminating unnamed deductions, exclusions and credits. Several muni groups, including BDA and the Government Finance Officers Association, have expressed concern that munis may be included as the plan is amended before Republicans hope to introduce formal tax legislation next year.

Renacci's plan, released on July 14, would replace the corporate income tax with a consumption tax but would maintain the muni exemption.

The Tax Foundation report's suggestions echo those of other reports released in recent years. The Simpson-Bowles Commission on Fiscal Responsibility and Reform in 2010 also called for eliminating the tax-exempt status of all new municipal bonds. The Bipartisan Policy Center's debt reduction task force had earlier called for eliminating the tax exemption for new private activity bonds.

The Bond Buyer

By Evan Fallor

July 22, 2016

GASB Survey on Indicators of Severe Financial Stress.

The Governmental Accounting Standards Board (GASB) is currently conducting research on indicators of severe financial stress and going concern disclosures. As part of their research effort, the GASB has developed an online survey to solicit thoughts and ideas.

The survey will be open until Friday, August 5, and may be accessed here.

Municipal Bank Loans and Direct Placements SIFMA Seminar: October 25, NYC.

Recently, there has been an increase in state and local governments turning to banks as a source of debt finance – instead of using a traditional public markets debt offering. However, with limited legal and regulatory guidance, this trend has raised important questions about transparency, regulation and whether bond investors have access to all the information they need to assess risks.

Join SIFMA for a half-day event during which our speakers will discuss the legal, regulatory, accounting and compliance questions that have arisen from this uncertainty.

CLE credits will be available

Click here to learn more and to register at the early bird rate.

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Learn how to customize your issuer homepage.

For more information about the EMMA features that allow issuers to consolidate, customize and analyze their bond information, join the MSRB for a live webinar on Friday, August 12, 2016 at 3:00 p.m. Register to attend.

Continuing professional education credit is available for webinar participants.

This is a live internet-based event.

Participants may receive up to 1 regulatory ethics CPE credit upon participation in the full webinar. The program level is “overview” and there are no prerequisites or advanced preparation required.

MSRB Announces Regulatory Topics to be Discussed at Upcoming Board Meeting.

The Municipal Securities Rulemaking Board (MSRB) today published an agenda for its upcoming Board of Directors meeting, to be held July 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.

View the MSRB Board of Directors meeting agenda.

Missouri Legislation Limits Municipal Approval Of Tax Increment Financings And Increases Financial Oversight Of Designated Districts.

Three new measures signed into law by Missouri Governor Jay Nixon on June 29 will have lasting implications for the creation and administration of tax increment financings (TIFs), community improvement districts (CIDs) and transportation development districts (TDDs) alike.

House Bill 1434, the legislation addressing TIFs, is largely aimed at the suburban counties in the St. Louis region—St. Louis County, St. Charles County and Jefferson County. Specifically, the bill limits the power of municipalities in those three counties to approve a TIF if the county-wide TIF board rejects it. For the rest of the state, the bill implements a few clean-up provisions—namely, it exempts sheltered workshop tax districts from both state and municipal TIF projects, specifies a deadline of November 15 for each municipality’s required annual report of TIFs and requires the Missouri Office of Administration to post information from the reports on the Missouri Accountability Portal. If a municipality does not comply with the reporting requirements, it can be prohibited from adopting any new TIF plan for five years. Gov. Nixon stated that the new legislation “contains the most significant TIF reforms Missouri has passed in more than a decade.”

Senate Bill 1002 adds new language to the Missouri statute governing CIDs, thereby granting the state auditor authority to assess the tax and financial records of a district the same way they would audit a public agency. The addition is driven in large part by the government’s desire to monitor districts which contain no voting citizens, which up until now have largely been able to avoid state-level scrutiny of their operations. Now, all of Missouri’s nearly 360 CIDs are on notice that they may be subject to auditing merely because they collect taxes in the capacity of a public entity.

The new CID policy emphasizes the importance of running districts in strict compliance with the law. The state auditor’s core functions are designated by the Missouri Constitution, and the process involves a comprehensive review of an organization’s governing details and finances. Open for review is a wide range of information, including “meeting minutes, written policies and procedures, and financial records.” An audited area has 30 days to respond to the auditor’s findings. Once complete, the report will be presented to the governor and the legislature, and made available to the public online.

The new legislation for TDDs—House Bill 1418—gives teeth to existing penalties concerning

financial reporting requirements. A lack of detailed language in the previous statute allowed TDDs to avoid paying fines for not filing annual financial statements with the state. Under the new rules, TDDs which fail to timely file with the state auditor will receive a late notice from the Department of Revenue—and will have 30 days upon receipt of such notice to file their report. After the grace period is up, a fine of US$500 will accrue for each day the report remains delinquent. Exempt from fines are only those TDDs that bring in less than US$5,000 of gross revenue for the fiscal year.

The TDD bill also adds a requirement for districts organized prior to August 28, 2016, to "notify the state auditor's office in writing of the date it was organized and provide contact information for the current board of directors by December 31, 2016." A TDD formed after August 28 must notify the state auditor's office of the same within 30 days of its first board of directors meeting. The bill further adds language clarifying that TDDs would be responsible for paying the cost of an audit, not to exceed three percent of the district's gross revenues, regardless of how the audit was initiated.

To be sure, the new CID and TDD requirements should not pose an issue for those districts that continue to operate in compliance with all laws and regulations. However, there are additional administrative burdens and associated costs in the event of an audit. State Auditor Nicole Galloway states that the reforms seek to promote transparency and accountability, and are part of a broader effort to strengthen government oversight of public projects. But with millions of taxpayer dollars at stake, you can expect to see these new measures being enforced vigorously in the months and years to come—further emphasizing the importance of making sure statutory processes are properly followed and written records are appropriately kept.

Article by John Snyder, Julia A. Taylor and Ryan C. Westhoff

Last Updated: July 15 2016

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Fed's Final Treatment of Municipal Securities as High-Quality Liquid Assets Disappoints the Industry: Butler Snow

Treatment of Municipal Securities in Fed's Final HQLA Rule Draws Unenthusiastic Industry Reactions

On April 1, 2016, the Federal Reserve Board released its final regulations[1] respecting treatment of municipal securities as high-quality liquid assets ("HQLA") for purposes of its liquidity coverage ratio rule for "covered companies" – the 11 most highly capitalized United States banks – after

strenuous criticism from the municipal securities industry and a Congressional response that included a bill that has passed in the House of Representatives[2]. In the final rule, the Federal Reserve Board revised the original proposal by modestly expanding those municipal securities that would qualify for inclusion in a covered company's HQLA, but rejected most commenters' recommendations. The following discussion summarizes the original Fed proposal, the principal comments from affected trade groups, the final regulation, the Fed's rationale for its determinations and the pending legislation.

Financial Crisis and Bank Regulatory Response

In the aftermath of the financial crisis of 2008 and 2009, international banks sought to ensure sufficient liquidity for the largest banks by establishing a quantitative liquidity coverage ratio standard pursuant to the Basel III capital and liquidity reforms. United States bank regulators, including the Board of Governors of the Federal Reserve System (the "Fed"), the Office of the Comptroller of the Currency (the "OCC"), and the Federal Deposit Insurance Corporation (the "FDIC") published a joint Notice of Proposed Rulemaking (the "NPR"), adopted on September 3, 2014[3], that established a Liquidity Coverage Ratio ("LCR") to be maintained by larger banks and holding companies[4]. The LCR would require covered institutions, during periods of non-stress, to maintain an amount of high-quality liquid assets that is not less than 100% of its total net cash outflows over a prospective 30 calendar day period.

Significantly for municipal securities issuers and the municipal securities industry, securities issued by "public sector entities" (*i.e.*, state and local government issuers) were not included as HQLAs in the original NPR.

Objections to NPR and Subsequent Fed Proposal

After predictable objections from trade groups representing municipal issuers, banks and the municipal securities industry, based upon potential harm to municipal securities issuance from exclusion of municipal securities as eligible HQLAs under the NPR, on May 28, 2014, the Fed (but without participation by the OCC or the FDIC) issued a proposal (the "Fed Proposal") that would permit covered institutions to include certain U.S. municipal securities as HQLAs under strict criteria described below.

The Fed Proposal

The Fed Proposal limits eligibility of U.S. municipal securities to investment grade general obligations that are not insured. Revenue obligations, irrespective of credit standing, would not qualify as HQLAs[5]. Additionally, the Fed Proposal imposes significant concentration risk limitations on a covered institution's holdings of HQLA-eligible U.S. municipal securities:

- No more than 25% of an individual CUSIP may be included in a bank's stock of HQLA;
- No more of a single issuer's bonds than an amount equal to two times the average daily trading volume of that issuer's bonds over the previous four quarters may be included in a bank's stock of HQLA; and
- No more than 5% of a bank's total stock of HQLA may be comprised of municipal securities.

Issuer and Industry Comments

During the public comment period on the Fed Proposal, which ended July 24, 2014, the Fed received 13 comment letters from issuers and industry groups[6]. All commenters argued that the HQLA standards for municipal securities in the Fed Proposal were excessively limiting, with the exception

of Better Markets, Inc., which argued that municipal securities should not be included in HQLAs at all because of the provision in the Fed Proposal that leaves the determination whether a security is "investment grade" to the covered institution itself.

A primary objection from all trade group commenters – including the Securities Industry Finance and Marketing Association ("SIFMA"), the Bond Dealers Association ("BDA") and a joint comment from 15 issuer groups that included the Government Finance Officers Association, the National Association of Counties, the National League of Cities and the U.S. Conference of Mayors – was the exclusion of investment grade revenue obligations from HQLA eligibility. Specifically, SIFMA noted that the credit quality of many revenue obligations is regarded by the market as preferable to general obligations, particularly in light of adverse treatment of general obligations in recent municipal bankruptcies such as Detroit's. Indeed, the PFM Group noted that the Fed Proposal "reduces the universe of outstanding eligible municipal securities by more than $2 trillion." Likewise, the Bond Dealers Association noted that the exclusion of revenue securities from HQLA effectively limits the municipal securities that would be eligible for inclusion as HQLA to less than 40% of securities issued in 2015.

Commenters, including municipal bond insurer Build America Mutual Assurance Company, also criticized the exclusion of insured general obligations from the HQLA eligibility, arguing that the Fed Proposal misconceived the role of bond insurance of otherwise investment grade obligations, which does not substitute for the underlying credit and actually adds liquidity to such securities.

Regarding the concentration risk limits in the Fed Proposal, commenters argued that they are based on misunderstandings of the municipal market. With regard to the limitation to 25% of a pertinent CUSIP (i.e., maturity), commenters argued that the rule would push banks to hold many smaller portions rather than large-block portions that are more liquid because of their appeal to institutional investors. SIFMA argued that the 25% limit is actually counterproductive to liquidity and that, alternatively, this rule should be dropped "in favor of reliance on the risk management systems banks already have in place."

Regarding the two-times average daily trading volume limitation, SIFMA noted that historic trading volume may not be the best indicator of liquidity in that many bonds are bought as buy-and-hold investments.

Regarding the limitation of U.S. municipal securities to not more than 5% of a bank's total HQLA, SIFMA noted that no other asset class eligible for inclusion in HQLA, including corporate securities, has an asset-specific limitation. Additionally, the LCR rule separately limits 40% of total HQLA for Levels 2A and 2B combined and has a 15% limit for Level 2B. Thus, SIFMA argued that the existing limitations are sufficient without the addition of the 5% limit.

Pending Legislation

In response to dissatisfaction with the Fed Proposal and the non-participation of the FDIC and OCC in establishing uniform HQLA standards, Representative Luke Messer (R-Ind.) and co-sponsor Representative Carolyn Maloney (D-NY) introduced legislation that would require the Fed Rule "to treat a municipal obligation that is both liquid and readily marketable (as defined in the Final Rule) and investment grade as of the calculation date as a high-quality liquid asset that is a level 2A liquid asset." The legislation would also require the FDIC and the OCC to conform their HQLA regulations to this statute. The proposed legislation passed the House of Representatives on February 1, 2016, as H.R. 2209 and has been referred to the Senate. As of this writing, there is no Senate sponsorship.

The Final Fed Rule and the Fed's Rationale; Industry Disappointment

The final Fed Rule makes two basic changes to the Fed Proposal: First, general obligation municipal securities insured by a bond insurer may count as Level 2B liquid assets as long as the underlying municipal security would otherwise qualify as HQLA without the insurance. Second, the final Fed Rule eliminates the 25% limitation on the total amount of outstanding securities with the same CUSIP number that could be included as Level 2B liquid assets. Notably, the final Fed Rule continues to exclude revenue obligations from HQLA status. A summary of the Federal Reserve Board's rationale for the final Fed Rule is set out in the following footnote[7] .

The final Fed Rule will take effect on July 1, 2016.

In interviews with The Bond Buyer[8], Congressional and trade group spokespersons expressed disappointment in the final Fed Rule. Representative Luke Messer said "Unfortunately, [the rule changes] will continue to discourage investment in our local communities. And, it will do little, if anything, to help cash-strapped school districts and municipalities finance critical infrastructure projects." John Vahey, Director of Federal Policy at Bond Dealers of America, observed that it is "unfortunate that the Fed has chosen to continue to restrict and limit the use of general obligation bonds and completely exclude high-quality revenue bonds from the banking liquidity rule."

Potential Impact of the Final Fed Rule? Prospects for a Legislative Override?

What, then, will be the impact of the Fed Rule as adopted? On the one hand, indications are that the HQLA limitations will reduce demand for U.S. municipal securities for covered banks and thus result in increased interest rates for securities bought by covered banks. Also, the continuing absence of a joint regulation that includes the OCC and the FDIC could result in differential standards that could disrupt the market even further. However, since the Fed Rule, as finally adopted, will directly affect only a dozen or so of the largest U.S. banks, it is unknown whether the ultimate Fed HQLA standards will affect non-covered bank lenders and the bond market generally[9].

In light of the passage of House Resolution 2209, the matter is not fully resolved. Whether House Resolution 2209 gains a Senate sponsor and can pass during this election year (not to mention the possibility of a Presidential veto) is speculative, but the industry response to the Fed's action on HQLA may not be finished yet.

by E. Alston Ray and Caitlyn T. Smith

July 14, 2016

Footnotes

[1] 81 Fed. Reg. 21223 (April 11, 2016).

[2] H.R. 2209, passed February 1, 2016.

[3] 79 Fed. Reg. 61439 (October 10, 2014).

[4] U.S. banks currently meeting the criteria for "covered companies" under the Basel III standards are as follows: J.P. Morgan Chase & Co., Bank of America, Citigroup, Wells Fargo & Co., Goldman Sachs Group, Morgan Stanley, U.S. Bancorp, Bank of New York Mellon, PNC Financial Services Group, Capital One, HSBC North America Holdings, State Street Corporation, and TD Bank U.S. Holdings.

[5] The LCR divides HQLA into three categories of assets: Level 1, Level 2A, and Level 2B liquid assets. Specifically, Level 1 liquid assets are limited to balances held at a Federal Reserve Bank and

foreign central bank withdrawable reserves, all securities issued or unconditionally guaranteed as to timely payment of principal and interest by the U.S. government, and certain highly liquid, high credit quality sovereign, international organization and multilateral development bank debt securities. Level 1 liquid assets, which are the highest quality and most liquid assets, may be included in a covered company's HQLA amount without limit and without haircuts. Level 2A and 2B liquid assets have characteristics that are associated with being relatively stable and significant sources of liquidity, but not to the same degree as Level 1 liquid assets. Level 2 liquid assets include obligations issued or guaranteed by a U.S. government-sponsored enterprises (GSE) and certain obligations issued or guaranteed by a sovereign entity or a multilateral development bank that are not eligible to be treated as Level 1 liquid assets. The LCR subjects Level 2A liquid assets to a 15% haircut and limits the aggregate of Level 2A and Level 2B liquid assets to no more than 40% of the total HQLA amount. Level 2B liquid assets, which are liquid assets that generally exhibit more volatility than Level 2A liquid assets, are subject to a 50% haircut and may not exceed 15% of the total HQLA amount. Under the LCR, Level 2B liquid assets include certain corporate debt securities and certain common equity shares of publicly traded companies. Level 2 liquid assets, including all Level 2B liquid assets, must be liquid and readily marketable as defined in the LCR to be included in HQLA. Under the LCR final rule, U.S. municipal securities were not included in the definition of HQLA. However, under the final Fed Rule all U.S. municipal securities that qualify as HQLAs will constitute Level 2B liquid assets.

[6] All public comments to the Fed Proposal are available on the Fed website at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.

[7] In its summary of the final rule, the Federal Reserve Board offered the following rationale for its determinations (emphasis added):

a) Certain US municipal securities may be included as a **level 2B liquid asset** if they meet the liquid and readily marketable standard in the LCR rule

> i) These securities will not be included as a level 2A liquid asset

b) Revenue bonds **still are not** eligible for inclusion as a level 2B liquid asset:

> i) During periods of significant stress, the credit equality of revenue bonds tends to deteriorate more significantly than general obligation bonds.
>
> ii) During times of significant stress, probability of default is considered along with the magnitude of expected loss upon default. Without general taxing authority support, the market would likely be more concerned about the probability of default for a revenue bond as compared to a general obligation bond.
>
> iii) Historically, there have been a significantly higher number of defaults on revenue bonds than general obligation bonds.
>
> iv) Liquidity could disappear if the specified revenue source of a revenue bond were found to be insufficient to meet its obligation, regardless of the total amount of the revenue bond outstanding.

c) A Board-regulated covered company **may include** as a level 2B liquid asset a US general obligation municipal security that has a guarantee from a financial institution as long as the company demonstrates that the underlying US general obligation municipal security meets all of the other criteria to be included as level 2B liquid assets without taking into consideration the

insurance.

d) The final rule **retains** the limitation on the inclusion of US general obligation municipal securities of a single issuer. A Board-regulated covered company that owns more than 2x the average daily trading volume of all US general obligation municipal securities issued by a public sector entity may include up to 2x the average daily trading volume of such securities as eligible HQLA:

> i) The Board believed that this 2x average daily trading volume cap could likely be absorbed by the market within a 30 calendar-day period of significant stress without materially disrupting the functioning of the market.
>
> ii) The Board believed that this requirement ensures that US general obligation securities included as eligible HQLA remain relatively liquid and have buyers and sellers during periods of significant stress.

e) The final rule **retains** the 5% limitation on the amount of US municipal securities that can be included in a Board-regulated covered company's HQLA amount:

> i) The Board believed this limit will act as a backstop to address the overall liquidity risk presented by the municipal securities market, including the large diversity of issuers and sizes of issuances by ensuring covered companies' HQLA amounts are not overly concentrated in and reliant on US municipal securities.

f) The final rule **eliminates** the 25% limitation on the total amount of outstanding securities with the same CUSIP number that could be included as level 2B assets:

i) This limitation could have barred certain companies from including certain municipal securities, and particularly small issuances, in their HQLA amount.

[8] "Fed Rule Treating More Munis as HQLA Seen As Too Restrictive," *The Bond Buyer*, April 1, 2016.

[9] Many thanks to Belinda Hannah at First National Banker's Bank in Birmingham, Alabama, and Alan Ganucheau, Greg Brewer, Jason Thomas and Steve Cole at Hancock Bank, for taking the time to discuss the Fed Proposal and its potential impact on the municipal securities market. However, nothing in this post is attributable to them or their employers, and, of course, any errors in this post are my own.

Missouri Expands Project Delivery Options For Public Works Projects: Thompson Coburn

The State of Missouri recently joined a majority of states allowing political subdivisions to make use of design-build and construction manager-at-risk contracts for public works projects. The new law, signed on July 1, 2016, permits political subdivisions (such as state agencies, counties, municipalities, school districts, hospital districts, and sewer districts) to utilize project delivery methods that are widely used in private construction projects.

History of Construction Delivery

Missouri political subdivisions (with some exceptions) are required to engage in traditional design-bid-build delivery of projects (i.e., the public body selects an architect based on qualifications, then picks the low-bidding contractor following completion of design). For more complex projects, public bodies could engage a construction manager, but the CM is not permitted to perform any construction or provide a price guarantee (this is commonly referred to as construction manager as agent).

New Law

The new statute allows political subdivisions to engage a construction manager-at-risk, where the contractor is engaged prior to completion of construction documents, provides preconstruction services for the owner during the design process, and typically provides a guaranteed maximum price or fixed price after the construction documents are complete. The new statute also permits design-build, where the contractor is responsible for both the design and construction of the project (and holds all of the design and engineering contracts). Public bodies now have increased flexibility in choice of delivery method, which they hope will result in time and cost savings for their projects.

Overview of New Parameters

Because the use of each construction method is only permitted under certain circumstances and procedures, we've created a chart that outlines the requirements of each construction method under the new statutes:

	Design-Build (RSMo 67.5060)	CM At-Risk (RSMo 67.5050)
Bidding	**Three Phases:** **Phase I** – Solicitation of qualifications of the design-build team, including list of required submissions **Phase II** – Technical proposal including conceptual design (2-5 firms) **Phase III** – Proposal of construction cost	**Two Steps:** **Step I** – Purely qualitative submission; no fees or pricing **Step II** – Five or less firms selected solely on basis of qualifications provide proposed fee and price for fulfilling general conditions
Award	**Phase II:** Qualifications: ≤ 20% of total points; Phase II must account for ≥ 40% of total point score as specified in the RFP **Phase III must account for** ≥ 40% of total point score as specified in the RFP	Qualifications: ≥ 40% of total points,Cost: ≤ 60% of total points
Timing for Evaluation of Bids	No requirement	Evaluation and ranking of bids must occur within 45 days after date of opening the proposals or qualification submissions
Publication of Request for RFP	Newspaper of general circulation in the county where the political subdivision is located once per week for two consecutive weeks prior to opening proposals.	Same
Thresholds for Use ($)	Civil Works: None Non-Civil Works: > $7 Million	Civil Works: > $2 Million Non-Civil Works: > $3 Million
Bid Stipend	Amount set in RFP (not less than 0.5% of total project budget) must be paid by political subdivision to each prequalified design-builder whose proposal is responsive but not accepted; bidder provides nonexclusive license to use design submitted without any liability for use of such design	None
Sunset	September 1, 2026	September,1, 2026

The full text of HB 2376 (2016) is available here.

Article by Paul M. Macon, David L. Orwick and William H. Metzinger IV

Last Updated: July 19 2016

Thompson Coburn LLP

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

The Puerto Rico Problem Is On Its Way to Getting Bigger.

This is a good moment for any US political figure to do or say something that will outrage a substantial number of people, even people with money. The noises the victims make will be drowned out by the sounds of the political conventions or retweeted mobile phone recordings of street violence.

So when hedge funds with several billion dollars of Puerto Rican government bonds filed a lawsuit

on Thursday against the governor of the commonwealth, along with several subordinate officials, they had to know that it would not get much notice. Even many people on the fixed income buyside have a hard time caring about their hedge fund colleagues. After all, the Republicans in Congress voted to give Puerto Rico a pass with that last minute deal, didn't they?

Not exactly. The Republicans thought they were making a compromise to avoid having to appropriate money for Puerto Rico in an election year. Politically, screwing hedge funds, or for that matter, other investors is OK. Taxpayer bailouts, not OK.

Unfortunately for Congress, its Puerto Rican problem is on its way to getting bigger over the next few months, rather than going away. The outgoing Padilla administration, with the support of senior US Treasury officials, is setting a series of precedents for how to handle future defaults in the US municipal bond world.

To begin with, the usual narrative that "Puerto Rico stopped paying on its bonds in July" does not describe what actually happened. The commonwealth government had about $2bn in interest and principal due on July 1, and chose to pay about half of that, but not according to the various bond issues' relative seniority.

Instead, Puerto Rico did not pay any interest or principal on the most senior, or general obligation bonds, but did make interest payments on more junior bonds. The government also paid its employees' pension funds $170m more than what was required for this year, despite the pensions supposedly being legally subordinated to bondholders.

According to the Promesa legislation the Republicans passed through Congress, this was not supposed to happen. But it did. And Governor Padilla and his fellow officials were not acting in defiance of the US Treasury and the administration. Treasury officials were at his side, advising him. Even Republican senators and members of Congress have not voiced objections to this unilateral reordering of debt priorities.

The intention of the law was for Puerto Rico to be given temporary protection from legal sanctions by creditors so it could restructure its obligations in an orderly way, and to maintain essential services. That makes sense. Nobody wants children to go without immunisation shots or water mains to shut down.

There could, though, be some reasoned debate over the essentiality of some of the spending incorporated in the budget the commonwealth government adopted after July 1. The mayors of all 78 municipalities will reportedly continue to have dedicated police escorts. And there is $2.488m appropriated for the "Office of the First Lady", who, along with her husband, will be leaving at the end of the year.

The last could be considered just a bad PR move, so to speak, on the part of a governor who will not be seeking a new elected office anytime soon . More significant, over the longer term, is the reordering of bonds' relative seniority, and overriding bondholders' previous ranking over pension obligations.

The bonds on which interest payments were made on July 1, such as the Puerto Rico convention center district and the Puerto Rico Highways and Transportation Authority, are disproportionately owned by bondholders on the island. Supposedly more-sophisticated mainland US investors had avoided these lower ranked issues on the misinformed premise that financial and legal analysis should outweigh political calculation.

Puerto Rican officials brush off objections to these spending priorities and to the inversion of the previous seniority ranking of the commonwealth's bonds. They point out that the Federal Oversight Board, set up under the Promesa law, can take back any inappropriate payments made by the commonwealth after July 1.

There are a couple of problems with that "solution". To begin with, the board's powers of "review and rescission" cannot be exercised until after it is appointed by the president, sometime in September, if not later. Then the board members have to agree on staffing, procedure, and office decoration. So it is likely not many "rescissions" will be demanded by the board before the governor leaves at the year's end.

Even then, it will be difficult to take back the flowers bought for the office of the First Lady, or recapture the gasoline bought for the mayors' escorts. Getting back interest payments from the convention center bondholders would be a legal and administrative nightmare.

Commonwealth bondholders probably put too much faith in the supposedly autocratic powers of the board. Despite Puerto Rico's colonial status, the board will find it difficult, if not impossible, to operate without the strong support of Governor Padilla's successor. Otherwise, it will be preoccupied with endless lawsuits and intermediating fights with a resentful Congress.

The Financial Times

John Dizard

July 22, 2016 8:59 pm

Assured and Orrick Retain Top Insurance, Counsel Ranks in Q2, First Half.

Assured Guaranty topped the rankings of municipal bond insurers for the second quarter while Orrick Herrington & Sutcliffe LLP was the leading bond counsel.

Quarterly League Tables

Muni issuance is only a little behind last year's pace but bond insurance penetration fell to 5.59% in the second quarter from 5.87% in the first quarter to land at 5.85% for the first half. Overall, the principal amount wrapped by Assured, Build America Mutual, and National Public Finance Guarantee – the three insurers writing new business – decreased to $12.79 billion for the first half of this year over 970 transactions, down from the $14.36 billion in 1,084 transactions during the first half of 2015, according to data from Thomson Reuters.

Assured retained its first place perch, despite having a lower principal amount insured and fewer deals with $6.84 billion in 464 deals from $8.75 billion in 594 deals, while also seeing its market share slip to 53.5% from 61% percent. The data includes Assured's subsidiary Municipal Assurance Corp.

"During the second quarter of 2016, Assured Guaranty continued to lead the industry, insuring 267 small, medium and large new issues, which represented 53% of the insured par sold in the primary market. Our $3.8 billion of primary-market par was up 25% from the first quarter of 2016," said Robert Tucker, senior managing director, investor relations and communications at Assured.

Tucker also mentioned that looking at Assured's first-half 2016 primary market activity, they captured a similar 53% of the market by guaranteeing $6.9 billion of par.

"Our secondary-market activity for the half of 2016 was very strong," Tucker said. "We issued 234 policies, totaling an industry-leading $752 million of par, 87% higher than in the first half of 2015. Our combined primary and secondary market par insured during the first half totaled $7.6 billion."

BAM also saw increases, as its principal amount insured rose to $5.59 billion in 468 issues from $5.29 billion in 479 issues. Although the mutually-owned company didn't do as many deals during the first six months of 2016 compared to the same period in 2015, they did see an increase in market share, improving to 43.6% from 36.9%.

"BAM had a great first half and a record second quarter, when our primary market par insured exceeded $3 billion for the first time," said Bob Cochran, BAM's chairman. "We got there by staying focused on our core mission of improving market access and transparency, particularly for small- and medium-sized issuers, and expanding investor demand for our guaranty."

Cochran also said that they are definitely seeing a growing awareness of the unique benefits BAM brings to a transaction as a mutual insurer, which he said includes its excellent financial strength and durable, AA/stable rating, as well as the additional transparency it provides for every insured bond by publishing a free credit profile on its website.

"The increased investor demand for BAM-insured paper was particularly obvious in our secondary market activity, which totaled almost $260 million in 190 trades in the second quarter, more than doubling volume from both the first quarter of 2016 and the second quarter last year," Cochran said.

National also had a better first half this year compared to last year, as its amount insured increased to $367 million over 39 transactions from $309 million in 11 transactions.

"In light of the ongoing difficult environment for our industry – with extremely low interest rates and the uncertainty regarding the outcome for Puerto Rico – we are pleased that investors continue to express demand for bond insurance," said Tom Weyl, head of new business development at National.

The municipal arm of MBIA Inc., which started writing new business in the third quarter of 2014, saw its market share inch up to 2.9% from 2.1%.

"We are also pleased with National's steady progress. We are gaining greater attention from important parties in the market that will further our progress, especially as market conditions become more favorable," said Weyl.

In the bond counsel rankings, Orrick not only held its first-place position but extended its lead, as the firm finished the first half of 2016 with a par amount of $22.12 billion or 10.4% market share in 217 transactions, an improvement over the $20.69 billion or 9.7% market share in 205 transactions during the first six months of 2015.

"We are obviously happy with our firm's results for the first half of 2016," said Roger Davis, chair of Orrick's public finance practice. "The national market volume was down by about 4% compared to the first half of 2015. Orrick's volume was up by about 9%, and our market share jumped by almost two full percentage points to over 10%."

Davis said that persistent low interest rates, accompanied until recently with the threat of rate increases by the Federal Reserve, led to a large number of refundings.

“And on top of that, we saw increasingly robust new money financing activity, particularly in multifamily housing, health care, public and charter schools, energy (including alternative and distributed energy), even governmental purpose (general fund and enterprise revenue) projects, all sectors in which Orrick is particularly strong,” said Davis.

Davis also noted that the office Orrick launched in Houston in January has been busy from inception is a substantial new contributor to the firm’s public finance group and its results.

“Looking ahead, we are as busy in all of our nine public finance offices around the country as I can remember being during the summer months,” said Davis.

Hawkins Delafield & Wood LLP stayed in second place with $11.09 billion or 5.2% market share over 173 deals, all slightly down from the $12.41 billion or 5.8% market share over 225 deals the firm finished with during the same period of time last year.

McCall Parkhurst & Horton LLP saw increased year over year, as the firm moved up to third from fourth place, finishing the half with $8.48 billion in 264 transactions versus $7.89 billion in 251 transactions.

Norton Rose Fulbright dropped from third to fourth to $6.87 billion from $9.69 billion, while Kutak Rock LLP moved up one spot into the top five with $6.14 billion from $6.10 billion.

Rounding out the top 10 are Squire Patton Boggs, Chapman and Cutler LLP, Stradling Yocca Carlson & Rauth, Sidley Austin LLP and Bracewell LLP.

The two biggest movers from the first half are Chapman and Cutler LLP, who jumped up to seventh from 15th a year ago and Bracewell LLP who leaped into the top 10 after finishing 16th during the first half of 2015.

Hawkins held the top underwriters counsel spot and pushed its lead further, finishing the first half of 2016 with $13.75 billion or 9.2% market share in just 65 deals, which compared to $10.58 billion or 7.1% market share in 83 deals in the first six months of 2015.

“For Hawkins in the first half of 2016, we had strong results across the board in terms of sectors and geography,” said Howard Zucker, managing partner at Hawkins. “This is due to having more lawyers devoted to the full-time practice of public finance than any other law firm in the nation, including 14 tax attorneys. Hawkins is 162 years old, and has been doing public finance for over 135 years but 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.”

Zucker added that among the many deals in which Hawkins participated in that were noteworthy, the firm was counsel to the underwriters in the $2.4 billion dollar bond issue for the rebuilding of LaGuardia Airport that was a P3 transaction, and bond counsel for the refunding of bonds of the NYS Utility Debt Securitization Authority. In addition, Hawkins was also involved in several large transactions for the State of California, and many housing and hospital financings around the nation.

“After the bankruptcy of, among others, the City of Detroit, and the Federal enactment of legislation to address the financial situation in Puerto Rico, there is much more attention to the legal structure of transactions, including statutory liens and special revenues, and that requires expertise in bankruptcy and secured transactions,” said Zucker. “This is another example of the requirement that bond lawyers have the necessary expertise in multiple areas of the law.”

Hawkins opened its ninth office in Michigan last fall and as of Jan. 1, the firm added three partners

to its ranks.

“We look forward with excitement to the future of public finance,” said Zucker.

Norton Rose Fulbright finished second with $8.02 billion, Stradling Yocca Carlson & Rauth was in third with $6.41 billion, Kutak Rock LLP came in fourth place with $5.78 and Nixon Peabody LLP was fifth with $5.75 billion.

Rounding out the top ten are Orrick, Squire Patton Boggs, Andrews Kurth LLP, Bracewell LLP and Greenberg Traurig LLP.

The biggest jump belonged to Bracewell LLP, who finished the first half of last year in 21st place and moved up to ninth this year.

“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,” said Zucker.

Zucker also noted that today law firms that want to be leaders in this field have to be truly dedicated, and have to commit significant resource to the depth and breath 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.

The Bond Buyer

By Aaron Weitzman

July 20, 2016

Massachusetts Senate OKs Municipal Finance Reform.

To most people, it hardly registers. But for the people who make small-town government work in Massachusetts, the municipal finance reform legislation in Massachusetts adds up to erasing a lot of longstanding headaches.

The comprehensive legislation to modernize finance and governance laws for cities and towns passed this week by the Senate includes provisions to eliminate or update obsolete laws, promote local independence, streamline state oversight and provide greater flexibility for cities and towns, according to Sen. Benjamin Downing, D-Pittsfield. It eliminates or updates obsolete laws, including the repeal of county government finance reporting requirements and changes to the civil motor vehicle infraction law to allow cities and towns to issue citations electronically.

The Senate measure, which now goes into a conference committee to reconcile with an earlier House version, includes a Downing amendment to let communities choose through a ballot question whether to institute a local tax surcharge to fund local and regional transportation projects.

“This amendment gives cities and towns the ability to control their transportation future,” said Downing. “In the communities that choose to use it, residents will determine at the local level the subject, amount, and use of the transportation dollars raised. This process will ensure that tax

dollars are spent in a way that most directly benefits each citizen and the infrastructure in their region."

In the face of declining federal support and mounting costs to maintain and expand infrastructure, states across the country have looked to local ballot initiatives to raise revenue at the municipal or regional level, Downing said.

The legislation also promotes local autonomy for cities and towns, allowing for more control over certain funding decisions and local regulations. It allows municipalities to enter into joint powers agreements to provide services regionally and reduces the state's role in regulating on-premise liquor license quotas.

It also streamlines state oversight of tax collection procedures to make the process more transparent and predictable for local officials. And it takes steps to provide municipalities with greater flexibility, including a study on double utility poles, changes to procurement laws to simplify, clarify and increase thresholds for construction contracts and updates to the way municipalities use parking revenues.

"The average taxpayer or citizen will not even know what these mean," said Greenfield Director of Municipal Finance and Administration Marjorie "Lane" Kelly, referring to the laundry list of municipal finance regulations, some of which are obsolete or contradictory though "we've had to live with them for 40 years."

But, she added, "It's an internal process that's being simplified. "Some of them I'll be grateful for, because they're cumbersome" — such as the requirement that towns get two or three approvals from the Department of Revenue, or have to get an OK for a procedure that's a daily occurrence."

The revisions should be even more important for small towns that have "single lone rangers doing the best they can to keep ahead of these regulations," Kelly said. Although the smallest of towns may be exempt, for those that have had to jump through the extra hoops, "it's a relief to them."

The Recorder

Combined Sources

Wednesday, July 20, 2016

City, County Leaders: U.S. Infrastructure Policy Must Protect Tax-Exempt Bonds, Enhance Long-Term Funding.

CLEVELAND, July 21, 2016 /PRNewswire/ — Republican elected officials from across the nation explained how infrastructure investments have fueled growth in their local economies, and said those successes support the case for more federal resources for infrastructure, as well as the preservation of tax-exempt municipal bonds in any tax-reform legislation. Their comments came during a policy briefing at the Republican National Convention sponsored by the National League of Cities (NLC), the nation's largest and most representative organization for city officials, and Build America Mutual (BAM), the first mutual insurer of municipal bonds.

Hon. Ray LaHood, a Republican who represented Illinois' 18th Congressional District for 14 years before being named Secretary of Transportation in 2009, opened the session by arguing that the

federal government should raise the gas tax to generate more money for infrastructure investment – particularly focused on urban areas.

“The next generation of transportation is going to take place in the cities. It’s not about building more Interstates or bridges, it’s about how people are going to live in communities without needing automobiles,” Secretary LaHood said. “Until we get politicians in Washington and a new administration thinking along the lines of a big pot of money to jumpstart these opportunities, we’re selling ourselves short.”

Clarence Anthony, NLC’s CEO and executive director, said preserving the tax-exemption for municipal bonds, which cuts the cost of infrastructure investment for states, cities, counties and other municipal governments, is a key priority for local government leaders. The tax exemption must come alongside long-term, stable funding for infrastructure and transportation, comprehensive transportation planning, and support for local broadband access.

“We are going to both the Republican and Democratic conventions because cities need to be partners with the next president of the United States, whoever that will be. We need the candidates to understand that we must make infrastructure a priority for America,” Mr. Anthony said. “Cities are a crucial part of that conversation because when cities succeed, the nation succeeds.”

BAM Chairman Robert Cochran said the tax-exempt municipal bond market is uniquely positioned to provide U.S. states, cities, counties and other government agencies with affordable funding to meet the nation’s infrastructure needs.

“There is no doubt that there is municipal market demand and investors that will provide that additional $100-$150 billion of annual investment that it will take to get to that $1.5 trillion of infrastructure funding that we need in order to make up the gap over the next 10 years,” Mr. Cochran said.

Additional panel participants included Oklahoma City Mayor Mick Cornett, the president of the US Conference of Mayors; Fort Worth, Tex., Mayor Betsy Price, who co-chairs the NLC’s presidential elections task force; El Paso County, Colo., Commissioner Sallie Clark, president of the National Association of Counties; and Sheila Amoroso, who manages the municipal bond department at Franklin Resources, one of the largest investors in municipal bonds.

Build America Mutual

July 21, 2016

About the National League of Cities

The National League of Cities (NLC) is dedicated to helping city leaders build better communities. NLC is a resource and advocate for 19,000 cities, towns and villages, representing more than 218 million Americans. www.nlc.org.

About Build America Mutual

BAM is the first mutual insurer of municipal bonds and the leading insurer of new-issue municipal bond transactions. BAM’s members are the more than 2,000 municipal bond issuers – including cities, counties, school districts and utility systems nationwide – who have used BAM insurance to save more than $300 million on their infrastructure investments since 2012. To improve transparency in the municipal market, BAM publishes a Credit Profile for every transaction it guarantees, which can be downloaded for free at www.buildamerica.com/credit-profiles. BAM-

insured bonds are rated AA with a stable outlook by S&P Global Ratings.

IRS Releases Final Arbitrage Regulations (Unrelated to Issue Price): Squire Patton Boggs

The IRS has released final regulations that make a variety of changes to the arbitrage rules for tax-advantaged bonds. These regulations finalize proposed regulations from 2007 and portions of the infamous 2013 proposed regulations that are unrelated to issue price. To say it again, these final regulations do not change the current issue price rules.

To recap the timeline: Click here to view the image.

Topics Covered: The final regulations change some rules that apply to:

- Working capital financings (including long-term working capital financings)
- The rebate computation credit
- Procedures for recovering rebate overpayments
- Certain rules for computing the yield on an issue of bonds (including, for our underwriter friends, the rules for yield-to-call high-premium bonds)
- Integration of hedges (swaps, etc.) with a bond issue
- Accounting for modifying and terminating hedges
- Yield reduction payments (expanding the circumstances under which you can make them)
- Valuing investments of bond proceeds
- The small issuer exception to rebate
- The arbitrage anti-abuse rules
- The definitions of “tax-advantaged bonds” and “issue”
- The definition and treatement of bond-financed grants
- (Rather randomly) Noting that Rev. Proc. 97-15 (dealing with closing agreements requests) is subsumed by Notice 2008-31 (which announced the Voluntary Closing Agreement Program, or VCAP, for tax-exempt bonds), and providing that Rev. Proc. 97-15 is now obsolete

Effective Dates: The final regulations generally apply to bonds sold on or after 90 days after Treasury publishes the final regulations in the Federal Register. The regulations are scheduled to be officially published on Monday (July 18), and 90 days after that date is October 16, 2016, which is a Sunday, so the regulations will generally apply to bonds sold on or after **October 17, 2016**. You can elect to apply certain provisions of the final regulations to bonds sold before that date. The rules for hedges apply to hedges that are entered into or modified on or after October 17, 2016, and there are specific effective dates for some of the provisions.

by John W. Hutchinson

July 15, 2016

Squire Patton Boggs

Bill to Raise Issuer Limit For Bank-Qualified Bonds Offered in Senate.

WASHINGTON – Two Senators have introduced a companion bill to a measure in the House that would permanently raise the annual issuer limit for issuers of bank-qualified bonds to $30 million from $10 million.

The Municipal Bond Market Support Act of 2016 (S. 5237) was introduced by Sen. Bob Menendez, DN.J. and referred to the Senate Finance Committee on Thursday. The bill is cosponsored by Sen. Ben Cardin, D-Md., who is a member of the Senate Finance Committee's taxation and IRS oversight subcommittee.

It is an identical version of The Municipal Bond Market Support Act of 2015 (H.R. 2229), which was introduced in the House in May of last year by Rep. Tom Reed, RN.Y. That bill is pending before the House Ways and Means Committee.

Menendez and Cardin could not be reached for comment Wednesday.

The companion bills would raise the annual issuer limit to $30 million permanently for the first time since bank-qualified bonds were created in 1986. The legislation would also index the annual issuer limits to inflation and apply to 501(c)(3) nonprofit borrowers rather than to the issuers they borrow from in conduit deals.

The bill pending in the Senate, if enacted, would greatly benefit many of the smaller, more rural jurisdictions that generally issue bank-qualified bonds to fund infrastructure projects, Emily Brock, director of the Government Finance Officers Association's federal liaison center here told The Bond Buyer on Wednesday.

"This would really benefit a significant number of GFOA members," Brock said, adding that roughly 70% of the organization's members are mid-to-smaller sized jurisdictions. "Smaller jurisdictions often have to pay a premium because of investor unfamiliarity with their area."

Bank-qualified bonds were created under the Internal Revenue Code of 1986 in order to allow smaller issuers to sell their tax-exempt bonds directly to local banks. These bonds give local issuers a chance to bypass the traditional underwriting process and access more cost-effective credit.

Brock said that small issuers often pay higher underwriting costs and also have a tougher time selling their bonds because investors oftentimes are not familiar with their jurisdictions. Selling bank-qualified bonds directly to banks reduces issuance costs by roughly 25-to-40 basis points, according to GFOA's bank-qualified municipals bonds resource center. As a result, GFOA said that many small issuers have been forced to pay higher interest rates.

Under the current threshold, a 25-to-40 basis points savings on a 15-year, $10 million bond would be between $232,000 and $370,000, according to GFOA. The basis points savings on a 15-year, $30 million bond would range from $696,000 to $1.1 million, the group estimates.

Banks can currently deduct 80% of the carrying cost of a qualified tax-exempt obligation under the federal tax code. The carrying cost includes the interest incurred from purchasing or carrying an inventory of securities.

However, Congress in 1986 limited bank purchases by saying banks could only buy the bonds of state and local governments that issue no more than $10 million of bonds during the calendar year.

Congress temporarily increased the issuer limit to $30 million in 2009 and 2010 under the American Recovery and Reinvestment Act, but that the increase was not renewed when it expired at the end of 2010.

Other versions of the Municipal Bond Support Act were introduced in the Senate in 2011 as well as in the House in July 2014.

Brock said the $30 million threshold was reached because the $10 million level set three decades ago was not tied to inflation. When indexed for inflation, the figure would be roughly $30 million, she said.

Brock said GFOA will continue to push through grassroots efforts to gain support for the bill, as well as urge more Senators to cosponsor the bill. A letter supporting the Municipal Bond Market Support Act of 2016 was sent to Menendez on June 24 was signed by 14 organizations, including GFOA, Bond Dealers of America and the National Association of Bond Lawyers.

She said she is confident that the bill can garner more support ahead of the next Congress because of the identical bills introduced in both the House and Senate.

“This is a stronger step than we’ve made in the past,” she said. “It allows both houses to see that this is a priority, and it sets the stage for really good conversation. It’s definitely a positive step in the right direction.”

The Bond Buyer

By Evan Fallor

July 20, 2016

How Ramapo, N.Y. and its Attorney Are Disputing SEC Fraud Charges.

WASHINGTON – The town of Ramapo, N.Y. and one of four individuals charged with securities fraud by the Securities and Exchange Commission for misleading muni bond investors are disputing the charges and urging a federal judge to dismiss the case.

They are asking for a jury trial if the judge fails to dismiss the SEC’s complaint.

Ramapo and town attorney Michael Klein detailed their defenses in recently filed separate answers to the SEC’s April 14 complaint filed in the U.S. District Court for the Southern District of New York in Manhattan.

They argue, among other things, that they relied on the advice of others. Ramapo relied on advice from accounting and auditor professionals as well as legal counsel while Klein relied on legal counsel and the advice of the town’s finance department and independent auditors, their lawyers said.

They also argue that the charges should be dismissed because nobody has suffered any loss or damage as a result of the alleged actions.

The SEC alleges that Ramapo, the Ramapo Local Development Corp., and the four individuals fraudulently hid the town’s financial troubles in bond documents for 16 muni securities offerings made between September 2010 and September 2015.

The town not only wanted the town’s financial picture to look good, but was also trying to prevent further political fallout from a minor league baseball stadium project that did not have Ramapo

citizens' support, according to the SEC.

Fourteen of the offerings were from the town and two others were from the RLDC but were guaranteed by the town and related to the baseball stadium. The commission charged the town and each of the individual defendants with either knowingly or negligently engaging in the fraud.

The town faced deficits ranging between $250,000 and $14 million between the town's fiscal years 2009 and 2014, the SEC alleges. But the defendants, through a series of fabricated receivables over that time period, were able to make it look like the fund actually had positive balances of between $1.4 million and $4.1 million, according to the commission.

The commission is charging the town and each of the individual defendants with either knowingly or negligently engaging in the fraud. Both the town and Klein are also charged with aiding and abetting violations by the bond-issuing RLDC.

The SEC is seeking an unspecified amount of civil penalties and has asked the court to bar each of the named individuals from the muni market.

The commission also has asked the court, through various undertakings and injunctions, to require Ramapo and the RLDC to retain for five years a court-appointed independent consultant, an independent auditing firm acceptable to the commission staff, and, if either want to issue munis, an independent disclosure counsel also acceptable to the staff.

Ramapo and Klein claim the SEC failed to state a claim or provide particular evidence of any material misstatements or omissions that would support the charges. Ramapo's lawyer argues that the SEC's allegations "are improperly vague, ambiguous … confusing, and omit critical facts."

Their lawyers contend their clients acted within the bounds of federal and state laws and did so "in good faith and in a commercially reasonable manner."

Ramapo's lawyer also asserts the SEC's claims for injunctive relief should be barred because the "adverse effects of an injunction far outweigh any benefit from an injunction."

Klein contends no investor could have reasonably relied upon his alleged misrepresentations or omissions, if they exist. He also says that any amount that the SEC claims the defendants owe is attributable to the actions of the other defendants and not to him.

In addition, Klein's lawyer claims the court does not have personal jurisdiction over his client. Klein lives in Airmont, N.Y., approximately an hour away from the New York City.

Both defendants say the SEC should also be barred from bringing the charges by the statute of limitations, usually six years for fraud charges according to Klein's lawyer. They say they reserve their right to bring up future defenses as may be appropriate. Ramapo, through its lawyers, says it maintains the right to adopt and assert defenses used by co-defendants.

The town and Klein are the only defendants to have filed an answer to the SEC's charges. The three other individuals facing charges are: Christopher St. Lawrence, supervisor and director of finance for Ramapo; Aaron Troodler, the former executive director of the RLDC; and Nathan Oberman, the town's deputy finance director. Lawyers for the other defendants either could not be reached or did not have a set date by which an answer would be filed.

The U.S. District Attorney for the Southern District of New York, in a connected action, successfully indicted St. Lawrence and Troodler on 22 counts of wire fraud, securities fraud, and conspiracy to

commit securities fraud.

The Bond Buyer

By Jack Casey

July 21, 2016

What Would a Best-Case U.S. Infrastructure Agenda Look Like?

Virtually everyone agrees that the United States needs modern, well-maintained infrastructure to ensure its future prosperity. Platforms produced for both major political parties at their conventions this month mention the issue, with Democrats pledging to "make the most ambitious investment in American infrastructure since President Eisenhower created the interstate highway system" and Republicans noting that "everyone agrees on the need for clean water and safe roads, rail, bridges, ports and airports."

Yet financing that infrastructure has become highly contentious. Lawmakers at all levels of government – have different ideas of how much to spend on infrastructure and where that money should come from, and a hesitancy to increase taxes or concerns over spending huge amounts of money on "luxury" upgrades has created political gridlock in many places.

But if the spending were less controversial and the political will were there, the U.S. could substantially transform its infrastructure. The new construction and upgrades could change how Americans travel, strengthen the country's economic engine, and make our communities safer and happier places to live. Texans might ride a futuristic bullet train to Atlanta, every child might attend a modern well-equipped school, and no city would have to worry about the safety and reliability of its drinking water.

As The Bond Buyer reaches 125 years of covering how America finances its infrastructure needs, we take a look at ten key areas of need and what could happen if money and politics weren't in the way. We examine what the project is, how it could benefit America, and, importantly, how it could be financed.

INTERSTATE 2.0

What it is:
A total modernization of the interstate highway system with upgrades such as dedicated truck lanes, redesigned interchanges to reduce bottlenecking, and express bus service

How it benefits the country or region:
The new interstate would improve commerce and the quality of life by reducing travel times and creating easier access to major population centers. The existing system was built more than half a century ago during the presidency of Dwight Eisenhower, and in many sections is inadequate for modern traffic needs or becoming aged and unreliable.

How much it costs:
Roughly $1 trillion

How it gets paid for:

All options on the table, but the most realistic is likely a combination of federal spending driven by user fees such as gas taxes and some local investment. Gas taxes have historically been the major means, but P3s are possible if allowed by the federal government.

AIRPORT INFRASTRUCTURE

What it is:
A radically consolidated ATC system with current control towers replaced by ground-level or underground facilities using an array of airport sensors at large airports, along with expansions and modernizations.

How it benefits the country or region:
Creates a more efficient and safer air travel. Air travel facilitates the movement not only of passengers but also of goods, and is a crucial economic driver for many localities with large or hub airports.

How much it costs:
Billions, but exact cost depends on the extent of the upgrades. The Federal Aviation Administration is attempting to implement its "NextGen" technological upgrades program, but has said it is dependent on full federal funding for the next 3 years, a political uncertainty.

How it gets paid for:
Federal spending or existing avenues of airport finance, including bonds backed by airport fees. Passenger Facility Charges, fees levied at commercial airports controlled by public agencies, are capped at $4.50 per passenger and could be raised to produce more revenue.

BRIDGE REPLACEMENT

What it is:
A replacement of structurally deficient and obsolete bridges nationwide. The American Road and Transportation Builders Association estimates that there are 58,495 U.S. bridges in need of repair.

How it benefits the country or region:
Rebuilt bridges are safer and improve traffic flow because they can handle increased weight loads, whereas some older bridges now have had to limit traffic for safety concerns. Bridge replacement could also facilitate expansion of certain highway sections crucial to some local economies.

How much it costs:
Likely over $150 billion nationwide.

How it gets paid for:
A good P3 candidate because they can be tolled and backed with revenue bonds.

WATER INFRASTRUCTURE

What it is:
A replacement and expansion of America's existing drinking water infrastructure, much of which is past or approaching its useful life

How it benefits the country or region:
Outdated water infrastructure can be unreliable or even unsafe, as in Flint, Michigan. Water main breaks can interrupt service and cause costly damage.

How much it costs:
The American Water Works Association has estimated it will cost about $1 trillion through 2035, assuming replacement of the entirety of America's drinking water system over that time. Drinking water components typically have a 15-95 year useful lifespan.

How it gets paid for:
Local planning and financing is the way to go, as each localities needs are unique. Some communities would pay as they go, others would bond.

NATIONWIDE HIGH SPEED RAIL

What it is:
A nationwide network of trains capable of exceeding 200mph. Such trains are already common in Europe and Asia, but are essentially nonexistent in the U.S. Amtrak operates a "high speed" Acela service in the Northeast, but its average speeds along its route are considerably slower than other high speed rail services globally.

How it benefits the country or region:
These trains could provide a green, fast way to travel between major metropolitan areas. They could serve as an alternative to air travel for short to intermediate distance trips, such as between Seattle and San Francisco or Houston and New Orleans. The U.S. Conference of Mayors has touted the economic benefits high speed rail would have to cities served by it.

How much it costs:
$500 billion plus

How it gets paid for:
A combination of federal dollars and local borrowing via bonds. The federal government has shown an interest in helping local governments leverage federal money to build high speed rail infrastructure.

PORT MODERNIZATION

What it is:
A series of improvements to the largest U.S. ports to ensure their continued economic competitiveness. Includes deepening them, adding more land-side cargo infrastructure, inclusion of robotic technologies.

How it benefits the country or region:
Modernized U.S. ports will facilitate more efficient interstate and international commerce, and help prevent port-driven localities from being driven out of business by ports in Mexico or Canada.

How much it costs:
More than $1 trillion

How it gets paid for:
Port authorities would borrow via bonds backed by their revenues. Port Authorities are already often some of the largest most frequent issuers in the U.S., and many have high credit ratings allowing them to borrow at a low cost.

SCHOOL UPGRADES

What it is:
Getting U.S. K-12 education into good operating condition. Almost half of U.S. public school buildings were built for the baby boom generation born between 1950 and 1969, the American Society of Civil Engineers reports.

How it benefits the country or region:
U.S. schools serve as not only education centers, but also as community gathering places, shelters during disasters, and other important functions.

How much it costs:
$270 billion plus.

How it gets paid for:
State and local spending, including bonds that could be either general obligations or increasingly-popular property-tax bonds. The ASCE also recommends exploring alternative financing options and innovative ways to reduce costs. Warren County Kentucky's Richardsville Elementary School, for example, generated enough electricity via solar panels to sell energy back to the grid.

HAZARDOUS WASTE SITE CLEANUP AND REDEVELOPMENT

What it is:
Cleanup and redevelopment of more than 1,000 unsafe brownfield sites. The U.S. produces millions of tons of hazardous waste annually.

How it benefits the country or region:
These sites pose a potential health and safety risk and also can't be turned into useful public sites until they are cleaned up and made safe.

How much it costs:
Roughly an extra $500 million annually over what the Federal government currently spends. Possibly more than $200 billion over the next 30 years.

How it gets paid for:
Federal spending through the Environmental Protection Agency's Superfund is the traditional way, but the EPA can also force whoever is responsible to clean up the site in many cases. Localities could partner with the federal government or be incentivized to redevelop these sites locally.

LEVEE REPAIR

What it is:
Repair and replacement of American levees, which protect both farmland and developed areas from flooding. The U.S. has some 100,000 miles of levees in all 50 states and the District of Columbia

How it benefits the country or region:
Insufficient or outdated unreliable levees can fail, causing devastating losses to the communities affected.

How much it costs:
More than $100 billion.

How it gets paid for:
P3s are a possibility, if surrounding infrastructure or the waterway can be monetized. US Army Corps of Engineers needs additional federal funding, localities must increase investment on levees

not the responsibility of the federal government.

NEW AGE ENERGY INFRASTRUCTURE

What it is:
Modernizing and expanding an increasingly outdated and unreliable distribution and transmission network for U.S. power supplies.

How it benefits the country or region:
Outages are a huge blow to the communities affected, slowing business to a crawl and creating a dangerous situation.

How much it costs:
Experts believe there is an investment gap of roughly $100 billion over the next several years.

How it gets paid for:
Largely local and P3, but federal government can play a role, particularly in incentivizing or helping in the development of green energy infrastructure.

The Bond Buyer

By Kyle Glazier

July 19, 2016

IRS PLR: City's Purchase of Interest in Electric Generating Facility Won't Result in Private Business Use of Bonds.

The IRS ruled that a city instrumentality's use of bond proceeds to acquire an undivided ownership interest in an electric generating facility from the company that will build the output facility under an agreement that creates a tax partnership between the instrumentality and the company will not result in private business use of the bonds (as defined in § 141(b)(6) for purposes of § 141(b)(1) of the Internal
Revenue Code.

Read the Private Letter Ruling.

Senate Introduces Bank-Qualified Loan Legislation.

Last week, a group of Senate lawmakers introduced legislation (S 3257) that would permanently raise the issuer limit on bank-qualified bonds from $10 million to $30 million. The legislation, which breathes new life into the effort to restore the annual issuer limit to $30 million, is the culmination of work by GFOA's Federal Liaison Center with the offices of Senator Cardin (D-MD) and Senator Menendez (D-NJ).

This legislation is identical to the legislation introduced in the House late last year (HR 2229), which is a significant step in the right direction—it not only sends a message to both the House and Senate

about the importance of raising the bank-qualified loan limit, but it also sets the agenda for what may prove to be an exciting 115th Congress beginning in January 2017.

The Federal Liaison Center encourages GFOA members to reach out to your senators and encourage co-sponsorship on this important legislation. Our Bank-Qualified Loan Resource Center provides sample letters and other helpful information about the legislation and the history of bank-qualified bonds.

Bank-qualified bonds were created in 1986 to give smaller issuers more cost-effective access to credit by allowing them to bypass the traditional underwriting system and sell their tax-exempt bonds directly to local banks. In addition to the higher costs of issuance in the normal underwriting process, many small issuers have a difficult time selling their bonds because investors may not be familiar with their jurisdictions. Many small issuers have therefore been forced to pay higher interest rates on their bond issuances.

Recognizing the utility of bank-qualified bonds to overcome these cost barriers, Congress temporarily expanded their use by raising the issuer limit to $30 million annually in 2009, and as a result, the market for bank-qualified bonds increased to approximately $32 billion that year. However, despite the effectiveness of bank-qualified bonds and bipartisan support on Capitol Hill, Congress did not extend these provisions beyond their December 31, 2010, sunset date, and on January 1, 2011, the annual issuer limit for bank-qualified bonds reverted to $10 million.

GFOA

Tuesday, July 19, 2016

EMMA Now Indicates ATS and Non-Transaction-Based-Compensation Trades.

Read the MSRB Announcement.

- NFMA Releases Draft White Paper on Disclosure of Statutory Liens.
- Why Issuers Must Increase Statutory Lien Disclosure.
- Black & Veatch 2016 Strategic Directions: U.S. Water Report.
- Expanding Municipal Securities Enforcement: Profound Changes for Issuers and Officials.
- NASACT Releases Voluntary Guidelines for Stable NAV LPIGs.
- NABL: IRS Issues Final Non-Issue Price Arbitrage Regulations.
- What's in Treasury's Newly Released Final Arbitrage Rules.
- The SEC's Municipal Advisor Rule: Webinar.
- And finally, BCB's Department of the Spectacularly Ill-Conceived gleefully brings you *McLean v. Pine Eagle School District, No. 61*, in which a high-school teacher claimed to have been traumatized by an active-shooter drill conducted at the school during an in-service day at which only teachers were present on the campus. Oh, boo hoo. Wait, what's that? School administrators smashed their way into the school dressed in black and wearing masks, ran down the halls throwing firecrackers, busted into classrooms, "shot" teachers at point-blank range with real guns firing blanks, screaming at the teachers that they were dead? This resulted in multiple injuries as the teachers stampeded for the doors? One teacher "wet herself"? Well at least they'd been told to

expect a drill right? No? Well, now that you put it that way….

EMINENT DOMAIN - ILLINOIS

Hampton v. Metropolitan Water Reclamation Dist. of Greater Chicago

Supreme Court of Illinois - July 8, 2016 - N.E.3d - 2016 IL 119861 - 2016 WL 3653963

Landowners filed complaints against water reclamation district, alleging damage to property from flooding and asserting a taking without compensation.

Following consolidation of complaints, the Circuit Court granted district's motion to dismiss with respect to claim for damages under the Metropolitan Water Reclamation District Act, but denied the motion as to takings claim and certified question for appeal. The Appellate Court determined that a temporary flooding could be a compensable taking. District petitioned for leave to appeal, which was allowed.

The Supreme Court of Illinois held that:

- What constituted a taking was same under both federal and state constitutions;
- Temporary flooding could be compensable as a taking under state constitution; overruling *Luperini v. County of Du Page*, 265 Ill.App.3d at 89, 202 Ill.Dec. 528, 637 N.E.2d 1264; but
- Flooding at issue was not compensable.

Though the takings clause of the state constitution provided greater protection for property owners than its counterpart in the federal constitution, as it provided a remedy for property that was damaged, in addition to property that was taken, what constituted a taking was the same under both clauses.

Temporary flooding could constitute a compensable taking under both the federal and state constitutions, and courts were required to look to the facts of each case to determine whether the property owner's use and enjoyment of the property has been diminished or destroyed; overruling *Luperini v. County of Du Page*, 265 Ill.App.3d at 89, 202 Ill.Dec. 528, 637 N.E.2d 1264.

Temporary flooding of residential properties was not compensable taking under state constitution, where property owners only alleged one instance of flooding, flooding was not alleged to be recurring, water did not remain on properties for a prolonged period of time, damage caused by flooding was able to be repaired, and there was no allegation that flooding was intentional or that water reclamation district knew of should have known that flooding would occur.

ZONING - MASSACHUSETTS

Eisai, Inc. v. Housing Appeals Committee

Appeals Court of Massachusetts, Suffolk - June 20, 2016 - 89 Mass.App.Ct. 604 - 52 N.E.3d 1097

Owners and lessors of abutting property sought judicial review of a decision of Housing Appeals Committee (HAC) that directed town zoning board of appeals to issue comprehensive permit to developer of housing project in industrial area.

The Superior Court Department affirmed. Owners and lessors appealed.

The Appeals Court held that:

- No evidence was presented that controverted owners and lessors' presumption of standing;
- Developer established prima facie case before HAC;
- HAC was within its statutory and regulatory authority to apply four-part test; and
- HAC's decision was supported by substantial evidence.

No evidence was presented that controverted presumption of standing for owners and lessors of property abutting proposed development, and therefore owners and lessors were entitled to rely entirely on their presumed status of being aggrieved parties to establish standing to appeal Housing Appeals Committee's (HAC) decision that directed town zoning board of appeals to issue comprehensive permit to developer.

Developer that had its comprehensive permit application denied by town zoning board established prima facie case before Housing Appeals Committee (HAC), despite contentions that developer's expert was unfamiliar with town's planning history and that other evidence before HAC contradicted much of testimony from developer's witnesses. HAC credited extensive testimony of developer's expert, whom it characterized as experienced municipal planner, together with testimony of manager of proposed project, an experienced real estate development specialist.

Four-part test to determine whether there was local concern of sufficient weight to outweigh regional need for affordable housing, enunciated by Housing Appeals Committee (HAC) on review of town zoning board of appeals' decision to deny developer comprehensive permit, was entirely consistent with HAC's prior policies and was well within its statutory and regulatory authority, despite contention that HAC "moved the goalposts" from previous two-part test. "New" factors were simply more detailed explication of two factors previously described.

Housing Appeals Committee's (HAC) decision to require town to issue comprehensive permit to developer of housing project in industrial area was supported by substantial evidence, and was not arbitrary, capricious, or otherwise contrary to the law. HAC balanced what it found to be relatively weak interests asserted by local zoning board, including job creation possibly lost by converting commercial lot into housing, conflicts of uses, and loss of tax revenue, against town's failure to adequately encourage affordable housing and its failure to meet statutory minimum 10% affordable housing obligation.

FAIR HOUSING ACT FUNDS - NEW JERSEY

In re Declaratory Judgment Actions

Superior Court of New Jersey, Appellate Division - July 11, 2016 - A.3d - 2016 WL 3671759

Several municipalities brought declaratory judgment actions seeking determination of their fair share of affordable housing obligation under Fair Housing Act (FHA). Actions were consolidated.

The Superior Court, Law Division, entered order directing Special Regional Master to include as part of fair share calculation a separate component for municipalities' fair share obligation during gap period for which Council on Affordable Housing (COAH) had failed to adopt rules governing determination of housing obligation. Municipalities sought interlocutory review.

The Superior Court, Appellate Division, held that:

- Separate component was improper, and

- Doctrine of judicial estoppel did not preclude such holding.

Separate, retroactive obligation for municipalities' fair share of affordable housing during gap period for which Council on Affordable Housing (COAH) had failed to adopt rules governing determination of housing obligation was not an appropriate component of municipalities' housing obligation for third-round cycle under Fair Housing Act (FHA). Text of FHA demonstrated legislature's concern with present and prospective fair share housing, low and moderate income households formed during gap period needing affordable housing could be captured in calculation of municipalities' fair share without resort to retroactive obligation component, and imposition of new obligation was best left to executive and legislative branches.

Doctrine of judicial estoppel did not preclude Appellate Division's holding that separate, retroactive obligation for municipalities' fair share of affordable housing during gap period for which Council on Affordable Housing (COAH) had failed to adopt rules governing determination of housing obligation was not an appropriate component of housing obligation for third-round cycle under Fair Housing Act (FHA). Appellate Division had not previously been asked to address, and had not sanctioned, a gap-period affordable housing obligation in prior action, and none of the parties in instant action participated in prior action.

EMINENT DOMAIN - NORTH CAROLINA

Kirby v. North Carolina Department of Transportation

Supreme Court of North Carolina - June 10, 2016 - S.E.2d - 2016 WL 3221090

Landowners brought action against Department of Transportation alleging takings without just compensation, including claim for inverse condemnation, related to Department's recording of highway corridor maps.

The Superior Court granted summary judgment to Department. Landowners appealed. The Court of Appeals reversed and remanded. Department filed petition for discretionary review, which was allowed.

The Supreme Court of North Carolina held that Department's use of Map Act to record highway corridor maps constituted use of power of eminent domain as opposed to exercise of police power.

Department of Transportation's use of Map Act to record highway transportation corridor maps constituted use of Department's power of eminent domain, as opposed to exercise of police power, and, thus, Department effectuated taking of fundamental property rights of landowners who owned property in area plotted by maps. Recording maps restricted landowners' rights to improve, develop, and subdivide their property for indefinite period of time.

LIABILITY - OREGON

McLean v. Pine Eagle School District, No. 61

United States District Court, D. Oregon - July 1, 2016 - F.Supp.3d - 2016 WL 3574017

Former elementary school teacher sued school district, as well as several district administrators, employees, and school board members for intentional infliction of emotional distress and civil assault following an active shooter drill of which she had not received prior notice.

Teacher brought four claims for deprivation of her federal constitutional rights under § 1983 and two state common law claims, intentional infliction of emotional distress and civil assault.

The District Court dismissed the four federal claims, but exercised supplemental jurisdiction over the two state law claims.

The District Court declined to dismiss teacher's state law claims, allowing her actions for intentional infliction of emotional distress and civil assault to proceed against certain defendants.

PENSIONS - RHODE ISLAND

Prew v. Employee Retirement System of City of Providence

Supreme Court of Rhode Island - July 13, 2016 - A.3d - 2016 WL 3743354

City police detective applied for accidental-disability retirement benefits after she was diagnosed with post-traumatic carpal tunnel syndrome. City retirement board denied the application, and detective filed petition for a writ of certiorari.

After granting the petition, the Supreme Court of Rhode Island held that:

- City ordinance governing accidental-disability retirement benefits was remedial and had to be construed in favor of detective, and
- Board was required to grant benefits to detective even though she failed to mitigate her injury through surgery.

City ordinance governing accidental-disability retirement benefits was a remedial measure intended to compensate employees who became disabled as the result of an injury suffered in the line of duty, and thus any ambiguities in the ordinance had to be construed liberally in favor of employees.

City retirement board was required to grant accidental-disability retirement benefits to police detective who was otherwise eligible for benefits due to carpal tunnel syndrome but failed to mitigate her injury through surgery. There was no language in city ordinance governing accidental-disability retirement benefits indicating that an employee had to undergo surgery to mitigate a permanent disability in order to qualify for benefits, the absence of such a requirement had to be construed in favor of the detective, and while the stated purpose of the city code section in which the ordinance was located was to protect the city's fiscal stability, that purpose would not fail in the absence of a mitigation requirement due to other safeguards against potential abuse.

UTILITIES - SOUTH CAROLINA

West Anderson Water District v. City of Anderson

Court of Appeals of South Carolina - June 15, 2016 - S.E.2d - 2016 WL 3342245

West Anderson Water District (the District) sought review of the circuit court's order interpreting a contract between the District and the City of Anderson (the City) that allowed the City to provide water service to a certain site within the District's boundaries.

The District argued that the individuals serving on the District's governing board at the time the contract was executed did not have authority to bind successor boards. The District also argued that

the circuit court's interpretation of the disputed contractual provision substantially compromised the District's central, primary function, i.e., the provision of water and sewer service.

The Court of Appeals held that:

- The District had the authority – derived from its enabling legislation – to enter into contracts that extend beyond the current members' terms, binding successor boards;
- The District had not delegated its decision-making authority to a private person or entity, or even another public entity, but rather it has delegated the function of providing water and sewer service to the site to the City for a limited period of time, and thus there existed no compromise of the District's central, primary function.

ZONING - SOUTH CAROLINA

Arkay, LLC v. City of Charleston

Court of Appeals of South Carolina - June 29, 2016 - S.E.2d - 2016 WL 3573147

Landowner appealed decision of the city board of zoning appeals to deny application for special use exception to operate stable in general business district near residential district.

The Circuit Court entered judgment for landowner, and city appealed.

The Court of Appeals held that:

- Entire building, rather than stalls where horses actually would be located, constituted "stable" within meaning of special use exception requirement that stable be located 100 feet from residential area, and
- Proposed horizontal property regime did not change status of building as a stable.

Entire building where horses would be kept, rather than stalls where horses actually would be located, constituted a "stable" within meaning of special use exception requirement that a stable be located 100 feet from any residential zone district. Carriage horse business ordinance differentiated between stable and stalls and defined "stable" as the barn where animals are kept, areas and rooms in front of stalls, including areas for customers, tack rooms, restrooms, and offices, were are commonly associated with horse stables, and obnoxious elements addressed by ordinance, including odors, waste, drainage, and pests, were still likely to accumulate in those areas and rooms and escape through front gate.

Proposed horizontal property regime did not change status of building as a "stable" within meaning of ordinance prohibiting stables within 100 feet of residentially zoned district, as it would not vertically subdivide the building itself to separate horse stalls from rest of building. Certain areas, including tack rooms, restrooms, and customer areas would all be underneath the roof of the building, and the building was within 100 feet of a residentially zoned district.

EMINENT DOMAIN - TEXAS

Harris County Flood Control District v. Edward A.

Supreme Court of Texas - June 17, 2016 - S.W.3d - 2016 WL 3418246

Landowners and former landowners whose properties were damaged by flooding brought action

against flood control district and county for inverse condemnation and nuisance.

The County Court at Law denied district and county's plea to the jurisdiction. District and county appealed. The Houston Court of Appeals affirmed. District and county petitioned for review.

The Supreme Court of Texas held that government entities that engaged in flood-control efforts were not liable to homeowners who suffered flood damage on compensable taking theory.

County and county flood control district that engaged in flood-control efforts were not liable to homeowners who suffered flood damage, on theory that the county and district effected a compensable taking of the homeowners' property by approving private development without fully implementing a previously approved flood-control plan. County and district never desired to cause the flooding, but desired only the opposite, undertaking significant efforts to prevent flooding, spending tens of millions of dollars over many years, and never intended, as part of a flood-control plan, to use the homeowners' particular properties for detention ponds, drainage easements, or the like, the only affirmative conduct of county allegedly causing the flooding was approval of private development, and even by the homeowners' reckoning the flooding resulted from multiple causes, including Acts of God and activities of other defendants.

PENSIONS - TEXAS

Van Houten v. City of Fort Worth

United States Court of Appeals, Fifth Circuit - July 1, 2016 - F.3d - 2016 WL 3595777

In separate lawsuits, police officers and firefighters brought an action against the city, alleging the city's reforms to its public employee pension plan violated provision of Texas constitution forbidding reduction of public pension benefits accrued by a person.

The United States District Court granted summary judgment in favor of the city in both actions. Appeals were consolidated.

The Court of Appeals held that:

- Provision did not prohibit pension reform that would decrease expected, but as-yet unearned, benefits;
- City's reform of its pension by altering the rate at which future benefits accrued did not violate provision; and
- City's pension reform which allowed participants who elected to be subject to variable cost-o--living adjustment (COLA) to revert to fixed 2% COLA did not violate provision.

As predicted by the Fifth Circuit Court of Appeals, provision of the Texas constitution forbidding reduction of public pension benefits accrued by a person did not prohibit pension reform that would decrease expected, but as-yet unearned, benefits. Provision only prohibited reduction or impairment of benefits accrued.

City's reform of its public employee pension plan by altering the rate at which future benefits accrued, going from a High 5 approach to bifurcated High 3/High 5 approach, did not violate provision of Texas constitution forbidding reduction of public pension benefits accrued. Reform protected accrued benefits and only impacted rate at which future benefits accrued.

City's reform of its public employee pension plan to allow participants who elected to be subject to

variable cost-of-living adjustment (COLA), guaranteed only to be within 0% and 4%, to revert to fixed 2% COLA rate did not violate provision of Texas constitution forbidding reduction of public pension benefits accrued. Provision did not protect against risk of downward fluctuations inherent in variable rates.

MBFA Sends Letter to House Leadership: Defends Tax Exemption for Municipal Bonds in Response to "Blueprint"

Today, the MBFA Coalition submitted a letter to House Speaker Paul Ryan (R-WI) and Rep. Kevin Brady (R-TX), Chairman of the House Ways & Means Committee in response to the release of the "Blueprint" on tax reform to maintain the tax exemption for municipal bonds. You can view a copy of the letter here.

While the Blueprint did not contain any reference to municipal bonds or the current-law status of municipal securities in particular, the letter outlines the benefits of the tax exemption and how its elimination, in whole or in part, will reduce the amount of infrastructure investments state and local residents can afford.

The MBFA will continue to engage with Members of Congress to advocate for the preservation of the tax-exemption for municipal bonds and stress caution for the implications of proposals that limit or eliminate the tax-exemption.

We hope this information is helpful. For further information on MBFA or issues raised in this update, please contact info@munibondsforamerica.org.

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Bond Math Bootcamp.

August 15-16, 2016 – New York City

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.

INTEREST RATES
What Is An Interest Rate?
Definitions
Interest rates, yields and rates of return compared
Interest Conventions
Simple interest
Compound interest

FINANCIAL MATHEMATICS
Time Value of Money
Significant issues
Future value
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BOND PRICES AND YIELDS
Bond Prices
Present value of the cash flows to maturity (first call date)
Pricing zeros/strips and coupon bonds
Bond pricing versus bond valuation
Pricing discount securities (T-bills)
Bond Yields
Types of yields
Calculation and interpretation
Yield to maturity versus rate of return
Expected Risks Versus Expected Returns

Sources of return
Risks of fixed income securities
Yield to maturity reconsidered

YIELD CURVES
Fundamentals
Terms and definitions
Types of yield curves by security type
Yield curve construction methodologies
Yield Curves Theory and Practice
Interest rate levels and shape of the yield curve
Yield Curve Movements And The Real Economy
Yield Curves And Securities Valuation
Spot rates and the spot rate curve
Construction/determination
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Forward rates
Riding the yield curve
Pricing derivative contracts

QUANTIFYING AND MANAGING INTEREST RATE (PRICE) RISK
Factors Determining Sensitivity of Price to Change in YTM
Non callable bonds
Callable bonds – embedded options
Quantifying Price Sensitivity to Changes In Market Yields
Modified duration
Effective duration
Dollar duration
Impact of convexity
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.

TAX - VIRGINIA

City of Richmond v. Virginia Electric and Power Company

Supreme Court of Virginia - June 30, 2016 - S.E.2d - 2016 WL 3610425

Power company appealed from the decision of the Tax Commissioner affirming city's ruling that company was subject to tax for natural gas consumed at its electric generation station.

The Circuit Court entered a consolidated letter opinion and order ruling that the company was not subject to the tax. City appealed.

The Supreme Court of Virginia held that city could not impose tax on natural gas consumed solely for purpose of generating electricity.

Statute allowing localities to impose tax on consumption of natural gas provided by "pipeline distribution companies" did not permit city to tax power company for natural gas consumed at electric generation station. Statute defined "pipeline distribution companies" as corporations which transmit natural gas to a purchaser for the purpose of furnishing "heat or light," and legislature's use of the word "power" alongside "heat" and "light" in separate provision of statute defining "commission," while omitting it from the definition of "pipeline distribution companies," reflected that the legislature did not intend to permit localities to impose a tax on natural gas consumed solely for the purpose of generating electricity.

GASB Equity Interest Ownership Consultative Group Formed.

GASB Chair David A. Vaudt recently announced the appointment of a consultative group to assist with the Board's research examining equity interest ownership of legally separate entities.

The members of the consultative group are:

- Lynne Bajema, Oklahoma State Comptroller, Office of Management and Enterprise Services
- William Bonawitz, Director of Research, PNC Capital Advisors, LLC
- Iain C.W. Briggs, Partner, Spectrum Health Partners, LLC
- Gregory A. Clark, Head of Municipal Research, Debtwire
- Suresh Geer, Executive Director of Finance, Seminole Tribe of Florida
- Greg S. Griffin, State Auditor, State of Georgia
- Demetria V. Hannah, Economic Statistical Methods Division, US Census Bureau
- Duane Hopkins, Chief Financial Officer/Deputy Director, Fort Collins Housing Authority
- Douglas J. Kilcommons, Senior Vice President – National Credit Team Manager, Wells Fargo Bank, N.A.
- Robert C. Kuehler, Associate Vice President/University Controller, University of Colorado
- Kristin Montgomery, Controller, California Public Employees' Retirement System
- John G. Moore, Executive Vice President/Chief Financial Officer, Parkland Health and Hospital System
- Tasha N. Repp, Tribal Services Group Partner, Moss Adams LLP
- Bart Rodberg, Director, RSM US LLP
- Blake Rodgers, Audit Senior Manager, Deloitte & Touche LLP
- Craig D. Shoulders, Professor, The University of North Carolina at Pembroke, Department of Accounting and Information Technology

WHAT DO CONSULTATIVE GROUPS DO?

The GASB assembles consultative groups at the discretion of the GASB chair for pre-agenda research that is expected to be extensive and to address a broad portion of the accounting and financial reporting standards. Consultative groups serve as a sounding board, providing suggestions

and feedback to the GASB staff as research activities progress. As part of this process, consultative group members review drafts of research materials prepared by GASB staff, commenting as appropriate.

HOW ARE PARTICIPANTS SELECTED?

Consultative groups are officially appointed by the GASB chair after consultation with the other GASB members and GASB staff. Consultative group members typically have a particular expertise or experience with the issue being researched and also are capable of articulating the views of other, similar constituents.

Members primarily are identified from the GASB's database of stakeholders, including persons who have indicated a willingness to volunteer for a consultative group. The GASB attempts to maintain an appropriate balance of financial statement preparers, auditors, and users on each consultative group.
Within each group, the GASB seeks to include a variety of types of stakeholders, such as finance officers from general purpose governments and business-type activities; auditors in government and private practice; and users from the municipal bond industry, citizen and taxpayer groups, legislative bodies, and the academic community. The GASB also tries to balance other factors that may be relevant, such as governments of various sizes and geographic areas of the country.

DeFazio's Proposed Financial Transaction Tax Would Apply to Munis.

WASHINGTON – Rep. Peter DeFazio's bill to impose a 0.03% tax on secondary market trades of stocks, bonds and derivatives would include tax-exempt as well as corporate bonds, a spokeswoman for the Democrat from Oregon said on Thursday.

The "Putting Main Street First Act" (H.R. 5745), introduced on Wednesday, is similar to bills that the congressman and former Sen. Tom Harkin, D-Iowa, introduced in 2011 and 2013.

DeFazio told reporters on Wednesday that the tax, which would amount to three cents for every $100 trade, is designed to discourage the same speculative trading that led to the 2008 Wall Street collapse and the 2010 "flash crash." It also would raise revenue to fund national priorities such as the development and repair infrastructure.

The tax would be paid by the purchaser of a bond or stock and collected by a broker or exchange. It would raise $417 billion over 10 years, according to the Joint Committee for Taxation.

For munis, this kind of transaction tax would be on top of a fee of $0.01 per $1,000 of the total par value of bonds imposed by the Municipal Securities Rulemaking Board on interdealer muni sales.

There was some confusion about whether the tax would apply to munis because the text of the bill says the tax would be imposed with respect to "any covered transaction." Covered transactions would include purchase of bonds, stocks or derivatives that occurred or were subject to the rules of "a qualified board" as defined by Section 1256(g)(7) of the Internal Revenue Code, according to the bill.

That section of the tax code says "a qualified board or exchange" means: a national securities exchange which is registered with the Securities and Exchange Commission; a domestic board of trade designated as a contract market by the Commodity Futures Trading Commission; or any other

exchange, board of trade, or other market which the [Treasury] Secretary determines has rules adequate to carry out the purposes of this section. None of these seem to apply to munis.

Under the bill, while trades involving tax-advantaged investments, such as college savings accounts, 401(k)s, or health savings accounts would also be taxed, individuals would receive tax credits equal to the transaction tax they paid. Additionally, annuities, insurance products and initial public offerings would not be taxed because they are not traded.

DeFazio conceded to reporters on Wednesday that there is little chance the bill would move forward in a Republican-led Congress. But the measure is in line with the Democratic platform for the presidential election, which warns against "risky financial deals that jeopardize everyone, especially the middle class."

Supporters of the bill include the AFL-CIO, Americans for Financial Reform, the Center for Economic and Policy Research, the Communications Workers of America, and Public Citizen.

But Payson Peabody, managing director and tax counsel for the Securities Industry and Financial Markets Association, said on Thursday that SIFMA "has a long record of opposing FTT [financial transaction tax] laws. He called the proposed tax "a new federal sales tax on Americans saving for retirement" and said it "is a bad idea."

"If the experience of other countries is any guide, an FTT would raise less revenue than promised; it would also reduce liquidity sharply in the affected markets, reducing asset values and increasing borrowing costs for US businesses, consumers, and the federal government itself," Peabody said.

There was some confusion from market participants about whether the bill would apply to tax-exempt bonds.

The Bond Buyer

By Lynn Hume

July 14, 2016

Hultgren Introduces Municipal Advisor Choice Act in Congress.

On June 28, Rep. Randy Hultgren (R-IL) introduced H.R. 5596, the Municipal Advisor Choice Act. The bill amends the Securities Exchange Act of 1934 by specifying that municipal issuers are not required to engage municipal advisors when issuing securities. The bill was referred to the House Financial Services Committee. "Washington's regulatory regime has again confused consumers, investors and other participants in the market, and the Municipal Advisor Rule is only the latest example," Hultgren said. "The Municipal Advisor Choice Act ensures that both issuers of municipal debt, and those who advise them, know their obligations under the rule. I look forward to clearing up the confusion surrounding this rule and urge quick action on this legislation."

Bill Information

GASB Survey on Indicators of Severe Financial Stress.

The Governmental Accounting Standards Board (GASB) is conducting a survey on the effectiveness of financial stress indicators of state and local governments. The survey is intended to gather feedback on the following questions: 1) What criteria might achieve the objective of disclosing severe financial stress uncertainties with respect to governments; 2) What information do financial statement users need with respect to the disclosure of severe financial stress uncertainties; and 3) Are the going concern indicators currently presented in note disclosures appropriate for state and local governments under severe financial stress.

The survey can be accessed here and should be completed no later than Friday, August 5, 2016. If you have any questions, you can contact Amy Shreck of the GASB project team at ashreck@gasb.org. You do not need to complete the entire survey in one session. If you save your responses, you will receive an individualized link that you can use to complete your survey later.

NABL: IRS Issues Final Non-Issue Price Arbitrage Regulations.

The Internal Revenue Service will publish in the Federal Register on Monday, July 18, final regulations on the arbitrage investment restrictions on tax-exempt bonds, finalizing proposals from 2007 and 2013. The final regulations do not include provisions on the determination of issue price. These final regulations amend existing regulations to address certain market developments, simplify certain provisions, address certain technical issues, and make the existing regulations more administrable. Notable topics covered include a new compliance-focused safe harbor for longer-term working capital expenditure financings, integration and significant modifications of qualified hedging transactions (e.g., interest rate swaps), valuation of investments at present value or fair market value in specified circumstances, and the treatment of grants with bond proceeds.

The final regulations are available here.

What's in Treasury's Newly Released Final Arbitrage Rules.

WASHINGTON – The Treasury Department and the Internal Revenue Service released final arbitrage rules on Friday that address issues relating to advance refundings, long-term working capital financings, hedges, investments, and grants among other things.

The 78-page package of rules, which consolidate and finalize arbitrage proposals made in 2013 and 2007, are expected to be published in the Federal Register on Monday and to take effect around Oct. 17.

They are designed to address certain market developments, simplify provisions, address certain technical issues and make existing rules more administrable, the agencies said.

“This basically cleans up the outstanding proposals in the arbitrage area from 2007 and 2013,” said John Cross, the Treasury Department’s associate tax legislative counsel.

The only arbitrage rules left outstanding are those on issue price, which proved to be so controversial when they were first proposed in 2013, they were separated out into their own

regulatory package. Those rules were re-proposed in June 2015 and are awaiting further action.

Bond lawyers generally praised many of these final arbitrage rules, but this was not a surprise since most of the proposals were favorably received years ago.

“Overall they’re favorable to the bond community,” Matthias Edrich with Kutak Rock in Denver said about these final arbitrage rules. “It will take some time for everyone to put these rules into practice to see how well they work.”

Chas Cardell, a lawyer at Orrick Herrington & Sutcliffe in San Francisco said the overall package “is extensive in that it deals with a large number of issues that have been percolating for some time.”

“In general, they did a great job of listening to the industry’s concerns and coming up with rules to solve those concerns,” he said. “There are a few instances in which their solution is not the one I would have chosen and in which there seems to be some clunky-ness in the operation of the new rule, but I do not as yet see anything that I think is unfair or misses the mark. In fact, they really did a nice job on these overall in finding a compromise between the industry requests and their compliance concerns.”

“It’s a great coup for the IRS to consolidate these” because of the lengthy six year period between the proposals, said Vicky Tsilas, who had Cross’ position at Treasury before returning to Ballard Spahr early last year. “There are some great nuggets in there.”

Bond lawyers were particularly happy that the rules allow issuers to make yield reduction payments for advance refundings. This will help issuers avoid arbitrage problems when the Treasury Department is forced to stop selling state and local government series securities (SLGS) because the federal government has reached its debt ceiling – something that has happened 11 times since 1995, including four times in the last three years.

SLGS are specially tailored securities that issuers can purchase for advance refunding escrows to ensure their investment yields stay below their bond yields and arbitrage is not generated. When the SLGS window is closed, issuers must buy Treasury securities in the open market and that increases the risk their investment yields will exceed their bond yields. The rules allow issuers to simply make payments to the government to reduce their investment yields when they need to.

The rules also provide a new safe harbor for long-term working capital financings, when bonds are issued to finance operating or other non-construction costs. Currently there are no statutory prohibitions against long-term working capital financings. But if the issuer can’t demonstrate long-term financial stress, the IRS can go after the issuer for having more bonds outstanding than necessary and can find the bonds are taxable under arbitrage abuse rules. The IRS has provided some safe harbors that allow issuers to avoid problems in short-term capital financings, but none exist for long-term deals.

The final rules provide, as Cross said, a “road map” for issuers that need to do long-term working capital financings without running into arbitrage problems.

Under the safe harbor, the issuer must reasonably expect to not have any available amounts of money for working capital for at least five years. For every year after the fifth year, the issuer must determine it has no unrestricted amounts of money it can use for working capital. If it does have available money it can take steps to avoid arbitrage problems by: redeeming some bonds; buying tax-exempt bonds; buying SLGS; or spending the money within 30 days for a governmental purpose.

The rules also contain a section on hedging transactions that provide a significant modification or

material change standard for interest rate swap terminations. Termination payments are taken into account in determining whether arbitrage is generated. Under the rules, interest rate swaps won't be treated as terminated unless there is a significant modification of the swap, such as a material change in the interest rates used in the swap.

Cross said this section was spurred in part by the financial crisis when bond insurers were downgraded, Lehmann Brothers filed for bankruptcy and tax lawyers had to restructure or modify thousands of swaps. Under existing rules, modifications forced many of those swaps to be terminated.

The final rules also give issuers 15 instead of three days to identify whether a swap is a "qualified hedge" whose yield can be taken into account with the bond yield in determining whether arbitrage has been generated. They detail how taxable indexes, such as LIBOR, may be used for qualified hedges.

Additionally, the rules clarify that when bond proceeds are used to make grants to unrelated parties, the issuer has to consider whether the grant was used for private business. Existing rules don't require grants to be tracked after awarded to an unrelated party.

The rules also clarify when investments need to be valued at fair market or present value.

Several lawyers said they are still studying the rules. "For the most part, Treasury and the IRS did a good job of addressing comments by making positive changes and clarifications," said Tom Vander Molen with Dorsey & Whitney in Minneapolis. "I am, however, disappointed that Treasury and the IRS did not adopt the suggested changes to the definition of fair market value of qualified hedges on termination. A number of suggestions on other items were described as beyond the scope of the project, but further guidance on some of these should be given in the future. In particular, I would like to see Treasury and the IRS expand the situations in which yield reduction payments may be used."

The Bond Buyer

By Lynn Hume

July 15, 2016

More Information on Trades Now Available on EMMA®

To help investors better understand municipal securities trade data, the Electronic Municipal Market Access (EMMA®) website now includes two new indicators to denote that a special condition applies to a specific trade. The first new indicator identifies inter-dealer trades that are executed with or using the services of an alternative trading system, or ATS. This will allow investors and others to better assess the extent to which ATSs are used in the municipal market.

The second new indicator flags customer trades that do not include a mark-up, mark-down or commission in the reported trade price. This indicator differentiates customer transactions that do not include a dealer compensation component, providing a more meaningful comparison of trade prices.

View a key to the special condition indicators on EMMA. For more information on understanding

trade prices, visit the MSRB Education Center, an online library of free, objective information on the municipal securities market.

July 18, 2016

TAX - MASSACHUSETTS

West Beit Olam Cemetery Corp. v. Board of Assessors of Wayland

Appeals Court of Massachusetts, Suffolk - July 7, 2016 - N.E.3d - 2016 WL 3619357

Jewish nonprofit organization applied for tax abatement for lot under exemption from property tax applicable to land dedicated to burial of dead and buildings owned and used exclusively in administration of cemeteries, tombs, and rights of burial.

Town's board of assessors denied application, and nonprofit appealed. The Appellate Tax Board ruled that portion of lot improved with single family home was not eligible for exemption, and nonprofit appealed.

The Appeals Court held that:

- Portion of lot improved with single family home "was not dedicated to burial of dead," as required for nonprofit to claim exemption from property tax allowed to cemeteries, tombs, and rights of burial, and
- Single family home was not "used exclusively in administration of cemeteries, tombs, and rights of burial," as required to be eligible for exemption.

Portion of lot improved with single residence in which resident, under caretaker agreement, lived and was obligated to open and close gates of cemetery on daily basis, in exchange for rent, "was not dedicated to burial of dead," as required for Jewish nonprofit owner of land to claim exemption from property tax applicable to land owned by religious nonprofit corporation dedicated to cemeteries, tombs, and rights of burial. Disputed portion of lot was contractually dedicated to residential use, not burials or other cemetery-related activity, under caretaker agreement that established resident's continuous occupancy of property for "residential purposes," "with no interference" by owner except for reasonable inspection and precluded owner from actively developing that portion of lot for "cemetery purposes" during term of agreement, resident's contractual duties to open and close cemetery gates on daily basis were minimal, and she was in now way full-time cemetery caretaker.

Where no interments have taken place on the subject property, the taxpayer seeking to claim an exemption from property tax applicable to cemeteries, tombs, and rights of burial must demonstrate that the property has been dedicated for burial purposes through planning and substantial actual use of the land to prepare it for burials or other activities necessary for, administration and operation of the cemetery.

Land is not "dedicated to the burial of the dead," as required to claim the exemption from property tax applicable to cemeteries, tombs, and rights of burial by a mere dedication or appropriation on paper. Nor does minor use of the purchased land for activities incidental to a cemetery constitute dedication of such land for a burial place.

Single family home on lot owned by Jewish nonprofit in which resident lived rent free, under caretaker agreement with nonprofit, in exchange for resident's obligation to ensure that adjoining cemetery gates were opened and closed on daily basis, was not "used exclusively in administration

of cemeteries, tombs, and rights of burial," as required for home to come under exemption from property tax applicable to buildings on cemetery property owned by religious nonprofit corporations, where home was used primarily for residential purposes and was restricted to such use during tax year in question.

How the Army Corps of Engineers Is Entering the P3 Market.

DALLAS - A $2 billion flood diversion project aimed at preventing future natural disasters in North Dakota and Minnesota will be the first publicp-rivate partnership for the U.S. Army Corps of Engineers.

The Red River project would protect more than 225,000 residents and $14 billion of property by moving floodwaters away from Fargo, N.D., and other areas that suffered from a massive flood in 2009 that nearly inundated the region.

The project includes a channel that is 36 miles long and a quarter-mile wide, two aqueducts, four railroad bridges, four interstate highway bridges, and 10 county road bridges.

The partnership agreement for the diversion project was signed July 11 by Lowry Crook, deputy assistant secretary of the Army for civil works, as well as the mayors of Fargo, N.D., and Moorhead, Minn., and the directors of the Fargo-Moorhead Flood Diversion Authority.

The Red River has flooded the area 49 times in the past 110 years, including every year from 1993 to 2011 and again in 2011. Another major flood could cause more than $10 billion of damages, said diversion authority chairman Darrell Vanyo.

The agreement formalizes the federal government's $450 million contribution to the $2 billion project and paves the way for a formal request from the Diversion Authority next month for qualification from interested private partners.

The Red River project will be the Army Engineers' first P3 test, said Corps commander Lt. Gen. Thomas P. Bostick.

The Water Resources Reform and Development Act of 2014 (PL 113121) required the Army Engineers to create a pilot P3 program with up to 15 projects.

"We can't wait. The nation can't wait," Bostick said. "Finding a way to think creatively about funding these projects is very important."

Private investors are necessary because Congress provides only $1.5 billion a year to fund $23 billion of Corps' projects, he said.

"For the Corps, we've hired people who wake up every day and their number one mission is to think about public-private partnerships and [how] to move them forward," Bostick said.

North Dakota and its local governments will provide $1.2 billion to build the project, with $175 million of state funds already committed. Minnesota, which will receive fewer benefits from the project than its neighbor, will contribute up to $100 million.

The local governments will fund most of their share of the project costs with proceeds from revenue

bonds supported by a dedicated 0.5% sales tax already approved by voters in Fargo and Cass County, N.D., said county administrator Keith Berndt.

The private partner is expected to provide up to 20% of total project costs.

The Flood Diversion Authority intends to use local sales tax revenues and state funds to make annual availability payments to the selected concessionaire.

The private partner that would be selected in 2017 would be responsible for financing its share of the project, building the required infrastructure, and operating the diversion facility for up to 35 years.

The Army Engineers will build a 12-mile dam on the Red River to direct floodwaters into the diversion channel though a conventional design/build approach, said Corps project manager Terry Williams.

It would take 20 years or more for the Corps to complete the entire project without the private partners because its federal funding comes in annual installments that are not consistent, Williams said.

“They may be able to find more innovative ways to design and build it knowing that they are going to have this operation and maintenance,” she said. “They may be willing to take a little more risk than the Corps would if we were designing and building it.”

The Bond Buyer

By Jim Watts

July 13, 2016

Expanding Municipal Securities Enforcement: Profound Changes for Issuers and Officials.

While many in the municipal securities market have been preoccupied with the Securities and Exchange Commission’s Municipalities Continuing Disclosure Cooperation Initiative, other significant developments have been occurring in the SEC’s municipal regulation through enforcement.

Since early 2013 alone, apart from the MCDC Initiative, there have been enforcement actions brought against 18 state or local governmental entities and against 16 issuer officials. In contrast, in the 14 years from the beginning of 1999 through 2012, the commission resolved disclosure actions against only 11 state or local entities and 10 officials. There is a definite change in tone.

Municipal securities enforcement has experienced a number of significant firsts in the 3½ years since early 2013. Most, if not all, of those measures follow the SEC’s expansion of the role of its Public Finance Abuse Unit (formerly, Municipal Securities and Public Pensions Unit).

At about the time the SEC’s more aggressive activity began, Mary Jo White, a former federal criminal prosecutor, became chair of the commission. White defined a priority of enforcement against the full range of securities law violations, even minor ones involving only negligence, as

opposed to intent or recklessness. White described this as “Broken Windows” enforcement.

The commission’s reliance on enforcement is not a surprise. Indeed, it is the market discipline contemplated in 1975 with the enactment of the Securities Acts Amendments of 1975. These included the Tower Amendment prohibiting the SEC from requiring pre-sale review of municipal official statements.

As a part of the bargain, Congress also amended the definition of “person” in Section 3(a)(9) of the Securities Exchange Act of 1934 to include “a government or political subdivision thereof.” That seemingly minor statutory change gave affirmative congressional authority — a green light — to the SEC for post-offering pursuit of state and local entities and officials not only for acts of fraud in violation of SEC Rule 10b5, but also pursuant to Section 17(a)(2) and (3) of the Securities Act of 1933 for negligence.

To summarize the outcome in 1975, there are no pre-sale SEC reviews of municipal issuers’ official statements and little in the way of pre-offering SEC disclosure mandates (other than in the definition of “final official statement” in SEC Rule 15c212), but post-offering review through SEC enforcement was clearly contemplated by Congress.

Importantly, the commission’s change of direction from its prior reliance almost solely upon deferential cease-and-desist orders against municipalities and public officials has far-reaching implications.

In the past 3½ years, the SEC has asserted its enforcement role considerably. It is not unfair to describe this approach as a form of direct regulation of issuers.

The MCDC Initiative is only one SEC enforcement undertaking, albeit against multiple parties. The SEC has embarked on a much larger journey. This is not good news for issuers or officials (or others). Instead of SEC guidance through regulation in advance of bond issues, the enforcement approach provides after-the-fact guidance to which bond lawyers and others pay significant attention. Enforcement may provide a very rough form of post-offering guidance indeed for the particular issuers and officials (and others) affected directly. Yet enforcement does provide helpful information for the balance of the market.

As discussed below, the Commission has achieved the following examples of “firsts” since early 2013:

- Collected its first civil penalties from issuers;
- Obtained its first emergency court order against an issuer to halt an offering in progress;
- Prohibited issuers from issuing municipal securities in the future without first satisfying specific conditions precedent;
- Determined “control person” liability for key issuer officials—mayors—without alleging that the officials acted with fraudulent intent or even with negligence;
- Ordered the first bars of municipal officials from participation in future offerings, effectively preventing the officials from exercising significant official responsibilities (or from working with underwriters);
- Ordered an issuer official to pay a civil penalty and barred the official from future bond offerings, although the official was alleged only to have been negligent due to a failure to read an official statement he signed;
- Taken its first action against a municipality for violations in public statements by the mayor — political speech — appearing together with annual financial reports on the issuer’s website; in other words, held an issuer liable for information provided outside of official statements or

continuing disclosure documents filed with the MSRB;
- Taken action against a municipality in connection with tax certifications to bond counsel and a pooled bond issuer, i.e., documents that investors never saw nor could be expected reasonably to see;
- Received the benefit of District and Appellate Court decisions that a municipal official is not entitled in securities law enforcement proceedings to qualified immunity in the performance of discretionary official duties;
- Taken its first action, based upon information relating to a private conduit borrower, against a governmental issuer providing credit enhancement for the borrower's payment obligations;
- Ordered an issuer to employ an independent monitor to review transactions for conflicts of interest;
- Taken its first action against local issuer counsel;
- And taken an action in coordination with a Justice Department criminal action in a municipal disclosure case pursuant to an announced policy of cooperation.

In another "first," the SEC is seeking potentially harsh monetary remedies in a pending action against a city that already is subject to a cease-and-desist order from a prior enforcement action.

Although the imposition of civil penalties on municipal officials is not a "first," previously the SEC imposed civil penalties only in a few instances. More recently, the commission has followed a pattern of imposing significant civil penalties on municipal officials in several separate actions within a brief period. Since the beginning of 2013, the Commission has levied $180,000 in civil penalties on eight officials. In contrast, five officials (in only two actions) paid $85,000—less than half as much—in civil penalties in the 15 years from 1998 through 2012. In pending actions, the SEC is seeking to levy civil penalties on five additional governmental entities and an additional six officials.

In connection with its increasing penalties, the commission is seeking, among other things, to place a greater emphasis on the responsibilities of individual officials, in addition to organizations for which the officials act.

Sometimes, in acting against municipal officials, the commission alleges control person and aiding and abetting liability. For example, in one settled action, for the first time, the SEC asserted that a former mayor "controlled" the actions of the city administrator and the city.

In a recent settled action against a sitting mayor the SEC alleged only that the mayor was a control person in relation to the city and the city's comptroller, that the mayor signed official statements and bond closing certificates, and the city and its former comptroller (as opposed to the mayor) had committed fraud. The commission made no explicit allegation that the mayor knew of disclosure violations, or even that he was reckless or negligent. The commission did not allege that the Mayor promoted or was involved in the project financed through the issuance of bonds. The commission did allege that the mayor asserted his Fifth Amendment privilege against self-incrimination during his investigative testimony before the commission in response to all substantive questions regarding the events at issue. Therefore, one is left to infer that the mayor did not have a good faith defense to overcome the commission's control person liability charge. Yet, that inference is part of the point. The burden of proof on the issue of good faith rested on the mayor, not the SEC. The remedies included a civil penalty and a bar against participation in future bond issues—a difficult outcome requiring a delicate balancing act for a sitting mayor, bond professionals working with the city, and investors purchasing the city's bonds. This approach may prove challenging for community leaders elsewhere in the future.

In another action against a former charter school CEO, the commission imposed a $10,000 civil penalty and barred the CEO from future bond issues for failing to read an official statement he

signed. Despite the harsh remedies, the SEC did not charge the former CEO with fraud, only negligence. In the commission's press release regarding the action, David Glockner, regional director of the SEC's Chicago Regional Office, stated: "This kind of negligent behavior is unacceptable in the securities markets."

Perhaps as an indication of things to come in more egregious fact settings, another "first" includes the first time that the SEC has announced an intention to coordinate with the Justice Department regarding misconduct in the municipal bond market. One recent coordinated effort led to the indictment of municipal officials in a pending action in connection with alleged disclosure violations.

Reviewing the past 3½ years, in circumstances involving carelessness, the SEC has recognized issuer efforts to improve practices by adopting policies, assigning responsibility, and training staff, and has imposed less exacting remedies structured to provide future assistance to the issuers. The commission's message is heavily underscored, however, in more egregious circumstances by remedies that drive the message home with an emphasis that issuers, officials and the market should not mistake.

It is likely that those changes in enforcement will result in significant alterations in the behavior of the vast majority of market participants.

The Bond Buyer

By Robert Doty

July 12, 2016

Robert Doty is president and proprietor of AGFS, a municipal securities litigation consulting firm in Annapolis, Md. This commentary is excerpted from his forthcoming book, "Expanding Municipal Securities Enforcement: Profound Changes for Issuers and Of icials," to be published by the International Municipal Lawyers Association.

South Carolina Economic Development Incentives: The Negotiated Fee in Lieu of Property Taxes.

South Carolina has some of the highest business property taxes in the Southeast. The state generally taxes land, buildings, machinery and equipment, and furniture and fixtures, but does not tax inventory, pollution control equipment, intellectual property, and other assets.

To reduce the effect of its high business property tax rates, and to make the state a more competitive environment for business, South Carolina offers a property tax incentive and tax savings for those businesses investing at least $2.5 million over a five year period in the state. This incentive is known as the negotiated fee-in-lieu of property taxes, or "FILOT".

Property taxes are calculated by taking the "value" of taxable property and multiplying it by an "assessment ratio" set by state law and then multiplying that product by an applicable "millage rate" set by local government. Real property owned and used by a "commercial enterprise" has an assessment ratio of 6%, and the personal property of the business is assigned an assessment ratio of 10.5%. Manufacturers are assigned an assessment ratio of 10.5% for both real and personal property.

Under a FILOT, the value of land and buildings is generally set at the value of this property at the beginning of the arrangement (typically, the cost or price paid for these assets) and this value remains constant throughout the term of the FILOT. This value may be adjusted to fair market value every five years, through agreement with the county. The value of personal property (e.g. machinery and equipment) begins with its cost and then is depreciated each year under a statutory rate (e.g. 11% per year for manufacturers) until the property is depreciated down to 10% of its cost.

The FILOT permits a business and the county to negotiate a reduction in the assessment ratio for all property, both real and personal, down to 6% (or even lower with larger investment levels), and the county can agree to "freeze" the millage rate at a fixed rate, or to adjust the millage rate every five years, throughout the term of the FILOT.

The term of a FILOT is from 20 – 30 years, from each year of investment. The county may grant an extension of the FILOT term for up to an additional 10 years. The investment period is generally five years, but may be extended for an additional five years.

There are three types of FILOT arrangements: the original FILOT Act (the "Big Fee"); the Streamlined FILOT Act (the "Little Fee"); and the Simplified FILOT Act. Each FILOT arrangement requires approval by the county, and through a local county council ordinance, which requires three county council readings and a public hearing.

Original FILOT Act ("Big Fee")

Under the Big Fee, a business must invest a minimum of $45 million in property. The Big Fee requires the county to own and have title to the property, so the business must transfer its applicable property to the county, but subject to a lease agreement with the county where the county leases the property back to the business for its use during the FILOT term. The business has the right to terminate the FILOT and reacquire its property during the term of the lease, and at the end of the lease, for nominal consideration (e.g. $1.00).

Streamlined FILOT Act ("Little Fee")

The Little Fee is similar to the Big Fee, but the investing business must only invest a minimum of $2.5 million over a five-year investment term. Like the Big Fee, the business will transfer its property to the county and lease it back for the term of the FILOT.

Simplified FILOT Act ("Simplified Fee")

Under the "Simplified Fee" a business must invest a minimum of $2.5 million. However, unlike the Big Fee and Little Fee, title to property may remain with the business, and no lease with the county is required. The business and the county enter into an approved "Fee Agreement" with the property being classified as "economic development property."

Additional FILOT Parties

With county consent, an additional business or party may be added to a FILOT arrangement as a "sponsor affiliate". Provided the sponsor affiliate (or multiple sponsor affiliates) makes a required minimum investment (which can be exempted for certain types of businesses, including manufacturing), all property of the sponsor affiliate potentially qualifies for the FILOT.

Larger FILOT Arrangements

Under each of the FILOT arrangements, there are provisions that allow a business to receive a lower

property assessment ratio, a longer investment period, and a lengthier FILOT term in return for a substantially higher minimum investment amount, and which is often coupled with a job creation requirement. For example, if a single business invests at least $150 million and creates 125 new full-time jobs in the state, or invests at least $400 million at a project the business may be able to negotiate a reduction of the assessment ratio from 10.5% to 4.0%, an extension of the FILOT term, and the business would have at least 8 years (if an extension is granted – a total of 13 years) to make the required investment.

by Adam Landy | McNair Law Firm, P.A.

7/8/2016

On Politically Tricky Transit Projects, Many Cities Let Voters Weigh In.

Cities nationwide have crafted and acted on ambitious blueprints for light-rail and other forms of mass transit, but unlike the Twin Cities, many of them have asked their voters whether they want higher taxes to help pay for it.

Ballot initiatives “give local officials the ability to turn a tricky political decision over to the voters,” said Jason Jordan, executive director of the Center for Transportation Excellence, a Washington, D.C., group that tracks transit spending. Since 2000, transportation initiatives have been on the ballot in 41 states, with an average of 71 percent passing.

A referendum of this sort has not been considered in Minnesota because the Legislature would have to authorize it. And, since efforts to pass a half-cent metro sales tax for transportation were thwarted by light-rail-averse Republicans last spring, that seems unlikely.

The final piece of local funding for the $1.79 billion Southwest light-rail line, totaling $135 million, is now in doubt. The fate of close to $900 million in federal matching funds for the controversial project is murky as well.

Partisan politics over mass transit haven’t necessarily played out nationally the way they have in Minnesota, according to Jordan. “We have found no partisan connection with these [transit] measures at all,” he said. “Voters really have a chance to evaluate whether they believe there’s value in a project or not.”

This fall, Seattle-area residents will vote on an initiative called Sound Transit 3 that calls for new sales and property taxes to fund $53.8 billion in transportation projects, including 62 additional miles of light rail.

Voters in the car-clogged Los Angeles area will decide in November whether to increase a county sales tax by half a cent for the next 40 years, raising about $120 billion to expand mass transit and various transportation initiatives.

Other cities, including Dallas, Phoenix and Denver, have used voter-approved tax revenue to build transit systems that are far more expansive than the Twin Cities’, which at the moment has two light-rail lines spanning 23 miles.

Dallas, Texas’ third-largest city, boasts a $5 billion light-rail network that is the longest of its kind in the country with some 90 miles of track. Last summer, Phoenix voters approved a $31.5 billion

transportation plan for the next 35 years that includes a transit sales tax increase to 0.7 percent. The funds will help build 42 miles of light rail.

In Denver, a city often seen as a peer to the Twin Cities, voters in 2004 approved the $4.7 billion FasTracks program, which added 122 miles of new commuter and light-rail lines in the region, as well as bus-rapid transit (where buses operate like trains) and related infrastructure.

However, Denver discovered the hard way how sales taxes ebb and flow with the economy. Once the Great Recession hit, costs of the transit program ballooned to nearly $7 billion, leaving a budget gap of $2.2 billion. A unique public-private partnership involving local businesses stepped in to help fund several rail lines, including one connecting Union Station in downtown Denver to the Denver International Airport.

Now back on track, transit options in Denver have been crucial in attracting millennials to the city, as well as $5.5 billion in transit-oriented development, said Nate Currey, spokesman for the Regional Transportation District. “You do not have to have a car to live here,” he said, adding that aging baby boomers are shedding their wheels, too.

Transit “is a big economic competitiveness issue for us to compete as a region,” said Adam Duininck, chairman of the Metropolitan Council, the regional body in the Twin Cities that plans and operates transit. “When you look at how we compare to other regions, we do well in all areas except for transit.”

There is a little-known transit sales tax in the metro area that has played a key role in funding big projects, such as the nearly $1 billion Green Line, linking the downtowns of Minneapolis and St. Paul.

Since 2008, five Twin Cities metro counties — Hennepin, Ramsey, Washington, Anoka and Dakota — have used the quarter-cent sales tax and a $20 motor vehicle sales tax to invest in transit projects administered by a group of mostly elected officials called the Counties Transit Improvement Board (CTIB). And 10 years ago, a general referendum question passed by voters dedicated 40 percent of motor vehicle sales tax proceeds to transit over a five-year period.

But Dakota County, unhappy with its return from the transit tax, voted last month to leave the group, and other suburban counties may follow.

If cities are unable to raise local money for big transit projects like light rail, they are in danger of losing matching dollars from the Federal Transit Administration. The FTA’s New Starts program, which pays out about $2.3 billion a year for new light rail, commuter rail and bus-rapid transit projects costing more than $250 million, looks first for a local funding commitment before awarding its grant money.

The competition for FTA money is fierce, transit experts say.

“You snooze, you lose,” said Hennepin County Commissioner Peter McLaughlin, who chairs CTIB. “If we whiff on [Southwest], we’re letting competitor regions with a vision march ahead of us.”

Critics disagree. Light-rail is “really expensive infrastructure to build and keep up that doesn’t work,” said Kim Crockett, vice president of the Center of the American Experiment, a think tank based in Golden Valley. The race for federal transit dollars — also footed by taxpayers — is a wasteful folly, she said.

Even cities like Seattle that are perceived as being transit-friendly have critics. John Niles, who co-

founded a Seattle group called Smarter Transit, says the impending ballot initiative in the Emerald City would cost the average person $1,000 more a year. (The transit agency there, Sound Transit, claims the figure is $200 a year.)

Niles says Seattle should refine its current system — much of which was built after a 2008 referendum added 2 percent in various sales taxes — before expanding it even more. “Let’s use the existing network to its full potential,” he said. “This may be a bridge too far.”

Meanwhile, other cities and regions continue to look to voters for a thumb’s up on transportation. This fall, more than 20 regions across the United States — from Pulaski County, Ark., to Kalamazoo, Mich., — will hold referendums to raise money for transportation initiatives, according to the Center for Transportation Excellence.

The Minnesota Star Tribune

By Janet Moore

JULY 13, 2016 — 10:33AM

A Look at Rural Hospital Closures and Implications for Access to Care: Three Case Studies.

Abstract

The number of rural hospital closures has increased significantly in recent years. This trend is expected to continue, raising questions about the impact the closures will have on access to health care services in rural communities. To investigate the factors that contribute to rural hospital closures and the impact of those closures on access to health care in rural communities, the Kaiser Commission on Medicaid and the Uninsured and the Urban Institute conducted case studies of three hospital closures that took place in 2015: Mercy Hospital in Independence, Kansas; Parkway Regional Hospital in Fulton, Kentucky; and Marlboro Park Hospital in Bennettsville, South Carolina.

Download the Full Report.

The Urban Institute

by Jane B. Wishner, Patricia Solleveld, Julia Paradise, Larisa Antonisse

July 7, 2016

What Record Low Bond Yields Mean for Investors.

The website Quartz reported recently that yields on U.S. 10-year Treasury bonds are lower than they have been since the days of Alexander Hamilton.

But when it comes to bond yields, zero is not the limit. Brexit and uneasiness about the global economy have pushed interest rates on a third of developed-country government debt into negative numbers as investors seek safe havens. That means countries like Germany, Switzerland and Japan

are charging investors money for the privilege of holding onto their cash.

Government bonds are many Americans' introduction to investing, and for many of us they represent safety and solidity in a volatile world. In fact, lots of investors have been moving into bonds as the stock market has been in turmoil lately, which is part of the reason yields are falling.

But with returns so low, would we be better off putting money in the mattress?

Not surprisingly, investment managers say no. Bonds are still an important part of your diversification strategy for retirement. This is because they counterbalance movements in the stock market, and their yields are much more stable than those of stocks.

Here are some topics to discuss with your investment manager.

–What types of bonds are best for you?

Again, within the overall category of bonds, most people are most familiar with U.S. Treasuries. They have an interest rate or coupon that is set on the day you buy it and paid out every six months for a term that ranges from 1 to 10 years for Treasury notes, and up to 30 years for Treasury bonds. You get the full principal back when the bond reaches maturity, giving some insulation from market ups and downs. However, there is market risk if you need to sell before the term is up.

The same basic structure is in place for other types of bonds: those issued by foreign countries, by corporations, or by U.S. state and local governments or their agencies (known as municipal bonds). Note that muni bonds can have special federal tax exemption (and possibly state or local tax advantages if you buy them for the city and state where you live).

In all these cases, by buying a bond you are essentially lending money to the entity in question. In general you'll find higher yields where there is also higher risk of default, as when lending to developing countries or distressed U.S. cities, or when buying "junk bonds" issued by higher risk firms, particularly in the energy sector.

–Is it better to own bonds or bond funds?

Bond funds are basically collections of bonds with staggered maturities. Just as with mutual funds full of stocks, you pay a management fee and expense ratio. In fact, the increasingly popular target-date retirement funds tend to include both stocks and bonds.

And, because it's a bouillabaisse of different holdings, there is no guaranteed date that you'll get back your principal.

That said, many investment managers feel that it's difficult to properly diversify through buying individual bonds unless you have a lot of money to park specifically in fixed-income investments. (What "a lot" means can vary — some say half a million dollars, while others argue that a hundred thousand is plenty.)

And the pressure to diversify is increasing with yields on the standard Treasury bonds so low.

So to recap, for most beginning investors, proper exposure to bonds will come in the form of target-date funds which will give you a selection of U.S. Treasuries, corporate and foreign issues, alongside stocks.

For those with more assets or who are heading closer to retirement — meaning you are shifting

more towards fixed-income investments — bond-only funds would be the next place to look.

If you are willing to be an active money manager or work with an investment adviser you trust, you should look beyond Treasuries to buy individual bonds across sectors.

The Chicago Tribune

by Anya Kamenetz

July 12, 2016

(Anya Kamenetz' most recent book is "The Test: Why Our Schools Are Obsessed with Standardized Testing, but You Don't Have to Be." She welcomes your questions at diyubook@gmail.com.)

Seeking Yield? Consider Insured Munis.

These distressed bonds from troubled places like Puerto Rico or Atlantic City can return as much as 8% after the tax exemptions.

Buying distressed bonds is hardly the stuff of muni investors' dreams. But with the yield on high-quality intermediate munis down near 1.4%, the opportunity to earn extra income by buying insured bonds from places with weak credit profiles is worth a look.

Consider this: Long-term insured Puerto Rico bonds, the main opportunity for this strategy, yield about 4.5% currently. Given that the interest is exempt from federal, state, and local income taxes, that payment equals a taxable yield of nearly 8% for investors in a top tax bracket.

Insured muni prices have held steady near or above par for years, even as Puerto Rico's finances deteriorated. In contrast, uninsured benchmark Puerto Rico bonds now trade for 67 cents per dollar of par value, reflecting how much of the face amount investors expect to recoup.

Insured bondholders got paid this month even as the commonwealth defaulted on July 1 on almost a billion dollars in interest and principal payments. At a time when munis are expensive relative to Treasuries and yields are at historic lows, "the insured Puerto Rico story still offers value," wrote Cumberland Advisors, which manages $105 million in insured Puerto Rico bonds.

There was a time in the muni market when buying insured bonds was commonplace. The financial crisis changed that. Bond insurers failed or had to restructure, and even the best firms lost their triple-A ratings. Now the leading muni insurers—MBIA's National Public Finance Guarantee and Assured Guaranty—have credit ratings in the mid-to-upper tiers of investment grade. Investors essentially evaluate the underlying bond based on the insurer's rating. That's why insurance doesn't add value for the great majority of muni bonds, which are rated higher than the insurers.

"You need a broken credit for the market to really assign value to the insurance," says Hugh McGuirk, who oversees municipal-bond investing at T. Rowe Price. That's also why there aren't a ton of insured bonds to choose from. Less than 10% of the muni market is insured now, but that number

is increasing, according to National.

IT'S NOT JUST PUERTO RICO insured bonds that investors are buying. Chicago Board of Education insured munis trade at a premium to uninsured, and yields are attractive. National points to bonds issued by Atlantic City, N.J.; Chicago; and North Las Vegas as recent examples of insured bond prices holding steady or rising while uninsured bonds fell. Cumberland says long-term insured munis outside Puerto Rico yield about 2.5%.

Buying insured bonds of weak credits requires extra legwork, says financial advisor Richard Daskin of RSD Advisors. Investors need to assess the underlying bond and the ability of the insurance company to pay if the issuer defaults. He is comfortable with both National and Assured and thinks they merit higher ratings from credit agencies.

Other drawbacks: Daskin experienced a few delays in receiving payments on insured bonds when Puerto Rico defaulted earlier this month, mainly due to paperwork snafus when the default occurred just before a holiday weekend. "It was eye-opening as to how insurance really works," he says. He notes the bonds are not very liquid, so investors should plan to hold them long term.

Mark Taylor, manager of Alpine High Yield Managed Duration Municipal fund (ticker: AAHMX), buys insured munis maturing in under five years. He believes National and Assured can meet their obligations in that period. He owns Puerto Rico bonds maturing in 2020 that yield about 4%.

But this strategy is not for everybody. Greg Steier, head of tax-exempt portfolios at Brown Brothers Harriman, won't buy munis when he's not confident of credit quality, even if there is insurance. "At the end of day, the underlying credit has to satisfy our criteria," he says.

For T. Rowe's McGuirk, insured bonds are "on the table." He adds, "There aren't many other opportunities where you can find yield."

BARRON'S

By AMEY STONE

July 16, 2016

The SEC's Municipal Advisor Rule: Webinar.

Come join the next State Debt Management Network webinar that will focus on the SEC's Municipal Advisor (MA) Rule. The framework for the MA Rule, established by Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), which amended Section 15B of the Securities Exchange Act of 1934, established a fiduciary duty between municipal advisors and their municipal entity clients. Since Dodd-Frank's effective date, the SEC and MSRB have promulgated a series of rules that are multi-faceted with numerous provisions that every issuer should understand. The speakers for this webinar session will delve into the details of this municipal advisory regulatory regime which is intended to give state issuers an effective framework in understanding this complex topic.

Thu, Jul 28, 2016 11:00 AM – 12:30 PM PDT

Register.

NASACT Releases Voluntary Guidelines for Stable NAV LPIGs.

These guidelines offer guidance for managing investment pools in a manner that provides state and local government participants with investment options that, when prudently managed, provide safety of principal and liquidity.

Read the Report.

Analysts Call for Clarity on Municipal Restructurings.

Governments should give municipal-bond investors a clearer idea of how they would fare in a bankruptcy, the National Federation of Municipal Analysts said in paper released Wednesday.

When deciding between two equally priced general obligation bonds, the NFMA wrote, investors would likely reject the one whose payments could easily be clawed back by a bankrupt government. "Yet in today's market, most investors are not able to make this distinction because they are not given the relevant information," the NFMA wrote.

Increased disclosure could benefit municipal-bond holders—ranging from mutual funds to insurance companies to retail investors—as they seek to avoid rare-but-costly government defaults. Mutual funds with billions tied up in once-lucrative Puerto Rico bonds are now facing significant losses as the commonwealth prepares to restructure its $70 billion debt load.

The NFMA called on public officials to clearly disclose in borrowing documents the existence of statutory liens that could keep tax dollars flowing to bondholders in a bankruptcy. They urged governments to also disclose "special revenue" pledges, which exempt the bond payments from an automatic stay in the event of bankruptcy.

"Detroit was a wake-up call to the market," said bankruptcy expert James Spiotto, of Chapman Strategic Advisers. In that city's agreed-upon bankruptcy settlement, holders of unlimited tax general obligation bonds were paid in full only after insurers supplemented the city's partial payment, he said, adding, "It made investors eager to ensure that any special revenues pledges or statutory liens were clearly spelled out and disclosed."

At least 30 states have some form of statutory liens protecting some government debt, according to a March presentation by Mr. Spiotto. The NFMA found that general obligation bondholders protected by statutory liens were paid 100 cents on the dollar in bankruptcies in Central Falls, R.I., and California's Sierra Kings Healthcare District. A study by Moody's Investors Service found, in most recent bankruptcies, bondholders with special revenue pledges received "significantly higher recoveries" than those without them.

Municipal bankruptcies are extremely rare. In 22 states, municipalities either lack state authority to file for bankruptcy, or can only do so with explicit state authorization, according to Moody's Investors Service.

In February, as Illinois Gov. Bruce Rauner was pushing to give Chicago's public school system the authority to declare bankruptcy, the junk-rated district was preparing to issue a $725 million bond. In public borrowing documents, the school district said it intended taxes pledged for debt payments

to be treated as special revenues under the bankruptcy code.

A bankruptcy court could still disagree. But “having that written into bond documents was a critical piece of the marketability of the deal,” said John Miller, co-head of fixed income at Nuveen Asset Management, which bought a roughly $300 million share of the bond issue.

Still, revenue pledges can only go so far. Analysts said even the strongest pledge is no substitute for simply having enough money to go around.

THE WALL STREET JOURNAL

By HEATHER GILLERS

July 13, 2016 6:56 p.m. ET

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

Why Issuers Must Increase Statutory Lien Disclosure.

WASHINGTON – The National Federation of Municipal Analysts wants issuers to improve their disclosures about statutory liens and how they could affect general obligation bonds following a slew of recent municipal bankruptcies where this was a key issue.

The group made the recommendation in its draft “White Paper on General Obligation Bond Payments: Statutory Liens and Related Disclosures,” which it released on Wednesday. Members of the municipal securities industry will have an opportunity to comment on the paper through Oct. 15. NFMA is also sharing the paper with municipal regulators and other market groups.

While the paper is focused on statutory liens, the group notes that other issues that affect the treatment of bondholders, like whether pledged revenues constitute “special revenues” under the bankruptcy code, also deserve attention when thinking about disclosure.

“The NFMA has always believed that good disclosure benefits all market participants, not just the analyst community,” said Jennifer Johnston, chair of NFMA’s industry practices and procedures committee. “We think if there is uniform, transparent, and clear disclosure of the presence of a statutory lien, it really is a best practice.”

Johnston, a vice president and research analyst with Franklin Templeton’s municipal bond department, said the paper is the result of NFMA members expressing frustration about unclear statutory lien disclosure.

A statutory lien, according to the federal bankruptcy code, can only be created under a state statute that specifies the circumstances and conditions of the lien. Such liens are important, according to NFMA, because they allow lien revenues to continue to be collected even after the filing of a bankruptcy petition under Chapter 9.

NFMA said one potential barrier to better disclosure is determining whether a statutory lien is actually in place under state law. Not all states have laws establishing statutory liens and some have laws that do so without actually using the words “statutory lien.” Some states have laws that are written in a way that makes it difficult to tell if such liens exist.

For that reason, the NFMA paper instructs issuers to talk with their bond counsel to make a determination about the presence of such a lien. Issuers should disclose the information they have gathered whether it shows there is a statutory lien, it is unclear, or one does not exist.

The paper also asks that issuers include in bond documents: where the lien authorization comes from; the full text of the statutory lien; any opinions or analysis from the bond counsel; whether pledged revenues are commingled with non-pledged revenues; and whether the state is considering legislation that may institute or alter a statutory lien. Issuers in the same state could standardize statutory lien disclosure, the NFMA said.

Gathering lien information is important for all issuers, even though some states do not allow municipal bankruptcies, NFMA added.

“It may be tempting to point out that not all states allow municipalities to file for bankruptcy, and in those non-bankruptcy states, the issue of a statutory lien is moot,” the paper says. “But as with the financial condition of a city, laws can change.”

NFMA also uses its paper to walk through several examples of municipal bankruptcies from 1994 to 2013 where GO bond assumptions were challenged and statutory liens played a role. Many of the recoveries were negotiated instead of court ordered, NFMA noted.

In Orange County, Calif.’s 1994 bankruptcy, the U.S. district court found that the county’s approximately $60 million of tax and revenue anticipation notes were subject to a statutory lien. That debt was eventually refinanced and paid in full as part of the county’s debt adjustment. Similarly, in the bankruptcy proceedings involving Central Falls, R.I., in 2011 the state legislature instituted a statutory lien on local GO debt that allowed GO bondholders to realize a 100% recovery rate from the city’s bankruptcy plan while leaseholders, pension beneficiaries, and vendors were all subject to varying levels of reductions.

The paper juxtaposes those results with the ones from Detroit’s bankruptcy in 2013 where the city’s emergency manager, Kevyn Orr, argued that the city’s unlimited tax GO bonds (ULTGOs) were not secured by a statutory lien. Michigan’s legislature later made the statutory lien explicit, but in the settlement between the city and its ULTGO bondholders, ULTGO bonds had a recovery rate of 74% to insurers and 100% to bondholders with the 26% balance made up from the bond insurers under their insurance policy.

“This was the highest recovery rate among the city’s debts, yet below that experienced by many statutory lien ULTGOs in other Chapter 9 proceedings,” the NFMA wrote in the paper.

The white paper further gives examples of good disclosure from issuers in states like Colorado, Louisiana, and Rhode Island where they made explicit references to statutory liens. But the group said it could only find Connecticut as an example of a state where issuers disclosed that a statutory lien either does not exist or may exist.

The Bond Buyer

By Jack Casey

July 13, 2016

New Hampshire Enacts P3 Legislation.

New Hampshire has joined a growing number of jurisdictions in the United States that have enacted legislation enabling public-private partnerships (P3) for transportation infrastructure projects. According to Governor Maggie Hassan, the P3 Law is expected to play an important role in advancing New Hampshire's transportation goals, including, among other projects, bringing commuter rail from Boston to Nashua and Manchester, New Hampshire. The P3 Law, Senate Bill 549, was approved on June 16, 2016 and will take effect on August 15, 2016.

The P3 Law authorizes the Commissioner of the State's Department of Transportation (DOT) to enter into certain types of contracts with private entities for transportation infrastructure projects, and establishes a public-private partnership transportation infrastructure oversight commission to recommend and advise on requests for P3 proposals.

DOT's Authority to Enter into P3 Contracts with Private Entities

P3s allow for certain risks and rewards to be shifted and shared between the private and public sectors. Specifically, according to the P3 Law, "public-private partnerships allow for the sharing of resources to finance, design, build, operate, and maintain transportation infrastructure projects and are especially effective when limited financial resources are available." The responsibilities of the private and public entities involved and associated risks and rewards will generally depend on how the P3 project is structured among various alternatives. Pursuant to the P3 Law, the Commissioner, with the approval of the Governor, Council, and Capital Budget Overview Committee, may now enter into agreements with private entities for design-build-finance-operate-maintain (DBFOM) or design-build-operate-maintain (DBOM) services for transportation infrastructure projects.

- DBFOM: Under this P3 structure, the private entity will generally be responsible for the design, building, finance, operation, and maintenance of the project for a specified period of time, while the public entity simply retains title to the asset.
- DBOM: Under this P3 structure, the private entity will generally be responsible for the design, building, operation, and maintenance of the project, while the public entity retains title in the asset and secures the funds.

Each P3 project must be approved as part of the State's 10-year transportation improvement program in accordance with Section 240 of the New Hampshire Revised Statutes Annotated.

P3 Transportation Infrastructure Oversight Commission

The P3 Law establishes a public-private partnership transportation infrastructure oversight commission (the Commission) to consider and recommend suitable P3 projects to the Commissioner. The Commission will act as an advisory board during the execution of a P3 project, and support the DOT in the development of a request for proposals and in the preparation of agreements for P3 projects.

Members

The Commission will consist of the following members, each for an initial term of two years: two members residing in different geographic regions of the state to be appointed by the Governor; two members to be appointed by the President of the Senate; two members to be appointed by the Speaker of the House of Representatives; and one member to be appointed by the State Treasurer who will not be an employee of the State Treasurer's office. The Commissioner will

serve as a non-voting member of the Commission. Note that there are additional qualifications and conditions to appointment and reappointment specified under the P3 Law.

Duties

The P3 Law sets forth the various duties of the Commission, which include the following:

- Establish a general framework for P3 contracts and a process for the submission and evaluation of all such projects and forms to enable the bidder to comply with the requirements, including terms and conditions;
- Provide for the submission of unsolicited proposals, and establish qualification criteria and evaluation standards for unsolicited proposals;
- Provide a method and structure for engaging public advisers for strategic planning, proposal evaluations, and project monitoring on a case-by-case basis;
- Perform an analysis to determine whether a project is suitable for P3 whenever DOT notifies the Commission of its intent to pursue a P3 contract;
- Hold a minimum of two publicly noticed hearings per project to establish whether P3 is the appropriate procurement method;
- Make recommendations to the Commissioner, subject to the approval of the Governor, Council, and Capital Budget Overview Committee, concerning the use of P3 for certain projects;
- Upon approval of the Governor and Council and the Capital Budget Overview Committee, support DOT in the development of a request for proposals;
- Provide criteria for qualifications to bid per project, including but not limited to adequate equipment to perform, financial stability, and proven record on projects of this type; and
- Assure that any P3 agreement is advanced in accordance with DOT's design, permitting, and right of way acquisition process and complies with all federal and state design criteria.

Procedures

The P3 Law sets forth certain procedures that must be followed in approving any P3 proposal. The DOT must first notify the Commission of its intent to use a P3 contract for DBFOM or DBOM services by submitting a written request to the Commission for its consideration. The Commission must provide an initial written response within 15 days. No request for proposal may be issued by the DOT without the Commission's written recommendation and concurrence by the Governor and Council of both the procurement method and content of such request for proposal.

Reports

Under the P3 Law, the Commission will be responsible for issuing certain reports, including the following:

- An initial report on the framework for submission and evaluation of P3 projects;
- Annual reports on the work of the Commission, including the number of projects reviewed, recommendations for such projects and the number of requests for proposals being developed; and
- A report for each P3 contract relating to the project's impact on current state employees; policy and regulatory structure for overseeing a privately operated transportation facility; taxation, profit-sharing and resolution of new revenue producing ideas; advertising and marketing; use of new technologies; lease terms and termination clauses; additional responsibilities by both the private infrastructure operator and the State during the lease period; financial valuation of the state transportation facility; issues of public concern; and anticipated advantages of entering into such P3 contract.

Contributions from Other States

A P3 project in New Hampshire may involve one or more neighboring states. For such a project under the P3 Law, the Commissioner may receive and accept capital contributions and funding from other states and may approve the transfer of support personnel and experts.

New Hampshire's P3 Law is limited to transportation infrastructure projects and does not allow for social infrastructure projects, such as schools, hospitals, and housing, which have become more popular throughout the country. The P3 Law also limits the delivery methods in which P3 projects can be procured.

Attorneys in Ballard Spahr's P3/Infrastructure and Public Finance Groups will continue to monitor and report on new developments in public-private partnerships in New Hampshire and other states. The Groups are recognized leaders in representing government and private sector developers, investors, and lenders in innovative public-private projects.

July 15, 2016

Black & Veatch 2016 Strategic Directions: U.S. Water Report.

Many, if not all, of the issues considered most important to the water industry in 2016 seem to pull hard on a single thread: cost. The cost of addressing outdated systems at a time when traditional revenue streams are drying up and/or the political cost of pitching rate cases or alternative financing strategies to skeptical stakeholders. The cost of water as it's widely perceived by the public, whose understanding of the resources needed to treat and deliver a safe supply may compete with the industry's ever-growing – and deferred – maintenance bill.

In this report, learn more about…

Communicating with the Customer
Public trust in government and municipal services is a critical, though fragile, construct. Tax and usage fee-paying customers expect that their funds are being used to create and operate reliable, safe and secure water systems.

Read More

The Art of Financing the Future
Our report explores the nascent but growing popularity of alternative financing schemes, particularly the rise of public-private partnerships as a way to join eager private investors with increasing public needs. The strategies employed in international markets – particularly Asia, Australia and Canada – may offer lessons for U.S. providers as they strive to balance revenues and infrastructure requirements.
Read More

Tools to Close the Gap
A sustainable future for the water industry includes applying the lessons learned by its electric and natural gas counterparts to address cost and aging infrastructure challenges. It means that the utility proactively collaborates with municipalities and its customers to build longer-term roadmaps. It means exploring alternative finance structures. It also requires embracing innovation.
Read More

Concluding Thoughts
While customer engagement on this crucial issue of cost carries risk on many levels, it is a conversation that must happen if the nation is to finally address its outdated systems. The scale and nature of the challenges in the water industry – from climate change to legacies of underinvestment – call for alignment, leadership, shared responsibilities and collaboration that goes beyond business-as-usual. [Tweet This]
Read More

Download the full report to learn more about the cost of water.

Kroll Surveillance Report: Municipal Assurance Corp. (MAC)

Executive Summary

Kroll Bond Rating Agency (KBRA) has affirmed the insurance financial strength rating of **AA+** with a **Stable Outlook** for Municipal Assurance Corp. ("MAC"). The rating affirmation incorporates the reduction in claims paying resources from MAC's repayment of $400 million of surplus notes effective June 30, 2016 to its affiliates.

Key aspects of KBRA's rating assessment are MAC's strong claims-paying resources and the company's diverse insured portfolio which consists of lower risk, predominantly investment grade U.S. municipal exposures. MAC has no exposure to Puerto Rico, which, in light of the Commonwealth's severely stressed financial position, KBRA views as a credit positive. As a major part of our analysis, KBRA used a Monte Carlo simulation analysis to determine a level of stress losses to be applied to MAC's insured portfolio. KBRA tested MAC's ability to pay this stress level of claims, and other expenses, in a run-off scenario. Under KBRA's Bond Insurer Financial model, MAC satisfied all projected claims due with an adequate balance remaining.

Since the company's capitalization in 2013, new business origination has fallen short of management projections and has not kept pace with the fairly rapid amortization of MAC's legacy

exposures. The decline in the insured portfolio combined with MAC's large and stable balance sheet has pushed leverage ratios lower than historical levels.

KBRA also conducted a detailed review of MAC's governance, credit, and risk management protocols and found them to be strong and reflecting best practices. MAC has a proven management team and a well-developed governance framework.

Late in the second quarter of 2016, MAC received permission from its New York regulator to repay the full amount of both series of outstanding surplus notes, ultimately resulting in an asset transfer of $400 million to MAC affiliates, Assured Guaranty Municipal Corp. ("AGM", AA+/Stable) and Assured Guaranty Corp. ("AGC"). Since its capitalization in 2013, MAC has not paid any dividends. KBRA views the surplus note repayment as equivalent to an extraordinary dividend and we factored this transaction into our rating assessment. While MAC's financial model results from KBRA's stress test remain above the AA+ rating level, the amount of projected excess assets is lower than was calculated for KBRA's last review on August 3, 2015, reflecting the now lower level of claims paying resources following the repayment of the surplus notes.

This rating is based on KBRA's Financial Guaranty Rating Methodology dated December 15, 2015.

Continue reading.

Orrick: IRS Issues Further Guidance on "Start of Construction" Requirement for Renewable Energy Tax Credits, Including Continuity Requirement.

On May 5, 2016, the IRS released Notice 2016-31, which provides additional guidance on the "start of construction" requirements for the production tax credit (PTC) and investment tax credit (ITC) in lieu of the PTC. Notice 2016-31 does not provide guidance with respect to the ITC for solar facilities. On May 18, 2016, the IRS revised Notice 2016-31. As discussed below, Notice 2016-31 provides additional guidance on satisfying the continuity requirement for beginning construction, satisfying the physical work test, and applying the five percent safe harbor to retrofitted facilities.

Under the Internal Revenue Code, eligible solar facilities currently can benefit from an ITC of 30% of the cost basis. Wind facilities can currently benefit from PTCs related to the quantity of renewable energy produced and sold during a taxable year (and, alternatively, can benefit from an ITC in lieu of PTCs). The ITC for solar and PTCs for wind were recently extended in legislation passed in December 2015.

Prior to the extension, the ITC was scheduled to be reduced to 10% for solar facilities placed in service after December 31, 2016. Prior to the extension, PTCs were available only for wind facilities for which construction began prior to January 1, 2015.

With the extension, solar facilities are eligible for a 30% ITC if construction begins before January 1, 2020. The 30% ITC for solar is phased down to 26% for facilities for which construction begins in 2020, to 22% for facilities for which construction begins in 2021, and to 10% for facilities for which construction begins after December 31, 2021. Additionally, to be eligible for the 30%, 26%, or 22% ITC, the solar facility must be placed in service before January 1, 2024 (if not, the ITC is reduced to 10%). Notice 2016-31 does not provide guidance with respect to the start of construction requirements for ITC with respect to solar facilities. The IRS anticipates issuing separate guidance addressing the extension of ITC for solar facilities.

For wind facilities, the extension provides for a phase down of PTCs over five years. Wind facilities for which construction begins before January 1, 2017 are eligible for the PTC at 100% of the current level. Wind facilities for which construction begins in 2017, 2018, and 2019 are eligible for reduced PTCs. The PTC reduction is 20% for 2017, 40% for 2018, and 60% for 2019. Wind facilities for which construction begins after December 31, 2019 would not be eligible for PTCs.

The IRS had previously provided guidance on when construction begins (Notices 2013-29, 2013-60, 2014- 46, and 2015-15). Notice 2013-29 provides two methods by which to satisfy the start of construction requirement. One method is to perform physical work of a significant nature. The other method is to pay or incur five percent or more of the total cost of a facility (the five percent safe harbor). In addition, work on the facility must be "continuous" in order for either method to be met (by meeting a "continuous program of construction" test or a "continuous efforts" test, as applicable). The continuity requirement is generally a facts and circumstances test. In Notice 2015-25, which was issued before the extension, the IRS provided that the continuity requirement would be deemed met if a facility is placed in service before January 1, 2017 (two years after the former begun construction deadline).

Notice 2016-31 provides that the continuity requirement will be deemed met if a facility is placed in service before the later of (i) a calendar year that is no more than four calendar years after the calendar year during which construction of the facility began or (ii) December 31, 2016. For example, if construction begins on a facility on January 15, 2016, and the facility is placed in service by December 31, 2020, the facility will be considered to satisfy the continuity safe harbor. As a result of the four-year rule provided for in Notice 2016-31, it will be necessary to determine the year in which construction began when evaluating whether a facility qualifies for the continuity safe harbor. Under the prior guidance, this was not necessary because the continuity safe harbor was satisfied by placing a facility in service by a specific deadline.

Notice 2016-31 provides that the physical work test and the five percent safe harbor may not be relied upon in alternating years to satisfy the beginning of construction requirement or the continuity requirement. This prevents taxpayers from extending the four-year rule by, for example, relying on the physical work test in one year and then relying on the five percent safe harbor in a subsequent year.

If the continuity safe harbor is not met, the continuity requirement is evaluated under a facts and circumstances analysis. In prior guidance, the IRS had provided examples of excusable disruptions that would not cause the continuity requirement not to be met. Notice 2016-31 adds interconnection-related delays and delays in the manufacture of custom components to the list of excusable disruptions.

Notice 2016-31 provides additional examples to illustrate what qualifies as physical work of a significant nature for different types of renewable energy facilities, as follows:

- Wind facilities. On-site physical work of a significant nature may include the excavation for the foundation, the setting of anchor bolts into the ground, or the pouring of the concrete pads of the foundation.
- Hydropower facilities. On-site physical work of a significant nature may include the excavation for or construction of a penstock, power house, or retaining wall structure.
- Biomass and trash facilities. On-site physical work of a significant nature may include the performance of site improvements (as opposed to site clearing), such as filling or compacting soil, or installing stack piling.
- Geothermal facilities. On-site physical work of a significant nature may include physical activities that are undertaken at a project site after a valid discovery.

Finally, consistent with prior IRS guidance, Notice 2016-31 states that a facility may qualify as originally placed in service even though it contains some used property, provided the fair market value of the used property is not more than twenty percent of the facility's total value (the cost of the new property plus the value of the used property). Notice 2016-31 provides that, for purposes of the five percent safe harbor, only expenditures incurred that relate to new construction are taken into account.

Article by Greg R. Riddle and Wolfram Pohl

Last Updated: July 8 2016

Orrick

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

Puerto Rico's Warning for States, Cities: You Might Be Next.

President Obama recently signed into law a highly anticipated — and much debated — rescue bill for debt-laden Puerto Rico. While the bill has its detractors, it marks a positive step toward the promise of recovery for the island. But the bill's impact could go far beyond the commonwealth's shores.

Puerto Rico, like states and many cities, can't legally declare bankruptcy. Saddled with $70 billion in debt, Gov. Alejandro Garcia Padilla's administration has spent the last few years unsuccessfully trying to reach an agreement with creditors. During that time, the commonwealth watched its tax base decline as residents fled stateside and Puerto Rican government entities defaulted on debt.

That's what life without bankruptcy protection is like for governments, Padilla said this week in a speech at the Brookings Institution in Washington, D.C. He went on to suggest that Puerto Rico, with its smaller economy and population size, might simply be farther along on a path other U.S. governments are also traveling. "We are only ahead of the curve — the curve that looms for many states and municipalities," he said. "We are forced to try the route that others have not tried before, to knock on the doors that others may need to approach in the not-so-distant future."

When asked to elaborate afterwards, Padilla explained that he was asked several times by Congress this year how a Puerto Rican rescue bill might also help troubled states. Padilla pointed to Illinois, for example, which has the lowest credit rating of any state and has struggled to find a long-term solution to its crippling debt, including its pension liabilities. "The fact is that if you go through the timeline [and look at] what's happening in other states … if they do not react in time they will face the same cliff we were facing two weeks ago," Padilla said.

At the start of this month, Puerto Rico defaulted on a $2 billion debt payment. But it did so under the protection of the rescue package referred to as PROMESA. Among other things, the law puts a temporary moratorium on litigation regarding Puerto Rico's debt and creates a seven-member financial oversight board with final say over the commonwealth's finance decisions. The board can also file debt restructuring petitions in federal court as a last resort if creditor negotiations fail.

Bankruptcy law allows states to decide whether their municipalities can file for bankruptcy — cities in about half of U.S. states are eligible — but states themselves are prohibited from declaring bankruptcy. Given the current laws, some worry that Puerto Rico's rescue plan will be used as a

road map for a struggling state or city. It's not unprecedented — PROMESA's structure was inspired in part by rescue legislation for Washington, D.C., in the 1990s.

Speaking on a panel after Padilla's speech, Florida's bond director Ben Watkins called the legislation "troubling" because it sets a precedent of allowing the federal government to change how money is paid back. "You're loaning someone money for 30 years and you think you know what you'll get in return for that," he said, referring to bondholders. "And then courts come in or federal legislation comes in to trump that — which is in effect, what has happened. That's troubling to me because I'm a state's rights kind of guy."

Still, many believe that if Congress had not approved a rescue plan in time for Puerto Rico's default this month, it would have roiled the municipal market by creating uncertainty as to whether the island would ever find protection to restructure its debt.

GOVERNING.COM

BY LIZ FARMER | JULY 14, 2016

Puerto Rico Plotting Bond-Market Return After Its Record Default.

Puerto Rico just defaulted on about $1 billion due to bondholders, has declared its debts too crushing to pay and is about to undergo an unprecedented financial takeover by the U.S. government. So what's next on the agenda? Finding investors willing to lend it $900 million.

The Puerto Rico Aqueduct & Sewer Authority wants to issue the debt through a new agency to finance construction work delayed by the government's fiscal crisis. As an inducement to skeptics, the agency would give investors first claim on revenue it collects from water and sewer bills, according to Efrain Acosta, the director of finance for the utility. It may also exchange an additional $1.1 billion of securities for its outstanding bonds to investors willing to accept less than they're owed.

"The market is tough at this moment," Acosta said in an interview. "But we have to go forward with our plan and see if we can get new money to pay our contractors and try to restart our construction plan."

Puerto Rico faces considerable obstacles, even in a market where rock-bottom yields have left buyers willing to take on more risk for bigger returns. The U.S. territory hasn't sold bonds since it borrowed $3.5 billion in March 2014, a deal that was supposed to give it time to arrest the financial decline, and a planned $750 million offering by the water utility last year was subsequently shelved. Moreover, it's unclear how a federal oversight board, which hasn't been appointed yet, will treat bondholders as the island seeks to cut its debt.

"The whole situation's kind of confusing," said Daniel Solender, who oversees $19 billion, including Puerto Rico securities, as head of municipals at Lord Abbett & Co. in Jersey City, New Jersey. "On the one hand, they're defaulting on bonds and they're declaring moratoriums and then they want to have market access for a new issue."

With an economy mired in recession, Puerto Rico has been defaulting on a growing share of its $70 billion debt, which Governor Alejandro Garcia Padilla says can't be paid without draconian budget cuts that would fall heavily on the island's 3.5 million residents.

After Puerto Rico made little progress in talks with creditors, President Barack Obama on June 30 enacted a law that will give a seven-member board power to review budgets and any debt restructuring. The next day, the island defaulted on nearly half of $2 billion of principal and interest that was due, marking the biggest payment failure ever in the U.S. municipal-bond market. The water utility, known as Prasa, negotiated with creditors to delay $12.7 million that it was supposed to pay. On Tuesday, S&P Global Ratings downgraded Prasa's bonds to as low as D, designating a default.

"Prasa's role and link with the commonwealth and the commonwealth's financial distress have caused a weakening in Prasa's financial risk profile, as evidenced by its diminished liquidity and large accounts payable," Theodore Chapman, an S&P analyst in Dallas, wrote in a report.

Other distressed borrowers, such as Detroit and Jefferson County, Alabama, have been able to return to the bond market, but only after going through bankruptcy to wipe out some of their debts.

Puerto Rico doesn't have recourse to Chapter 9 and its crisis is far from resolved. The federal board will help the commonwealth end chronic budget deficits, monitor any borrowings and will be able to force reluctant creditors to accept a deal in court. Obama has until Sept. 15 to form the panel.

The move to help rescue Puerto Rico has been welcomed by most bondholders because it promises to resolve the crisis. Prasa debt maturing July 2042, the utility's most actively traded, changed hands Monday at an average price of about 67 cents on the dollar, up from 62.7 cents at the start of 2016, data compiled by Bloomberg show. The yield was about 8.4 percent.

The bill passed by the legislature that would allow Prasa to issue debt has yet to be sent to Garcia Padilla for his signature. Any deal would probably happen after the board is in place, Prasa's Acosta said. To get cash in the meantime, the utility may try to sell notes that would be repaid after the bonds are sold.

In addition to selling new debt, the utility would offer investors a chance to exchange their securities at a 15 percent loss, Acosta said. The new bonds would be backed by a pledge of as much as 20 percent of the utility's revenue, he said. Prasa has about $4.7 billion of debt.

The Puerto Rico Electric Power Authority in December reached a similar agreement, with creditors accepting a loss in exchange for securities with stronger legal protections. It may be possible for Prasa to do the same, said Matt Dalton, chief executive officer of Rye Brook, New York-based Belle Haven Investments, which oversees $5 billion of municipal bonds, including insured Puerto Rico debt.

"If it's iron clad, it's locked up and it's attractive, at the right price you can pull people out of the shadows," Dalton said.

Whether that's possible may depend largely on the oversight board. Investors will probably want to know how it's going to treat bondholders first, said Molly Shellhorn, a senior research analyst in Chicago at Nuveen Asset Management, which holds $120 billion of municipal debt, including insured Puerto Rico securities.

"I just have a hard time seeing that go forward outside the oversight board," Shellhorn said.

Bloomberg Business

by MichelleKaske

July 12, 2016 — 2:00 AM PDT Updated on July 12, 2016 — 10:28 AM PDT

Puerto Rico Governor Likely to Sign Water Utility Borrowing Bill.

Puerto Rico Governor Alejandro Garcia Padilla said he will probably sign into law a bill that allows the island's main water utility to raise money through the capital markets.

The governor, who will leave office in January after serving one term, is reviewing the legislation that "will be more likely to be signed" than other bills sitting on his desk, Garcia Padilla said during a Bloomberg TV interview Tuesday.

The measure enables the Puerto Rico Aqueduct and Sewer Authority, called Prasa, to sell bonds through a new agency that will be repaid from up to 20 percent of the utility's revenue collections. The bill allows for as much as $900 million of bonds for capital projects and another $1.1 billion that would restructure a portion of Prasa's existing debt.

Puerto Rico is planning a water-bond sale after the commonwealth defaulted on July 1 on about $1 billion to investors, the biggest payment failure in the $3.7 trillion municipal-bond market. The day before the record default, President Barack Obama signed into law legislation, called Promesa, to create a federal control board to oversee any debt restructuring for the commonwealth and monitor its budgets. Promesa also halts any creditor lawsuits against the commonwealth seeking repayment.

Creditors should continue to discuss with Puerto Rico on how to reduce the commonwealth's $70 billion debt load now that investors are prohibited from suing the island, Garcia Padilla said.

"Promesa is passed," the governor said. "So now they have another reason to negotiate in a true voluntary process, something I've been trying to do for more than a year without the bill."

Bloomberg Business

by Michelle Kaske

July 12, 2016

Think Governments Are a Mess? Markets Don't.

Fear mongers on both sides of the Atlantic would have us believe that governments are failing. They cite racially-charged violence from Dallas to Charleston, South Carolina; voters in Britain choosing to exit the European Union; the flood of migrants from the war in Syria; terrorist-inspired massacres from Brussels to San Bernardino, and the anemic global economy that is dividing generations of workers, families and communities.

Among investors, though, the full faith and credit of governments is at an all-time high, according to data compiled by Bloomberg. If low interest rates on sovereign debts are the ultimate measure of confidence in the governments that issue them, the market remains unshaken. The yield on short- and long-term securities has never been lower, according to Andy Haldane, chief economist and executive director of monetary analysis and statistics at the Bank of England.

As these interest rates are benchmarks for state and local governments, their cost of borrowing has plummeted to record lows as well. U.S. municipalities are financing at 1.54 percent this month, less than the 1.67 percent of 1945 or 4.71 percent of 1933, according to Bloomberg data and the U.S. Government Publishing Office.

The once-widening budget deficit as a percentage of gross domestic product is shrinking in the U.S., to 2.5 percent from 10.1 percent in 2009, and is now a 0.7 percent surplus in Germany.

30-YEAR RETURNS

For bondholders, the total returns (income plus price appreciation) have been a bonanza — surpassing gold, the fear monger's favorite store of value. During the past 30 years, global sovereign debt returned 576 percent, or more than twice the 271 percent return for gold, while U.S. Treasury securities returned 529 percent, according to Bloomberg data. The yield on the 10-year Treasury note, which climbed to a high of 15.8 percent in 1981, is 1.3 percent this month, the lowest since Bloomberg began compiling such data in 1962.

Secular Stagnation

The record-low rates are a symptom of what many economists, led by former Treasury Secretary and former Harvard President Larry Summers, call secular stagnation: Slowing population growth and insufficient technological innovation and capital investment. These economists also see the low rates on U.S. and other sovereign debt as the most propitious opportunity to get economies moving faster because governments can borrow so cheaply to pay for infrastructure improvements, thereby creating demand from higher-paying construction jobs while investing in everyone's future.

The market agrees. So far in the 21st century, the bonds sold to finance roads, bridges, hospitals, sewers and schools have outperformed all state and local government debt as well as the stock market and even gold, according to Bloomberg data. That's because of the combination of after-tax returns and record-low financing costs. The borrowing cost to toll and turnpike authorities, a proxy for U.S. infrastructure financing, is an unprecedented 1.7 percent.

PERFORMANCE SINCE 2004

Since such data became available in 2004, toll and turnpike bonds returned 89 percent, easily beating the 74 percent benchmark for the municipal-securities market. The Standard & Poor's index of U.S. stocks had an 87 percent after-tax return for those in the lowest 28 percent tax bracket — since most investors in tax-exempt securities are in the higher 35 percent tax bracket, though, the advantage to investors in infrastructure bonds has actually been greater.

To be sure, nothing approached gold's 403 percent return during the past 15 years when global high-yield corporate bonds returned 223 percent, investment grade corporate bonds 139 percent, global sovereign bonds 132 percent and Treasuries 102 percent. But gold's price fluctuations are four times that of U.S. Treasuries. On a risk-adjusted return basis, gold has been lagging all categories of the credit market. During the past five years, for example, global high-yield corporate bonds gained 32 percent, followed by U.S. Treasuries at 19 percent, global investment-grade bonds at 18 percent and global sovereign debt at 9 percent. Gold lost 16 percent, according to Bloomberg data.

Gold also loses when taxes are taken into account. U.S infrastructure debt is mostly tax exempt, which helped it outperform stocks and bonds not only in the long term but also during the past two years and, most recently, during the last 12 months. In that year they returned more than 10 percent

compared to the municipal-bond benchmark of 8 percent and the S&P 500's 3.6 percent after-tax return. During the past 10 years, when infrastructure bonds returned 82 percent, gold gained 76 percent on an after-tax basis (assuming most investors are in the 35 percent tax bracket) and gold's volatility, or price fluctuations, was almost six times that of bonds.

So far this year, nothing comes close to matching the returns of infrastructure debt in the municipal market, where North Carolina Turnpike Authority debt has appreciated more than 22 percent, followed by Colorado's E-470 Public Highway Authority's 12 percent and California's Riverside County Transportation Commission's 11 percent, according to Bloomberg data.

So when Larry Summers calls for "a new approach" starting from "the idea that the basic responsibility of government is to maximize the welfare of citizens, not to pursue some abstract concept of the global good," and to let people "feel that they are shaping the societies in which they live," the market already has ratified this policy by making infrastructure one of the best investments of our time.

BloombergView

By Matthew A. Winkler

(With assistance from Shin Pei)

JULY 13, 2016 5:00 AM EDT

This column does not necessarily reflect the opinion of the editorial board or Bloomberg LP and its owners.

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As Fed Risk Recedes, Low-Coupon Munis Show Way to Pick Up Yield.

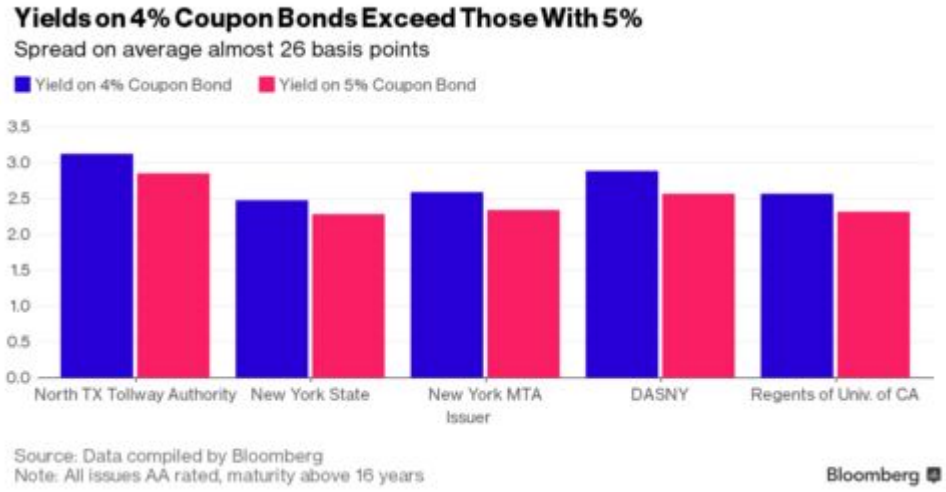
With U.S. bond yields near record lows, municipal-debt investors are finding a way to pick up a little extra return: Buying lower-coupon securities, which provide fatter payouts because they'll be harder hit once interest rates start to rise.

The discrepancy was on display when Massachusetts sold bonds late last month. The state paid a 2.18 percent yield on those maturing in 2038 that pay annual interest of 5 percent. For debt with a 3 percent coupon, the yield was half a percentage point more.

Even such a small pickup can be alluring with negative interest rates overseas, Treasuries paying near record lows and the difference between long and short-term municipal debt narrowing to the least since 2008 — meaning there's less extra income for holding the longest-dated securities. And the risk that the Federal Reserve will soon tighten monetary policy appears to have receded: prices in the futures market suggest a rate increase isn't likely until the second half of 2017.

"Absolute levels of rates are getting so low that for people, particularly high-grade buyers afraid of

credit risk, a strategy to outperform is to buy lower coupons," said Peter Block, managing director of credit strategy at Ramirez & Co Inc., a New York-based underwriter.



The discrepancy stems in part from a quirk of the $3.7 trillion municipal market, where most state and local governments give themselves the option to buy bonds back before they're due — usually in a decade — in case they can be refinanced at lower costs.

Because interest rates have largely been on a steady decline since the 1980s, governments have almost always exercised that option. If rates were to rise, which would cause prices of outstanding bonds to fall, those with rock-bottom coupons are more likely not to be called back, leaving investors with the choice between selling at a loss or holding them until maturity.

For bonds with top tier credit ratings, that risk has caused investors to demand about one-quarter percentage point more in yield to hold 10-year bonds with a 4 percent coupon instead those set at 5 percent, Block said. Some mutual funds also have little option but to buy the lower-coupon debt, he said: Many are restricted from paying too much above the bond's face value. As yields have declined, the price of fixed-income securities with higher annual interest payments has soared.

"The question is," he said, "Will four's become the new five's? Will orange become the new black?"

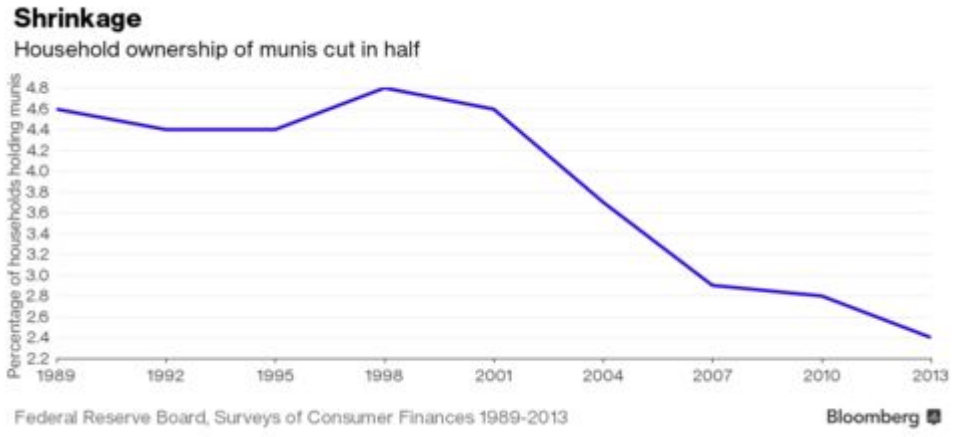
Bloomberg Business

by Molly Smith

July 13, 2016 — 2:00 AM PDT

Muni Tax Exemption Risks Becoming Target as Ownership Narrows.

Municipal bonds are becoming concentrated in a fewer number of hands and that may not be good for bondholders and states and local governments.



The share of households owning muni bonds fell by almost half between 1989 and 2013 to 2.4 percent from 4.6 percent as the focus of their investing has shifted to tax-deferred retirement accounts such as 401(k) plans, according to a paper by faculty from Brandeis University and the Massachusetts Institute of Technology.

At the same time, the securities are increasingly concentrated among the wealthiest households. The share of total muni bonds held by the wealthiest 0.5 percent of households rose to 42 percent from 24 percent, according to the paper.

The drop in ownership could weaken the political will of municipalities to pay their debt and of Congress to maintain the tax-exemption of municipal bonds, write Daniel Bergstresser, an associate professor of finance at the Brandeis International Business School, and Randolph Cohen, a senior lecturer at MIT's Sloan School of Management.

"A declining share of households who hold municipal bonds and perceive themselves as benefiting from the tax exemption may place this exemption on a shakier political foundation," they write in a paper presented this week at the 5th Annual Municipal Finance Conference hosted by the Brookings Institution's Hutchins Center on Fiscal and Monetary Policy.

Annual Consternation

Proposals to eliminate or curtail the $3.7 trillion municipal market's tax break are a perennial, if little-noticed, feature of Washington, D.C., budget and tax debates. A 35-page plan released by House Speaker Paul Ryan last month that referred to repealing several "special-interest carve-outs" from the tax code without naming them was enough to raise alarm bells with lobbying groups representing local finance officials and investment banks.

Both the Republican chairman of the House Ways and Means Committee and President Barack Obama have previously proposed limiting the tax-exemption.

Representatives of the National Association of State Treasurers, the Bond Dealers of America and the Government Finance Officers Association questioned the paper's conclusion saying it ignored a vital constituency for the tax exemption: states and local governments that save billions of dollars in financing costs for roads, sewers, schools, and airports. Curtailing the tax exemption would raise state and local government financing costs by $17 billion, according to Washington State Treasurer James McIntire, president of the state treasurers group.

Survey Sample

“Where is that $17 billion going to come from? It’s going to come largely from sales taxes and property taxes which have a disproportionate impact on the poor,” said McIntire. “We are a necessary and important part of providing the infrastructure necessary to build our economy.”

Bergstresser and Cohen’s paper is based on data from the Federal Reserve’s Survey of Consumer Finances, a survey of about 6,000 families.

Internal Revenue Service data from individual income tax returns differ from Bergstresser and Cohen’s findings. According to the IRS, the percentage of individual filers who report tax-exempt income has increased to 4 percent in 2013 from 3.4 percent in 1990, IRS data shows. About 6 million filers reported tax-exempt income in 2013, according to the IRS.

The discrepancy between the data may come from filers who own taxable bond funds, like Pacific Investment Management Co.’s Total Return Fund, that also buy munis, generating some tax-exempt interest, Bergstresser said. The Fed survey would probably classify these funds as general bond funds.

In addition, the Fed survey has a separate category for money-market funds so tax-exempt income generated by a muni money-market funds would be reported to the IRS, but wouldn’t be included in the survey’s municipal bond and tax-exempt fund category.

Households owned about $2.6 trillion of municipal bonds, either directly or through mutual funds and exchange-traded funds at the end of 2015, down from $2.9 trillion in 2010, according to the Fed’s flow of funds data. Banks and insurance companies owned about $990 billion. Foreign investors, who have increasingly come to the muni market because they face negative interest rates in their own countries, held $87.2 billion.

The declining share of muni holdings has been most pronounced in the upper middle class, where 2.6 percent of households reported holding municipal bonds, down from a high of 9.6 percent in 1998, according to Bergstresser and Cohen. The upper middle class is defined as households with average financial assets $215,000.

As the ownership rate of munis fell, the share of households owning stocks has soared to 42.7 percent from 27.3 percent, coinciding with the rise of 401(k) s and IRAs.

“Municipal bonds’ tax exemption reduces their pre-tax yields and makes them a very unusual (and

even inappropriate) asset for tax-deferred accounts."

Municipal bondholders tend to invest locally, creating a significant constituency that can be counted upon to support repayment, Bergstresser and Cohen write. A declining base of owners could weaken that connection, they said.

Emily Brock, federal liaison for the Government Finance Officers Association said the authors didn't cite any evidence supporting that conclusion.

Bloomberg Business

by Martin Z Braun

July 14, 2016 — 2:00 AM PDT

Bloomberg Brief Weekly Video - 07/14

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

Watch the video.

11:55 AM PDT
July 14, 2016

MuniLand's Pressing Pension Problems.

Douglas Offerman, Senior Director at Fitch Ratings, talks about the landscape for public pensions with The Bond Buyer. He looks at how state pensions are faring and discusses what impact the new GASB requirements have on disclosure.

Watch the video.

Chicago Public Schools Prepare Budget With Eye on Bond Market Return.

CHICAGO — Chicago's cash-strapped public schools will be able to raise cash in the capital markets after the nation's third-largest public school system unveils a balanced budget in August, the district's top official said on Wednesday.

Forrest Claypool, Chief Executive Officer of Chicago Public School (CPS) was short on details to achieving a balanced budget but said the full spending plan would be out next month.

CPS, which must erase a lingering $300 million deficit for the fiscal year that began July 1, also faces the possibility that a $215 million boost in Illinois funding for teacher pensions may not happen.

Claypool announced the baseline per pupil would be $4,087, matching the level in place since February after a round of spending cuts.

“One of the reasons it was so important to balance the budget was to make it clear to the credit markets we are worth the credit risk,” Claypool told reporters.

He said CPS would use proceeds from bond sales to repair and improve its facilities, but not for operating expenses. Claypool also said CPS could use a new $45 million property tax increase approved by the Chicago City Council in October to help pay off the debt. The “junk”-rated district paid a huge penalty for its last sale in the U.S. municipal bond market in February when investors demanded an 8.5 percent rate on most of the tax-exempt bonds.

The district will continue to rely on a bank line of credit for cash-flow purposes, according to Claypool, who said he was confident CPS will be able to renew for fiscal 2017 the $870 million credit line it fully tapped in late June for its pension payment.

The Illinois Legislature last month agreed to let CPS hike property taxes by $250 million and give the district a one-time $215 million state contribution exclusively for pensions. But enactment of the latter is contingent on the passage of major statewide pension reform, which was made increasingly difficult by recent Illinois Supreme Court rulings blocking retirement benefits cuts for public sector workers.

Another unknown for CPS is ongoing negotiations for a new teachers’ contract. Claypool said it was time for teachers to be part of the solution for balancing the district’s budget, but declined to discuss specifics.

The Chicago Teachers Union Vice President Jesse Sharkey said in a statement that CPS is relying on a short-term fix from the state instead of “sustainable, progressive revenue” to keep operating.

By REUTERS

JULY 13, 2016

(Reporting by Karen Pierog; Editing by Diane Craft)

Social Impact Investing: A Conversation with Congress and the Financial Services Industry.

Social impact investing describes the direction of investment funds to opportunities or companies that have desirable environmental, governance or social factors, and is related to social finance, which involves the use financial assets or instruments to fund projects that have a positive social or environmental impact.

Through impact investing, America’s capital markets enable programs to improve local outcomes and help communities combat the challenges of long-standing problems such as poverty, pollution, and other social needs.

Watch the video.

SIFMA hosted a roundtable on Social Impact Investing with industry experts and Members of

Congress. The event fueled a discussion on the role of America's capital markets in creating and funding programs designed to improve local communities. Participants discussed Social Finance's Pay for Success Programs, such as the Nurse-Family Partnership in South Carolina and the Connecticut Family Stability Project; and Morgan Stanley's underwriting work for Sustainable Neighborhood Bond, which funds affordable housing in New York, and its Investing with Investing with Impact Platform and Sustainable Investing Portfolios, which allow investors of all sizes to invest with impact, making scale in the social finance market possible.

July 14, 2016

By: Chris Killian

NFMA Releases Draft White Paper on Disclosure of Statutory Liens.

The National Federation of Municipal Analysts (NFMA) announced today that it has released the draft White Paper on General Obligation Bond Payment Protections: Statutory Liens and Related Disclosure (White Paper).

The NFMA determined to address this topic "to call attention to the lack of uniform, transparent and clear disclosure of the payment sources and security protections afforded" to the holders of general obligation debt, according to the executive summary in the paper.

Jennifer Johnston, Chair of the NFMA's Industry Practices and Procedures Committee, further clarified the rationale for the paper, stating, "Having clear and complete disclosure benefits all market participants. The NFMA wanted to get involved in the dialogue related to statutory liens and general obligation bonds to call attention to why better disclosure is necessary."

July 13, 2016

Contact: Lisa Good, NFMA Executive Director
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www.nfma.org

New GFOA Research Report on Civic Engagement.

INTRODUCTION

Governments that want to engage their citizens via technology have many choices; the challenge for most communities is determining which tools are right for them. This choice is often based on a number of factors including the availability of resources, the community's appetite for engagement, and the impetus of government leadership. While the factors influencing which tools a community should select often vary, the benefits that can be realized from new methods of civic engagement are clear. The following sections highlight key features to consider when selecting civic engagement tools.

Continue Reading.

Author: Mark Mack

Year: 2016

U.S. Corporate and Muni Debt Issuance to Hold Steady, CUSIP Requests Show.

NEW YORK, NY, July 14, 2016 – CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for June 2016. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity, suggests a steady issuance of new corporate and municipal debt offerings over the next several weeks.

Total CUSIP requests for all U.S. and Canadian corporate securities reached 3,864 in June, up 9% from May
monthly totals. Within that broad asset class, there were 797 security identifier requests for new U.S. corporate debt issues, a decline of 9% from May, and 304 CUSIP request for Canadian corporates, a 20% increase over the previous month. On a year-over-year basis, corporate CUSIP request volume for both debt and equity asset classes across the U.S. and Canada was down -0.3% through June 2016 versus June 2015, reflecting weak volumes in January 2016 and comparatively strong issuance volumes in the early part of 2015.

The volume of requests for new municipal CUSIP identifiers saw a fifth consecutive month-to-month increase in June. A total of 1,754 new municipal bond identifier requests were made over the course of the month, a 1% increase from May. On a year-over-year basis, municipal bond identifier requests were up 1.3% in June.

Regionally, municipal bond issuers in Texas demanded the highest volume of new CUSIP identifiers in the first half of 2016, accounting for a total of 1,013 identifier requests during the period. Texas was followed by New York (774 CUSIP requests) and California (656 CUSIP requests).

“While the month-to-month growth rate of new CUSIP requests in the corporate debt and municipal bond market
has slowed from the break-neck pace we were seeing earlier in the year, we’re still seeing indications of very steady new issuance volume for the coming months,” said Gerard Faulkner, Director of Operations for CUSIP Global Services. “As we turn the corner to the second half of the year, we expect the CUSIP indicator to be a telling signal for the market appetite of major debt and equity issuers.”

International debt and equity CUSIP International Numbers (CINS) were mixed in June. Requests for new
international debt CINS were down 9%, while requests for new equity CINS were up 48%. On a year-over-year
basis international debt CINS were down 30% and international equity CINS were down 61% through June 2016.

“Given all of the uncertainty in the global economy right now, it’s actually quite amazing that CUSIP request volume has stayed so strong,” said Richard Peterson, Senior Director, S&P Global Market Intelligence. “Clearly, issuers across several asset classes still see an attractive environment for raising new capital and that sentiment is continuing to show up in our CUSIP request data.”

To view a copy of the full CUSIP Issuance Trends report, please click here.

MSRB and the Municipal Forum of New York Host Municipal Finance Day in Washington, DC.

Washington, DC – With an eye to exposing teens to possible careers in public finance, the Municipal Securities Rulemaking Board (MSRB) and the Municipal Forum of New York are hosting Municipal Finance Day on July 15, 2016 for high school graduates participating in the 2016 Urban Leadership Fellows Program.

The Urban Leadership Fellows Program enables New York City's underserved youth to explore careers in finance through a paid summer internship at a financial or finance-related company. Participants visit Washington, DC for Municipal Finance Day to merge the practical skills gained at their internships with an understanding of the legal, regulatory and policy implications facing the municipal securities market.

Featured speakers for this year's Municipal Finance Day include Representative Gregory W. Meeks of New York; Hester Pierce, Director, Financial Markets Working Group and Senior Research Fellow, Mercatus Center at George Mason University; and MSRB Executive Director Lynnette Kelly.

"The MSRB is excited to host Municipal Finance Day with the Municipal Forum of New York for the fifth year running," Kelly said. "This is a great opportunity to engage young people and encourage them to apply their talents and skills to a career in public finance."

The Municipal Forum of New York has sponsored the Urban Leadership Fellows since 1992 through its Youth Education Fund.

Date: July 14, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500
jgalloway@msrb.org

- DOL Fiduciary Rule Gets It Half Right On the Municipal Bond Market.
- MSRB Reminds Municipal Securities Dealers of July 18, 2016 Effective Date of Changes to Trade Reporting Requirements.
- P3s and Tax-Exempt Bonds: Butler Snow
- Bonus Yields Found in Muni-Bond Niche Tax-Free to Most Americans.
- Recent IRS Private Letter Ruling Provides Helpful Guidance on Management Contracts: Squire Patton Boggs
- Comparing Financing Structures for Student Housing.
- *Indian River County v. Rogoff* – District Court holds that counties lacked standing to challenge DOT's issuance of PABs based on alleged harms arising from construction and operation of railway.
- And finally, Location, Location, Location! is brought to us this week by *City of Dallas v. Sanchez,* in which the City of Dallas received two virtually simultaneous 911 calls from the same apartment complex regarding a drug overdose. The City promptly dispatched an ambulance, which dealt with the situation and left the premises. All well and good, unless you're the *other* drug overdose victim left there to die. Oops. Depending on one's personal proclivities, either the best – or worst –

apartment complex of all time. We'll let you decide. Word has it there's an opening.

MISAPPROPRIATION OF PUBLIC FUNDS - CALIFORNIA

People v. Hubbard

Supreme Court of California - June 16, 2016 - 63 Cal.4th 3783 - 71 P.3d 578 - 203 Cal.Rptr.3d 114 - 16 Cal. Daily Op. Serv. 6233

Defendant was convicted in the Superior Court of two counts of misappropriating public funds.

Defendant appealed. The Court of Appeal reversed in part, vacated in part, and remanded with directions. The People petitioned for review. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that:

- Statute defining offense of misuse of public funds applies to public officers only if they are "charged with the receipt, safekeeping, transfer, or disbursement of public moneys," but
- Defendant was "charged with the receipt, safekeeping, transfer, or disbursement of public moneys."

An individual is "charged with the receipt, safekeeping, transfer, or disbursement of public moneys," as required for the offense of misuse of public funds, so long as he or she exercises a degree of material control over public funds that amounts to being "charged with" such authority, and whether someone exercises this degree of material control over public funds depends on actual function as much as, if not more than, formal title.

Superintendent of school district was charged with the "receipt, safekeeping, transfer, or disbursement" of public funds, as required for a conviction of misuse of public funds, where superintendent had explicit contractual responsibilities to oversee the "budget and business affairs" of the district, superintendent owed a duty to safeguard school district funds, and superintendent had a responsibility to ensure such public funds were spent in accordance with the law.

PRIVATE ACTIVITY BONDS - DISTRICT OF COLUMBIA

Indian River County v. Rogoff

United States District Court, District of Columbia - June 10, 2015 - 110 F.Supp.3d 59

Counties brought action against the Department of Transportation (DOT) and DOT officials, alleging that DOT's authorization of tax-exempt private activity bonds (PAB) supporting construction and operation of railway violated various federal statutes. Both counties moved for preliminary injunctions, and one county moved for a temporary restraining order and for summary judgment.

The District Court held that:

- Counties lacked standing to challenge PAB authorization based on alleged harms arising from construction and operation of railway,
- Counties lacked standing to challenge PAB authorization based on alleged procedural harms.

Counties failed to demonstrate that enjoining the issuance of tax-exempt private activity bonds

(PAB), which were authorized by Department of Transportation (DOT) and supported construction of railway that would allegedly cause a variety of environmental harms in the counties, would significantly increase the likelihood that the railway project would be abandoned, and thus counties failed to establish a redressable injury sufficient to confer Article III standing to challenge the issuance of the bonds. Project's investor stated it would move forward with or without the PABs, investor had already made substantial investments in the project and claimed it had access to further funding sources, and investor's expert calculated that project was financially viable even without PABs.

Allegations regarding impact of Department of Transportation's (DOT) authorization of tax-exempt bonds for railway project on the Federal Railroad Administration's (FRA) environmental review of that project under NEPA were insufficient to establish that counties that opposed the project suffered a redressable injury sufficient to confer Article III standing to challenge the issuance of the bonds. Counties could not object to the final environmental impact statement (EIS) and record of decision (ROD) before either was completed, and FRA was not required to evaluate alternative project financing options during the EIS process.

MUNICIPAL CONTRACTS - MICHIGAN

Associated Builders & Contractors v. City of Lansing

Supreme Court of Michigan - May 17, 2016 - N.W.2d - 499 Mich. 1772016 WL 2888719 - 26 Wage & Hour Cas.2d (BNA) 743

Trade association filed suit against city, challenging constitutionality of ordinance requiring contractors performing work on municipal contracts to pay its laborers and mechanics prevailing wages and benefits.

The Circuit Court granted association's motion for summary disposition, and city appealed. The Court of Appeals reversed and remanded. Association was granted to leave to appeal.

The Supreme Court of Michigan held that:

- Ordinance was appropriate exercise of its constitutional authority to adopt ordinances "relating to its municipal concerns, property and government," overruling *Attorney General ex rel Lennane v. Detroit*, 225 Mich. 631, 196 N.W. 391, and
- Supreme Court precedent was binding on Court of Appeals until clearly superseded or overruled.

City ordinance requiring contractors working on municipal contracts to pay their laborers and mechanics prevailing wages and benefits as determined by statistics compiled by United States Department of Labor and related to city area was not unlawful exercise of municipal authority and usurpation of state power, but was appropriate exercise of its constitutional authority to adopt ordinances "relating to its municipal concerns, property and government," with full power over their own property and government, subject to constitution and law; overruling *Attorney General ex rel Lennane v. Detroit*, 225 Mich. 631, 196 N.W. 391.

MUNICIPAL ORDINANCE - NEVADA

Scenic Nevada, Inc. v. City of Reno

Supreme Court of Nevada - June 30, 2016 - P.3d - 2016 WL 3552000 - 132 Nev. Adv. Op. 48

Advocacy organization brought action to invalidate city ordinance permitting digital advertising displays.

Following bench trial, the Second Judicial District Court entered judgment in city's favor, and organization appealed.

The Supreme Court of Nevada held that:

- State constitution's three-year moratorium on legislative amendments to voter initiatives applied to municipal initiatives, and
- City's reenactment of invalid ordinances after three-year legislative moratorium had expired validated them.

State constitution's three-year moratorium on legislative amendments to voter initiatives applied to municipal initiatives, and thus city ordinances amending municipal initiative within three years of its adoption were void ab initio, notwithstanding statute providing that municipal initiative ordinances were to be treated same as ordinances adopted by city council, and city charter that permitted ordinances to be amended at any time.

Although city billboard ordinances were originally adopted in violation of state constitution's three-year moratorium on legislative amendments to voter initiatives, city's reenactment of ordinances after three-year legislative moratorium had expired validated them.

PENSIONS - NEW JERSEY

Brick Tp. PBA Local 230 v. Township of Brick

Superior Court of New Jersey, Appellate Division - June 21, 2016 - A.3d - 2016 WL 3389321 - 2016 L.R.R.M. (BNA) 197, 801

Police union and former officer brought action against township, seeking a declaration that officer was not required to continue making health insurance premium contributions and seeking reimbursement for past contributions.

The Superior Court, Law Division, granted summary judgment to township. Union and officer appealed.

The Superior Court, Appellate Division, held that statute requiring premium contributions exempted disability retirees.

Statute governing health insurance coverage for municipal employees and retirees exempts disability retirees from health insurance premium contributions. It applies only to active public employees and those who retire based on meeting the service requirements.

PENSIONS - NEW JERSEY

Berg v. Christie

Supreme Court of New Jersey - June 9, 2016 - A.3d - 2016 WL 3189778

Retired government employees brought action against the State alleging that a statute suspending

pension cost of living adjustments (COLAs) violated the Contract Clause of the Federal and State Constitutions.

The Superior Court entered summary judgment in favor of the State. Employees appealed. The Superior Court, Appellate Division, affirmed in part, reversed in part, and remanded. Employee and the State petitioned for certification to appeal, which was granted.

The Supreme Court of New Jersey held that:

- Determining whether there was a legislative contractual right to pension COLAs required a finding that the legislature expressed an unequivocal intent to contract;
- Statute granting non-forfeitable-right for government employees to receive benefits "provided under the laws governing the retirement system or fund" did not include pension COLAs;
- State was not equitably estopped from terminating pension COLAs; and
- Employees did not have a due process right to pension COLAs.

BENEFITS - OHIO

DeMoss v. Silver Lake

Court of Appeals of Ohio, Ninth District, Summit County - June 1, 2016 - Slip Copy - 2016 WL 3078844 - 2016 -Ohio- 3241

In 1972, the Village of Silver Lake enacted an ordinance establishing medical and life insurance benefits for employees who retired under the PERS or Police Pension plans after having completed at least 15 years of service to the Village.

In 1995, the Village enacted an amendment repealing the prior language regarding medical and life insurance benefits for retirees, retaining such benefits solely for "permanent regular employees * * * under such terms as Council may periodically determine provided such coverage is available from commercial sources."

Retirees sued, seeking a declaration that their rights to medical and life insurance benefits under the 1972 ordinance vested upon each attaining 15 years of service with the Village prior to the enactment of the 1995 amendment.

The magistrate ruled in favor of the Village and retirees appealed.

The Court of Appeals reversed, finding that the modification of section 139.05 of the codified ordinances enacted in 1972 by way of the 1995 enactment violated the Retroactivity Clause of the Ohio Constitution.

PUBLIC UTILITIES - OKLAHOMA

Oklahoma Gas and Electric Company v. Federal Energy Regulatory Commission

United States Court of Appeals, District of Columbia Circuit - July 1, 2016 - F.3d - 2016 WL 3568086

The Federal Energy Regulatory Commission (FERC) accepted, subject to modifications, regional

transmission organization's (RTO) filing to comply with local and regional transmission planning and cost allocation requirements and granted in part and denied in part requests for rehearing.

RTO and its members petitioned for judicial review, and various parties intervened.

The Court of Appeals held that requirement that RTO members remove rights of first refusal to construct transmission facilities from their membership agreement did not violate *Mobile–Sierra* doctrine.

Federal Energy Regulatory Commission's (FERC) order requiring that members of regional transmission organization (RTO) remove rights of first refusal to construct transmission facilities from their membership agreement did not violate Mobile–Sierra doctrine, pursuant to which freely-negotiated wholesale-energy contracts were presumed to be just and reasonable unless found to seriously harm public interest. FERC reasonably determined that rights of first refusal did not promote competition, but instead created pre-existing barrier to entry for nonincumbent transmission owners, which created disincentives for non-incumbents to identify and commit resources to cost-effective solutions to transmission needs.

INVERSE CONDEMNATION - TENNESSEE

Cope v. Hawkins County

Court of Appeals of Tennessee, at Knoxville - May 25, 2016 - Slip Copy - 2016 WL 3092662

Several property owners brought suit against the county for inverse condemnation when the county commission's road committee rescinded its recommendation to accept a road as a county road. They claimed that the road had been treated as a public road following the initial recommendation, evidencing an implied ratification of the recommendation. They asserted that the reversal of the recommendation reduced the market value of their property and caused them to incur additional expenses to maintain the road.

The County filed a motion to dismiss, alleging that the complaint failed to state a cause of action upon which relief can be granted. They asserted that a "taking" of real property never occurred because the County Commission never approved Red Rock Lane as a county road. They claimed that the Road Committee merely issued a recommendation and argued that the County Commission's failure to accept the recommendation was not an implied ratification of the recommendation.

The Court of Appeals held that, while property owners may have suffered injury as a result of the county's refusal to designate Red Rock Lane as a county road, a taking of real property never occurred. "Taking all reasonable inferences in favor of Property Owners as we are constrained to do in our review of the case, we conclude that the complaint failed to state a cause of action for which they may seek compensation under Tennessee's inverse condemnation statute."

IMMUNITY - TEXAS

City of Dallas v. Sanchez

Supreme Court of Texas - July 1, 2016 - S.W.3d - 2016 WL 3568055

Parents, whose son died from a drug overdose, brought wrongful death action against city, alleging that emergency personnel provided assistance to a different drug-overdose victim at the same

apartment complex and then left the premises without aiding their son and alleging that the 911 telephone system malfunctioned and disconnected son's call before the responders could establish the overdose reports were not duplicative.

The trial court granted the city's motion to dismiss as to all claims except the allegation that the 911 phone system failed or malfunctioned. On interlocutory appeal, the Dallas Court of Appeals affirmed, and city filed petition for review.

The Supreme Court of Texas held that alleged defect in the 911 telephone system was not a proximate cause of son's death from drug overdose, as required to establish a waiver of governmental immunity.

Alleged defect in the 911 telephone system was not a proximate cause of apartment tenant's death from drug overdose, as required to establish a waiver of governmental immunity under the Tort Claims Act, waiving governmental immunity from suit for personal injury and death caused by a condition or use of tangible personal or real property. Between the alleged malfunction and tenant's death, emergency responders erroneously concluded separate 911 calls were redundant and left the apartment complex without checking the specific apartment unit the dispatcher had provided to them, six hours passed between the phone malfunction and tenant's death, further attenuating the causal connection, and phone malfunction was merely one of a series of factors that contributed to tenant not receiving timely medical assistance.

U.S. Supreme Court Issues Two Significant Cases On Puerto Rico's Sovereignty.

In the first decision, on June 9, 2016, the United States Supreme Court affirmed the judgment of the Supreme Court of Puerto Rico that Puerto Rico and the United States are not separate sovereigns for purposes of the Double Jeopardy Clause contained in the Fifth Amendment of the U.S. Constitution in the appeal styled under the caption Commonwealth of Puerto Rico v. Sanchez Valle, No. 15-108. Opinion. Sanchez Valle was the first of two appeals heard by the U.S. Supreme Court this term involving Puerto Rico.

On June 13, 2016, the US Supreme Court also confirmed the decisions by the Court of Appeals for the First Circuit and by the United States District Court for the District of Puerto Rico that Puerto Rico's Debt Enforcement & Recovery Act (DERA) was unconstitutional in the appeals styled under the caption Puerto Rico v. Franklin California Tax-Free Trust, 15-233, and Acosta-Febo v. Franklin California Tax-Free Trust, 15-255 (the "Franklin Fund Appeals"). Opinion. We previously covered the First Circuit's decision here.

Puerto Rico Is Not a Separate Sovereign for Purposes of Double Jeopardy Clause

In Sanchez Valle, the US Supreme Court found that "the ultimate source of Puerto Rico's prosecutorial power is the Federal Government–because when we trace that authority all the way back, we arrive at the doorstep of the U.S. Capitol—the Commonwealth and the United States are not separate sovereigns." Op. at 17-18. Here, Puerto Rico's authority to enact and enforce criminal law ultimately comes from Congress. Accordingly, the Double Jeopardy Clause bars both Puerto Rico and the United States from prosecuting a single person for the same conduct under equivalent criminal laws. The Supreme Court noted that "[t]he degree to which an entity exercises self-governance—whether autonomously managing its own affairs or continually submitting to outside

direction—plays no role in the analysis." Op. at 6-7. The test, the Supreme Court indicated, is "whether [the prosecuting entities] draw their authority to punish the offender from distinct sources of power. The inquiry is thus historical, not functional—looking at the deepest wellsprings, not the current exercise, of prosecutorial authority." Op. at 7. The Supreme Court recognized that Congress authorized Puerto Rico to create the Puerto Rico Constitution. The Supreme Court also recognized Puerto Rico's special relationship with the United States and its wide-ranging self-rule under its own constitution, but these facts do not factor into the analysis. While recognizing that "Congress has broad latitude to develop innovative approaches to territorial governance", Op. at 16, "[b]ut … Congress … has no capacity … to erase or otherwise rewrite its own foundational role in conferring political authority. Or otherwise said, the delegator cannot make itself any less so—no matter how much authority it opts to hand over." Op. at 16-17.

Bankruptcy Code Preempts Puerto Rico's Recovery Act

In Franklin California Tax-Free Trust, the US Supreme Court found that section 903(1) of the Bankruptcy Code preempts the Puerto Rico Debt Enforcement and Recovery Act (the "Recovery Act"). Recognizing that the Bankruptcy Code had long included Puerto Rico as a "State," but in 1984 Congress amended the definition of "State" to exclude Puerto Rico "for the purpose of defining who may be a debtor under chapter 9." Op. at 1. Rejecting the Commonwealth's arguments that the 1984 amendments made the preemption provisions of section 903(1) of the Bankruptcy Code inapplicable, the Court stated that "Puerto Rico remains a 'State'" for other purposes related to Chapter 9, including that chapter's pre-emption provision. That provision bars Puerto Rico from enacting its own municipal bankruptcy scheme to restructure the debt of its insolvent public utilities companies." Op. at 1-2. The Supreme Court stated that "[b]arring Puerto Rico from 'defining who may be a debtor under chapter 9' is tantamount to barring Puerto Rico from 'specifically authorizing' which municipalities may file Chapter 9 petitions under the gateway provision. The amended definition of 'State' unequivocally excludes Puerto Rico as a 'State' for purposes of the gateway provision." Op.at 10. The Supreme Court held that the text of the definition extends no further. "The Code's pre-emption provision has prohibited States and Territories defined as 'States' from enacting their own municipal bankruptcy schemes for 70 years. Had Congress intended to 'alter this fundamental detail of municipal bankruptcy, we would expect the text of the amended definition to say so" Op. at 11. "Puerto Rico is no less a 'State' for purposes of the pre-emption provision than it was before Congress amended the definition." Op. at 10-11.

by Lorraine S. McGowen

Last Updated: July 5 2016

Orrick

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

A Stumble May Lead Puerto Rico Forward.

When an amorphous problem drags on without a solution anywhere near the horizon, it can be refreshing when something concrete happens, even if it's not particularly positive.This seems to be the case with Puerto Rico, which just had its biggest default ever by missing $911 million of payments due on July 1. While the move couldn't exactly be called good — defaults and insolvencies

rarely are — it carried some kernels of optimism, especially for bond traders and insurers, if not for the commonwealth's residents.

For one, the default could be seen as a starting gun for the aforementioned elusive solution and a defining moment after antagonistic negotiations between Puerto Rico and its creditors. Also, it was smaller than it could have been. The island was on the hook for $2 billion of bond payments, which it was ill-equipped to pay. The fact that it paid any surprised some.

Puerto Rico made it clear last year that it has no intention of paying off its $70 billion debt load in full. Moreover, it dragged its heels about disclosing its true finances. Congress wasn't providing much assistance. And talks between Puerto Rico and creditors kept breaking down.

The hard July 1 debt payment deadline appeared to focus everyone's efforts. U.S. lawmakers expedited a bill giving the commonwealth tools to restructure its debt, passing it on June 29, just days before the payment came due. The island opted to disclose its 2014 finances right afterward.

The legislation didn't prevent a default or even map out specifically how Puerto Rico's debt would be restructured. But it started to clear a path forward and created a fiscal control board to oversee the island's finances, a move that has been welcomed by many investors.

By the time the default actually came to pass, investors took the missed payments in stride, or even as a good sign. Just take a look at prices on the bonds. They've largely risen, with some notes gaining considerably, as investors became more optimistic about their recoveries.As it became clearer that Congress would pass legislation to give restructuring tools to Puerto Rico, traders grew more confident and started transacting more frequently. Trading volumes have picked up in Puerto Rico bonds from the lackluster levels of March and April, when there was less certainty about anything having to do with the island's finances.

And at least one group of players is benefiting, at least for now: bond insurers. Check out the share prices of MBIA, Assured Guaranty and Ambac. They've hung in there despite the fact that they are on the hook to compensate investors for losses on billions of dollars of Puerto Rico debt.

These debt-insurance firms are getting a chance to prove their effectiveness. Two subsidiaries of Assured Guaranty paid an estimated $184 million in net claims in the wake of the default, albeit decrying the island's lack of payment as a violation of its constitution.

Assured Guaranty is capitalized well enough to cover these payments, given its $12 billion on hand to cover all claims, according to Mark Palmer, a BTIG analyst who covers the company. Its net insured exposure to Puerto Rico amounts to about $5 billion, he said.

"There's such a thing as a good loss for a municipal guarantor," Palmer said. "It underlines the value proposition associated with bond insurance." An orderly restructuring of Puerto Rico's debt is probably too much to ask for at this point, and in fact the turbulence is probably just shifting into a new phase.

Creditor squabbles and government recriminations are a given. But that blip way out there on the horizon might not be a mirage.

This column does not necessarily reflect the opinion of Bloomberg LP and its owners.

Bloomberg Business

By Lisa Abramowicz

Jul 8, 2016 6:41 AM PDT

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Breaking Down Puerto Rico's Historic Default.

Puerto Rico was poised to pay less than a fifth of the guaranteed debt due on Friday, with none of the payment going to the general obligation debt, according to sources.

About $1 billion in general obligation and commonwealth-guaranteed debt was due Friday, according to a written statement from the Government Development Bank for Puerto Rico and the Puerto Rico Fiscal Agency and Financial Advisory Authority. After the day was over the government would still owe over $800 million of this, the statement said. These statements indicated payment of somewhere between $100 million and $200 million of this debt on Friday.

The government owed $779 million for general obligation debt on Friday and planned to pay none of it, knowledgeable sources said. The $100 million to $200 million was going toward guaranteed but not GO debt.

Late on Thursday Puerto Rico Gov. Alejandro García Padilla invoked Puerto Rico's Moratorium Act on the payment of general obligation bonds and obligations of other public entities, opening the door to making partial and non-payments on about $2 billion of debt due Friday.

He also declared a state of emergency at the Puerto Rico Convention Center District Authority, the Employees Retirement System, the Industrial Development Company, and the University of Puerto Rico, to give these entities what he believed to be legal cover to debt defaults or other actions. The governor said this protection comes from the Moratorium, Financial Emergency and Rehabilitation Law, which passed in April, and is used by the central government to retain funds necessary for its operation.

All of these entities owed debt Friday.

Besides its guaranteed debt, Puerto Rico had other debt due on Friday. The Puerto Rico Electric Power Authority said Thursday it planned to make its $415 million payment.

The Puerto Rico Aqueduct and Sewer Authority was expected to make $134 million in payments. It was not expected to make a $12.7 million in rural development bond payment due to the U.S. Department of Agriculture, though it expected to have a forbearance agreement on the bonds by the end of Friday, PRASA president Alberto Lázaro Castro said. Nor would it make about a $22 million state revolving fund payment to the U.S. Environmental Protection Agency, an account that is also in forbearance. Neither non-payment would be considered a default under the 2008 and 2012 bond covenants, he said.

The Puerto Rico Highways and Transportation Authority was expected to make payments on a 1968 resolution, 1998 resolution seniors, and 1998 resolution subordinate 2003 issued bonds, according to knowledgeable sources. It would pay about $100,000 out of $4.5 million due on 1998 resolution

subordinate 1998 issued bonds.

A knowledgeable source said the following entities would make full payment Friday: Municipal Finance Authority, Convention District Authority, Employment Retirement System, Sales Tax Finance Corp. (COFINA), Industrial Development Authority, and AFICA. The emergency declared Thursday for some of them may have allowed them to do other things besides a payment default.

The Public Building Authority, except for series L, was expected to pay $152 million of $177 million that was due. It was expected to pay the series L bond in full.

The Infrastructure Finance Authority was expected to continue non-payment of rum tax bonds. PRIFA was expected to pay $10 million towards its $10.7 million bond anticipation note payment.

The GDB was expected to pay all it owed, except for general obligation notes, on which it was expected to pay nothing. The Public Finance Corp. would continue to default.

The governor's executive orders stopped the transfer of cigarette tax revenues to the Metropolitan Bus Authority and authorized the suspension of rent payments from government entities to the Public Buildings Authority.

The government expected to end June with $200 million in its operating accounts and $150 million in a "clawback" account fed by funds shifted from certain public corporation and revenue streams. Through a combination of the executive orders and the use of other "extraordinary measures," the government's operating account is expected to remain below $95 million for the remainder of the year. "This is a dangerously low cash position for a government that funds services to millions of Puerto Ricans," the GDB and the Fiscal Authority said.

The extraordinary measures include delaying payments to vendors, delaying contributions to the retirement systems, extending financing from certain public entities to the commonwealth government proper, and delaying capital expenditures. The government already owes about $2 billion to its vendors.

The executive orders put a stay on creditor use of the legal system to remedy the defaults, the GDB and the Fiscal Agency said. On Thursday Pres. Barack Obama signed PROMESA, a bill that puts a stay on all Puerto Rico debt-related law suits retroactive to December 2015.

The Bond Buyer

By Robert Slavin

July 1, 2016

TAX - WASHINGTON

United Airlines, Inc. v. King County

Court of Appeals of Washington, Division 1 - June 6, 2016 - P.3d - 2016 WL 3190515

Prior to 2006, the County and State employed an imputed return approach to valuing possessory interests in airline leaseholds at SeaTac Airport. The value was computed using a discounted cash-flow model that capitalized the net annual lease payments assuming a seven-year remaining life.

In 2006, the department decided to change to a variation of what is known as a residual approach for valuing possessory interests. The residual approach first computes the present value of the leasehold by capitalizing the net amount of lease payments for a single year using a capitalization rate determined from a review of rate studies. The second step is to consider the present value of the government-owned reversionary interest and to subtract it if it has any material value. Using the residual approach, the department "looked for evidence suggesting that the lease would not be renewed at the end of its express term." Where the evidence suggested that the lease would continue to be renewed into the foreseeable future, the port's reversionary interest "was considered to be minimal." According to the department, a significant difference is that the residual approach used a direct capitalization method, whereas the imputed return approach used limited-life yield capitalization.

The residual approach resulted in valuations that were significantly higher than the valuations calculated under the imputed return approach.5 Using the residual approach, the department, at least in some cases, calculated the value of the government-owned reversionary interest at "nil" or "zero."

After receiving objections from airline companies, and after internal study and discussion, the department agreed to change from the residual approach to a modified version of the earlier imputed return approach. This methodology used the actual lease term rather than a hypothetical perpetual lease.

United requested an administrative refund of taxes paid to King County from 2009 through 2011. For each year, the department had valued United's possessory interest by using the residual approach and assuming a hypothetical perpetual lease. The county denied the request.

United brought this action in superior court. The superior court granted the department's motion for summary judgment and United appealed.

The Court of Appeals affirmed, holding that an administrative refund of taxes under chapter 84.69 RCW is not available as an avenue for challenging an alleged error in determining the valuation of property. To challenge a tax as unlawful or excessive, a taxpayer must pay the tax under written protest and then file suit under RCW 84.68.020.

Because United attempted to use the administrative refund process to challenge the appraisal method by which appellant's property interest was valued, the trial court properly dismissed the action on summary judgment.

"In summary, the use of an appraisal method that assigned a nil value to the port's reversionary interest after consideration of all the circumstances cannot be characterized as the manifest error of assessing property exempted by law from taxation."

Illinois: Should It Issue Bonds or Sell Tax Credits?

That may seem like an odd question until you consider that a tax-credit financing could easily be viewed as 'AAA.' That contrasts with Illinois bonds that trade below their 'BBB' benchmarks. The difference represents significant value — perhaps more than 100 basis points of savings on long-term offerings.

Here's a simple example of a proxy financing. Instead of issuing a 1year note that paid $100 at

maturity, Illinois would sell a $100 tax credit that could be applied any time after one year. It's an alternative that produces identical net cash flows.

What's the appeal of the tax-credit alternative? It guarantees that a holder will receive full value as long as he has a matching tax liability. That's true even if the issuing State is in a financial crisis and can't pay its bondholders. Imagine where a State's bonds would trade if it missed a payment. But a tax credit would still be worth 100%. In fact tax credits may be the perfect hedge: as long as taxes are owed, they retain full value.

You might also notice something interesting – using tax credits in this way allows a holder to prepay his taxes at a market discount, which is probably the safest and most efficient way to lend to a municipality.

Still, the ideal solution would be to wrap an ordinary bond around the tax credits, so that a holder has both the convenience of cash pay and the safety of back-up tax credits. That's the thinking behind a proposed GO structure, Tax Offset Municipal Securities (TOMS). In its simplest form it's a cash-pay bond, but in the event the issuer can't pay, bondholders receive equivalent tax credits instead.

In terms of mechanics the Trustee purchases tax credits from the State at the close of the underwriting. This is done under an agreement which acknowledges that the credits are receipts for estimated tax payments. The Trustee would then automatically "put" these tax credits to the State at each payment date for its cash equivalent. If all goes well bondholders would be paid cash as expected and the matching tax credit would expire. But if the State failed to pay, the Trustee would simply distribute the tax credits.

You might ask about the behind-the-scenes machinery. It establishes that a holder's credit is for estimated taxes already paid. That makes it secure. No one has ever suggested that a State could say to a taxpayer, "We've cashed the check for your taxes, but we're not going to allow the deduction."

In the end it's a structure that has the potential to deliver high-grade enhancement without counterparty exposure or credit risk, in effect bond insurance which no traditional insurer can match.

The Bond Buyer

By Paul Fennell

June 30, 2016

Paul Fennell is an independent investment banker specializing in capital market and fixed-income solutions.

New Report Examines Landscape of Georgia's Community Improvement Districts.

ATLANTA – Community improvement districts (CIDs) are an increasingly popular method of promoting economic growth in Georgia, with 25 active CIDs currently. In these special districts, property owners voluntarily tax themselves to fund a range of public improvements and services to

support business.

In a new report, “Georgia’s Community Improvement Districts,” the Center for State and Local Finance examines the landscape of Georgia’s CIDs, focusing on their evolution and key characteristics, as well as providing an in-depth analysis of five select districts.

The extensive analysis serves as a much-needed guide to Georgia’s CIDs. Among numerous findings, the report:

- Provides the most public and up-to-date list of Georgia’s CIDs, including recently formed Atlanta Aerotropolis CIDs (the Airport South and Airport West CIDs) and Little Five Points CID
- Highlights Georgia’s business improvement districts (BIDs), a lesser-known model of improvement districts in the state that tends to be farther from metro Atlanta and unlike CIDs, may tax residential properties
- Examines the organizational structure of Georgia CIDs as compared to Georgia BIDs and four neighboring southeastern states BIDs (Alabama, Florida, South Carolina and Tennessee)
- Discusses evolutionary trends in CIDs since their inception in the 1980s, including the increasing diversity in services provided by CIDs
- Identifies funding sources used by Georgia’s CIDs, such as the Georgia Transportation Infrastructure Bank, where more than 60 percent of loans and grants have gone to CIDs
- Takes an in-depth look at five select CIDs (Cumberland CID in Cobb County, the Atlanta Downtown Improvement District, South Fulton CID, Evermore CID in Gwinnett County, and Georgia Gateway CID in Camden County near the Florida border)

As a whole, the report shows that Georgia CIDs have considerable autonomy and authority, which has allowed them to spearhead ambitious, complex economic development projects. This has significantly influenced development in metro Atlanta, though CIDs are gaining momentum in other parts of the state.

With nine new CIDs created in the past five years, this report is a timely look at an increasingly prevalent economic development tool that has proved useful in revitalizing cities and counties throughout the state.

Download the study.

Read the presentation.

Center for State and Local Finance

Posted On June 28, 2016

New Program Provides Property Assessed Clean Energy Financing for Home Improvements in Kansas City Area.

KANSAS CITY, Mo., July 5, 2016 /PRNewswire/ — Renovate America, the leading provider of residential Property Assessed Clean Energy (PACE) financing in the U.S., and the Missouri Clean Energy District (MCED) today announced a recruitment effort to register local contractors to offer new kinds of financing for Missouri homeowners to make energy-efficient and renewable energy improvements. HERO, Missouri’s new residential PACE program, will give local contractors an important new tool for growing their businesses and reaching more customers with energy-saving

technologies. The program enables clean energy upgrades to be paid for over time through local property taxes, at a fixed interest rate for terms of five to 20 years, based on the useful life of the product. The name HERO stands for Home Energy Renovation Opportunity.

“Every year, one in six homeowners replaces a system that consumes energy. Three-quarters of the time they choose inefficient technology that ends up costing them more over the long term in higher energy bills,” said Joe Suggs, Vice President for Operations in Missouri for Renovate America. “HERO can solve that marketplace failure while helping homeowners save on energy bills, local contractors create clean energy jobs, and local governments reduce emissions.”

“I’m very excited about the HERO program because it will make energy efficiency and renewable energy upgrades more affordable for homeowners — improving our customers’ sense of comfort in their homes while reducing their energy bills over time. HERO can be a game changer for my business and my customers,” said Steve Burbridge, co-owner of local contractors Anthony Plumbing, Heating & Cooling.

As a partner with local government, PACE financing includes additional requirements to protect consumers not found in other payment options like credit cards or home equity loans. For example, the HERO program will only pay a contractor after the homeowner signs off that the job has been completed to their satisfaction. Contractors must be in good standing with HERO; products and labor must meet competitive pricing standards; and homeowners select from products certified as efficient by local, state and federal government authorities.

Through Missouri law, HERO will enable thousands more property owners in jurisdictions that adopt the program to finance improvements such as energy-saving roofing, windows, and doors, a more efficient HVAC system, building insulation, or solar panels. Since these improvements stay with the home, PACE financing is repaid through the property taxes, interest may be tax deductible, and any remaining balance may be able to be passed to a new owner. HERO financing does not require upfront payments, so it may be a good solution when a system fails and or needs an upgrade for which a homeowner has not saved. Homeowners qualify based on equity in the property and a proven track record of on-time mortgage and property tax payments.

Contractors are able to create new, clean-energy jobs thanks to resources provided by HERO, such as an integrated software platform that helps connect contractors with homeowners and hundreds of thousands of eligible products, and makes financing seamless and straightforward. HERO also offers low-interest working capital and marketing resources to help small home improvement contractors expand their businesses.

HERO will be available within cities and counties that have joined the Missouri Clean Energy District. Local governments can join simply by passing a resolution. Contractors interested in offering HERO financing can register at https://register.renovateamerica.com/. Once the program officially launches in Jackson County this summer, homeowners in the county can begin using HERO to finance clean-energy improvements.

In California, where PACE financing began, HERO has been used by more than 66,000 homeowners since 2012 to make more than $1.5 billion in efficiency improvements, creating more than 13,500 local jobs and generating more than $2.7 billion in local economic activity.

In addition to residential PACE, HERO has already launched its commercial PACE program, financing a solar panel system on the Kansas City Scottish Rite Temple. The installation consists of 300 250-watt solar panels, and is projected to produce 105,000 kWh of renewable solar energy annually, enough to fully power eight average Missouri homes, and utility savings over $786,000

over the life of the system. The project also benefitted from a $75,000 rebate provided by Kansas City Power & Light. The Temple was originally constructed in 1930, and is of classic Greek design of the Ionic order. The contractor is Sunsmart Technologies, which has been serving the Kansas City area since 2012.

Prior to partnering with HERO, the Missouri Clean Energy District used PACE financing to make energy upgrades on multiple property types including multi-family, commercial office space, and public projects.

Jul 05, 2016, 11:59 ET

After a Slow Start, PACE Financing Picking Up in Florida.

Property-assessed financing for energy-related improvements to homes and businesses is starting to take off in Florida.

Since Florida's Supreme Court upheld the state's Property Assessed Clean Energy (PACE) law against challenges last autumn, applications for the innovative financing have been rising fast, and more local governments are signing up to offer the program in their areas, PACE leaders in Florida say.

"We were probably getting 200 to 300 applications a month, and last month, we got about 1,200," said Joseph Spector, vice president of operations for Ygrene Energy Fund Florida, the largest PACE lender by far in the state. "Now, we're active in an area of about 2.7 million people. By the end of the summer, as more cities and counties join, we could be at 5 million people – or about 25 percent of the state."

Ygrene already has contracted about $74 million in PACE financing in Florida since starting three years ago in the state. It expects to sign up $100 million in new financing this year and at least $200 million more next year, Spector told Southeast Energy News.

Two other PACE players active nationwide also are ramping up in Florida. Renew Financial of Oakland, California entered the state last fall by buying EcoCity Partners of St. Petersburg, and is revising its PACE offerings. And Renovate America of San Diego, California is working to launch a residential program in Florida this October and to expand to businesses financing later, executives confirmed.

"There are no more regulatory or legal challenges" to PACE expansion in the state, said Mike Antheil, market development director in Florida for Renovate America. "It's now about getting the word out to the people, and it's trending in the right direction."

A slow start amid legal challenges

Florida's Legislature authorized the PACE program in 2010. The law lets property owners borrow funds to make energy improvements such as installing more efficient air conditioning systems, solar panels or hurricane-impact windows. The participants then pay back the money together with property taxes – just like an assessment.

In many cases, savings from increased energy efficiency as well as lower premiums on property insurance are big enough to cover the full cost of PACE repayment. That means the owner has no

outlays upfront and no added costs in making the property improvements through PACE. Communities also gain, because contractors get new business and improved energy efficiency helps slow demand for new power plants, PACE advocates say.

Begun in California in 2008 and key to financing solar projects there, the PACE program was slow to take off in Florida – until this year.

That's largely because of legal challenges, including one by the Florida Bankers Association. The bankers worried that repayment of PACE financing would come before repayment of bank mortgages, when properties were sold or re-financed. Similar cases have surfaced at the federal level and been resolved; the Federal Housing Administration is soon to publish guidance aimed to "unlock" PACE for homes with federally-backed mortgages, industry leaders said.

Last autumn, the Florida Supreme Court dismissed the bankers' case for lack of standing, and it has upheld PACE in several other challenges, said attorney Erin L. Deady, who wrote an extensive article on PACE for the June 2016 issue of the Florida Bar Journal.

Some cities and counties in Florida delayed authorization for PACE, pending the court rulings.

Brandsmart USA, a chain of consumer electronics and appliance stores based in Hollywood, Florida has become the biggest commercial user of PACE funds in the state so far, with projects totaling $5 million. It's mobilized the financing for new air-conditioning, lighting, roofing and other improvements at several stores in what executive vice president Larry Siniwitz calls "a phenomenal program."

Brandsmart already is "cash-positive" on PACE at its south Miami-Dade store after the first year, saving about 10 percent more on energy bills and maintenance than it costs to back the money – and all without paying a dime upfront, Siniwetz said. It works through a services contractor, ABM, who handles all the property improvements and also guarantees that the savings from the improvements will be enough to repay PACE, he said.

Governments keen on consumer protections

Some local governments in Florida also had concerns beyond the bankers' and legal challenges.

South Florida's Broward County, home to Fort Lauderdale, was worried about protections for consumers and for local governments themselves, said Alan J. Cohen, assistant to the county administrator. The county wanted to make sure that consumers knew that PACE may not pay for itself and could cost them money out of pocket. Plus, the government wanted to find a way to protect cities and the county from lawsuits, if borrowers filed suits against contractors or lenders on PACE projects, Cohen said.

To address those issues, Broward now is putting safeguards in its PACE authorization. First, it is requiring PACE providers agree to cover any costs in the event of a lawsuit related to their projects. Next, it is limiting payments for annual taxes and assessments including PACE to 5 percent of the fair market value of properties – a step taken in other jurisdictions.

In a unique move, Broward also is asking participants to affirm one of three other things when using PACE: Either that the mortgage lender or servicer consents to escrow the PACE assessment; that energy or insurance savings can cover the cost of the PACE assessment; or that the PACE repayment won't exceed 4 percent of their gross income. The county came up with that income standard

because of concern over low-income senior citizens being targeted for financial products, Cohen said.

“Consumer protections by far are the most important aspect of what we are moving forward with,” Cohen said of PACE.

Unlike some other states, PACE programs in Florida are not run by governments but rather by third-parties such as Ygrene and Renew Financial. Programs typically involve a district that cities and counties can join. The trend now is for local governments to sign up with multiple providers, so that the programs compete.

Not much PACE funding for solar so far

By volume, competition will be largely for residential financing.

At Ygrene, about 99 percent of PACE contracts in Florida so far are for homes and then mainly for hurricane-related protection such as impact windows and new roofs, said Spector. Those upgrades cut insurance premiums. Thicker windows, often with tinted film, also help trim energy costs by keeping out more sun. So far, Solar accounts for only about 6 percent of the PACE funding in Florida, Spector added.

“We recommend property owners secure the building envelope first” with impact windows, roofs and other improvements, said Spector. If people want solar panels later, they can opt for a smaller installation to meet lower energy needs.

Rivals also will compete on terms for funding. Ygrene now offers financing for terms of 5, 10, 15 or 20 years with rates ranging about 6.5 percent to 7.4 percent linked to indexes, Spector said. The average amount financed now runs about $22,500, he said.

But the biggest difference between programs, industry leaders agree, will be how they treat consumers and contractors.

At Ygrene, Spector said staff is trained to describe PACE to consumers in detail. Some people call in and think because PACE is government authorized, it’s free. “You have to explain that it’s like going to a bank. You have to qualify first, and you have to pay it off,” he said. To protect customers, Ygrene also won’t pay contractors until an inspection is complete or the borrower has signed off on the project, added Spector.

The competition is expected to grow as Renew Financial and Renovate America get active in the state. Over time, predicts Spector, “You’re looking at a PACE industry that could potentially be at half a billion dollars in financing per year in Florida.”

Southeastern Energy News

by Doreen Hemlock

July 6, 2016

Doreen Hemlock writes on energy, business, travel and other topics. She’s worked on staff at newspapers in the U.S. Virgin Islands, Peru, Venezuela, Puerto Rico and South Florida and contributed to publications worldwide. She holds an MBA from Columbia University and lives in Miami Beach.

Recent IRS Private Letter Ruling Provides Helpful Guidance on Management Contracts: Squire Patton Boggs

On May 27, 2016, the National Office of the Internal Revenue Service ("IRS") released Private Letter Ruling ("PLR") 201622003. PLR 201622003 continues the trend of favorable PLRs issued by the IRS on the question of whether, under a facts-and-circumstances analysis, a management contract that fails to satisfy a Rev. Proc. 97-13 safe harbor from private business use results in private business use of a tax-exempt bond issue. PLR 201622003 also provides helpful guidance in interpreting the scope of the safe harbor from private business use set forth in Rev. Proc. 97-13 §5.03(7) in the case of a management contract that provides for incentive compensation based on the attainment of a threshold for an increase in gross revenue of the managed facility or a decrease in the expenses of operating the managed facility (but not both an increase in revenue and decrease in expenses).[1]

PLR 201622003 involves a management contract for a hotel that was financed with the proceeds of a tax-exempt bond issue. The PLR does not state the precise term of the management contract, but it does make clear that the contract's term exceeded five years. The manager's compensation under the contract consisted of a base fee equal to a stated percentage of the hotel's gross revenue, as well as an incentive fee equal to an additional stated percentage of the hotel's gross revenue in those years where: (1) the net profits of the hotel exceeded a specified threshold; and (2) the hotel's revenue-per-available-room exceeded a stated percentage of the average revenue-per-available-room for a pre-determined group of comparable hotels.

The IRS found that the contract did not satisfy a safe harbor from private business use contained in Rev. Proc. 97-13. The IRS further found that the although the hotel's net profits served as a partial trigger for the payment of incentive compensation, the incentive compensation consisted of an additional stated percentage of the hotel's gross revenues, rather than a portion of the hotel's net profits, because the incentive compensation was a fixed percentage of gross revenue and did not rise or fall in proportion to increases or decreases in the hotel's net profits. Ultimately, the IRS concluded that the manager's compensation under the contract was comprised entirely of a percentage of the hotel's gross revenues, and that the management contract's only deviation from the safe harbor set forth in Rev. Proc. 97-13 §5.03(7) was the contract's term, which exceeded five years. The IRS found that the contract's term was reasonable under the facts and circumstances. Consequently, the IRS held that the management contract did not give rise to private business use of the tax-exempt bond-financed hotel.

The holding in PLR 201622003 with respect to the use of a net profits threshold for the payment of incentive compensation that consists of a fixed percentage of gross revenues accords with the same conclusion the IRS reached on this issue in PLR 201145005. It is helpful to have some consistent indication from the IRS that a net profits trigger for the payment of incentive compensation will not be treated as the sharing of net profits with the manager if the incentive compensation is a stated amount or a specified percentage of an item like gross revenues, where the incentive compensation itself does not constitute a portion of the net profits of the managed facility.

PLR 201622003 also provides helpful guidance with respect to the scope of the safe harbor from private business use contained in Rev. Proc. 97-13 §5.03(7). This safe harbor was added to Rev. Proc. 97-13 by IRS Notice 2014-67, and it provides that a management contract does not result in private business use where:

> All of the compensation for services is based on a stated amount; periodic fixed fee; a capitation fee; a per-unit fee; or a combination of the preceding. The compensation for services also may

include a percentage of gross revenues, adjusted gross revenues, or expenses of the facility (but not both revenues and expenses). The term of the contract, including all renewal options, does not exceed five years. Such contract need not be terminable by the qualified user prior to the end of the term. For purposes of this section 5.03(7), a tiered productivity award as described in section 5.02(3) will be treated as a stated amount or a periodic fixed fee, as appropriate.

Rev. Proc. 97-13 §5.03(7) therefore specifically includes a qualifying tiered productivity award under Rev. Proc. 97-13 §5.02(3) among the mix of compensation that will satisfy the safe harbor from private business use. Rev. Proc. 97-13 §5.02(3), which was modified in large extent by Notice 2014-67, provides as follows regarding productivity awards and tiered productivity awards:

For purposes of § 1.141-3(b)(4)(i) and this revenue procedure, a productivity reward equal to a stated dollar amount based on increases or decreases in gross revenues (or adjusted gross revenues), or reductions in total expenses (but not both increases in gross revenues (or adjusted gross revenues) and reductions in total expenses) in any annual period during the term of the contract, generally does not cause the compensation to be based on a share of net profits. A productivity reward for services in any annual period during the term of the contract generally also does not cause the compensation to be based on a share of net profits of the financed facility if:

(1) The eligibility for the productivity award is based on the quality of the services provided under the management contract (for example, the achievement of Medicare Shared Savings Program quality performance standards or meeting data reporting requirements), rather than increases in revenues or decreases in expenses of the facility; and

(2) The amount of the productivity award is a stated dollar amount, a periodic fixed fee, or a tiered system of stated dollar amounts or periodic fixed fees based solely on the level of performance achieved with respect to the applicable measure.

Safe harbors are narrowly construed, and the only reference to a tiered productivity award in Rev. Proc. 97-13 §5.02(3) is with respect to productivity awards that are paid for the achievement of a given level of performance for a measure of the quality of services provided, rather than the attainment of a quantitative target, such as a level of revenue or expense (but not both). Thus, the reference to qualifying tiered productivity awards in Rev. Proc. 97-13 §5.03(7) could easily be interpreted as limited to incentive compensation arrangements that are based on qualitative, rather than quantitative, measures. PLR 201622003 does not adopt this narrow reading of the safe harbor.

Incentive compensation paid on the basis of quantitative measures is quite common, so a restrictive interpretation of the Rev. Proc. 97-13 §5.03(7) safe harbor would leave these arrangements dependent on a favorable facts-and-circumstances analysis to avoid resulting in private business use of a tax-exempt bond issue. Prior to the modification of Rev. Proc. 97-13 by Notice 2014-67 to include the safe harbor from private business use set forth in Rev. Proc. 97-13 §5.03(7), the IRS had found in certain instances that such incentive compensation arrangements do not result in private business use, based on that facts-and-circumstances analysis. See, e.g., PLR 201338026. It is refreshing that the IRS has indicated in PLR 201622003 that the safe harbor from private business use in Rev. Proc. 97-13 §5.03(7) can extend to incentive compensation arrangements that are based on quantitative measures and that a facts-and-circumstances analysis therefore need not be applied to determine whether the management contract results in private business use.

[1] Code Section 6110(k)(3) provides that a private letter ruling cannot be used or cited as precedent unless regulations to the contrary are issued. Nonetheless, as reasoned by the U.S. Supreme Court, private letter rulings “reveal the interpretation put upon the statute by the agency

charged with the responsibility of administering the revenue laws," and such rulings aid in the interpretation of the internal revenue laws. Hanover Bank v. Comm'r, 369 U.S. 672, 686-87 (1962). See also Rowan Cos. Inc. v. United States, 452 U.S. 247, 261 n.17 (1981). Moreover, the Tax Court has found that private letter rulings may be cited to show the practice of the IRS. Rauenhorst v. Comm'r, 119 T.C. 157, n.8 (2002); Estate of Cristofani v. Comm'r, 97 T.C. 74, 84 n.5 (1991); and Woods Inv. Co. v. Comm'r, 85 T.C. 274, 281 n.15 (1985).

by Michael A. Cullers

July 6, 2016

Squire Patton Boggs

Bringing Clarity to Government Finance.

For the average citizen, comprehending government finance is along the lines of comprehending quantum physics.

Fortunately, a new company, ClearGov, has been launched to address the former. We'll leave the latter to institutions of higher learning.

Based in Hopkinton, the startup was founded last year to bring clarity to government finance, hence its name.

And the company has already been making news. Earlier this year, it took first place in AOL Inc.'s TechCrunch PitchOff at the Royale nightclub in Boston. Billed as an event showcasing the "Cream of the Boston Startup Crop," TechCrunch has been hosting startup competitions in Boston every year since 2013.

ClearGov was one of only 10 finalist startup companies chosen to participate. At the event, its CEO and founder Chris Bullock was given 60 seconds on stage to pitch ClearGov to a packed house of hundreds of attendees and a panel of judges made up of local venture capitalists and TechCrunch editors.

"Everyone has a right to know how their local property tax dollars are being managed," said Bullock. "ClearGov transforms complex and confusing municipal financial reports into easy-to-understand infographics that benchmark cities' and towns' performance against statistical peers. The platform helps local governments better communicate their financial performance to help inform voters and policy makers. Being selected by the panelists as the winner was a great validation for our business and clear indicator that there is demand for tools that help governments drive efficiencies."

As result of its victory, ClearGov was awarded an exhibitor table in May at TechCrunch Disrupt NY 2016, an event described as "the world's leading authority in debuting revolutionary startups."

ClearGov was also recently named by the editors of Government Technology magazine to the GovTech100 comprised of 100 government-focused companies with innovative or disruptive offerings.

Bullock recently discussed his company with Daily News staff writer Bob Tremblay.

QUESTION: Why was the business started?

ANSWER: ClearGov was born from a simple question: “How are my property taxes being spent?” I searched municipal websites and found large, annual reports 200-300 pages long. About halfway into them I would find the financial statements, but they used unfamiliar terminology, had complex transfers between funds and generally lacked any context to the numbers. For example, seeing that a municipality spends $60 million on education is nothing more than looking at a large number without context. What people want to see is how much of their money goes towards things like education and are the tax dollars being spent efficiently compared to other cities and towns. In other words, I could see a tremendous need for clarifying government data and putting it into perspective. Fulfilling that need facilitates the overall enhancement of government efficiency and public engagement in a most productive manner.

This isn’t my first time taking an opaque industry and making it transparent. I did that in the legal industry as well as co-founder of Sky Analytics, which helped large corporations benchmark attorney rates and matter costs. It has since been sold to Huron Consulting. I was fortunate to combine my analytic background with my co-founder’s solid municipal and executive management operations. ClearGov is my fifth company.

Q: Why did you choose your current locale?

A: I live in Hopkinton and decided to base the business in my hometown.

From April to June, ClearGov was invited to be part of the Innoloft Acclerator at the Constant Contact headquarters in Waltham. We’ve grown from four to eight employees and our development team will soon be expanding, so we have since relocated from Waltham to Hopkinton.

Q: Do you have other businesses or work in other businesses?

A: No.

Q: What does your company do?

A: ClearGov creates financial transparency pages on our website for every town in Massachusetts (and several other states) that are free to the public. We sell expanded, more robust and granular data platforms to the municipalities for an annual fee. Those platforms are linked or embedded in their municipal websites to provide a user-friendly consumer interface for local government transparency. Local municipalities add more recent and detailed financials to the site along with commentary to better tell the story behind figures, to share the metrics that drive budgetary decisions and to access tools to benchmark their municipal budget against the state and their statistical peers.

Q: What makes you different from the competition?

A: Benchmarking: Numbers by themselves are near meaningless to the average citizen. To know that your town spends $55 million on education is not too helpful, but to know that your town spends 47 percent more than similar towns on education is interesting. Benchmarking provides powerful context to data.

Visual format: Our infographic format is easier to digest for the average citizen; other platforms often have a lot of bells and whistles, but too many options can confuse the average citizen. So we’ve purposely taken a simpler approach to the user interface modeled after infographics.

Market approach: From a more holistic standpoint, our whole market approach is unique. ClearGov.com is a resource for taxpayers. Towns have a presence on ClearGov even without their participation, so towns are drawn to want to manage their presence.

Non-financial metrics: ClearGov intertwines demographic and educational data to better communicate the factors that may be driving costs.

Q: What is the price of your service?

A: ClearGov's annual fee is based on the municipality's annual budget and ranges from $2,500 a year to $25,000 a year. ClearGov launched its service to municipalities in December 2015. Framingham, Sudbury, Holliston, Norwell, Norwell, Easton, Athol, Brookline and Upton are just a few of the towns that have already signed up.

Q: Any future plans?

A: ClearGov will be launching in several new states in the coming months.

Q: Any news to report?

A: ClearGov is currently raising a seed round of investment.

Q: Apart from residing in Hopkinton, do you have any other MetroWest connections?

A: I was born and raised in Framingham and graduated from Framingham High School in 1995.

ClearGov's website is www.ClearGov.com.

The Milford Daily News

By Bob Tremblay
Daily News Staff

Posted Jul. 11, 2016 at 12:01 AM

Comparing Financing Structures for Student Housing.

Please join Orrick and The Bond Buyer for an informative webinar that will focus on comparing and contrasting four different tax-exempt bond financing structures for student housing. Comparison of these structures will cover the spectrum of allowable legal transaction types and delve into the legal and policy issues specific to tax-exempt student housing finance.

Topics to be addressed include:

- University revenue bonds for projects owned by the university
- Auxiliary revenue bonds for projects owned by a university-controlled auxiliary
- Conduit revenue bonds for projects owned by a nonprofit not controlled by the university
- Governmental purpose revenue bonds for projects owned by a government agency not controlled by the university (P3).
- Specialized tax issues and compatibility with P3 procurement will also be addressed

Register Now

July 27, 2016
12 pm ET/9 am PT

Speakers:

Chas Cardall
Partner
Orrick

John Wang
Partner
Orrick

Roger Davis
Partner
Orrick

Who Should Attend:

- College and University Administrators and Finance Officers
- Student Housing Developers and Operators
- Conduit and Other Relevant Bond Issuers
- Financial Advisors
- Investment Bankers

DOL Fiduciary Rule Gets It Half Right On the Municipal Bond Market.

Shrinking the pool of muni sellers does not help investors

While some modifications have been made, municipal-bond investors are still left in a potentially tight spot with regard to the Department of Labor's fiduciary rule.

To its credit, the DOL seems to be listening to feedback with an open mind, which was illustrated by a revision to the 2015 draft version of the rule. Originally, firms acting as principals would have been prohibited from directly purchasing and selling muni bonds from or into a client's retirement account. The April version of the rule was changed to allow principals, which hold muni bond inventories, to purchase bonds from clients, essentially expanding the market of potential buyers of the bonds.

This is good for investors. The DOL clearly recognized that, particularly in times of market stress, there is no logical upside to limiting the universe of potential buyers of a security that an investor wants to sell.

However, for some reason, the DOL seems to be holding firm, for the time being, on not allowing principals to sell muni bonds out of its inventory to clients investing through their individual retirement accounts.

For a lot of financial advisers this might seem like a small or even a non-issue. Some might argue

that it's more important that a client has better access to a buyer of a security, particularly in times of market turbulence, than a seller.

But, considering the breadth and depth of the sweeping DOL rule, this looks more like an oversight, which could negatively affect investors in muni bonds.

To be clear, prohibiting firms that hold bond inventories from selling muni bonds to clients in their IRA accounts doesn't mean those clients can't buy muni bonds — it just means the principal can't participate or compete with other broker-dealers looking to sell bonds to that investor.

The logic behind this is not clear, especially when the DOL has already revised its rule to allow principals to buy muni bonds from clients in IRA accounts.

A statement from the DOL regarding the principal transaction exemption that allowed for the purchase, but not the sale to investors in retirement accounts, failed to address the specific issue. However, it alluded to a means of seeking a specific exemption to this aspect of the rule.

"This is an area that was subject to public comments and, in fact, the department did make changes from the proposed principal transactions exemption," the statement reads.

"We also added a mechanism for parties wishing to expand the exemption as it applies to purchases by plans and IRAs, if parties seek an individual exemption, and we made changes so that municipal bonds can be sold in agency and riskless principal transactions under the [best interest contract] exemption," according to the statement.

In other words, without further comment or clarification from the DOL, one might conclude the rule is leaving a loophole for those principals willing to jump through some hoops.

Based on that, the question remains as to why the DOL didn't just open up the sale to retirement plan clients the same way it opened it up to purchases?

As the DOL pointed out, this particular limitation does not only apply to muni bonds, it also applies to some securities that don't meet certain liquidity or investment-grade standards.

But one reason it could negatively affect investors in muni bonds is that the $3.5 trillion municipal bond market is made up of 65,000 different issuers of debt. This is not a globally commoditized market, like Treasury bonds or even corporates.

The muni bond market is made up of participants with developed expertise in specific markets, but not necessarily all markets, or all 65,000 issuers across the country.

With that in mind, it makes even less sense to limit the number of participants available to sell bonds to investors.

"The DOL recognized that when the market is falling there's no reason to limit the pool of potential buyers of a security, but why are they still limiting the pool of potential sellers especially when sellers are required by the rule to put their clients' interests first?" said Ron Bernardi, president of Bernardi Securities.

"We can deal with it," he added. "But in certain instances it might be limiting our clients' choices."

Essentially, unless the DOL can find a way to lift the restrictions on muni bond sales to IRA accounts, it is merely requiring advisers to act as fiduciaries without actually enabling them to act as

fiduciaries.

Investment News

By Jeff Benjamin

Jul 7, 2016 @ 12:09 pm

Cedar Rapids, SEC Negotiating Settlement Over Federal Securities Violation.

CEDAR RAPIDS — Cedar Rapids officials are negotiating a settlement with the United States Securities and Exchange Commission as part of a nationwide crackdown on securities law violations.

Cedar Rapids self-reported the violation in November 2014 as part of the SEC's Municipalities Continuing Disclosure Cooperation Initiative, which was launched that year. The SEC claims the city violated federal bond disclosure requirements.

Those are in place to guard against fraud by providing information to investors considering municipal bonds, which cities issue to pay for a variety of functions and construction projects.

The SEC's disclosure initiative covers bond transactions dating back to September 2009, according to a city document briefing the City Council on the matter. However, city spokeswoman Maria Johnson said on Friday the 2007 and 2008 filings were late, prompting the self-reporting.

The City Council last month approved for City Manager Jeff Pomeranz to "negotiate, approve, and make the offer of settlement" to the SEC.

The city self-reported its violations in November 2014 in advance of a Dec. 1, 2014 reporting deadline set forth in the SEC initiative.

According to the SEC, bond issuers are required to provide continuing disclosure about "its financial condition and operating data," and disclose if they've failed to comply to previous commitments for disclosure.

Johnson said the settlement is being handled by city and SEC attorneys, similar to litigation, and as such the communications are considered confidential. She said more details will be released when the settlement is final. The SEC did not have a formal timetable for a decision, but it is expected soon, she said.

The city outlined the parameters for its settlement, which is consistent with an overview of the initiative by the SEC.

"Settlement will include consenting to adopting written policies and procedures and periodic training related to continuing disclosure obligations, comply with existing continuing disclosure undertakings, and disclosure of the terms of its settlement with the SEC in future bond offering materials," according to the city briefing.

SEC in its overview states its enforcement division would recommend no fine for self-reporting municipalities, but no assurances are provided for municipal officials "if they have engaged in violations of the federal securities laws."

The Government Finance Officers Association of the United States and Canada has been providing briefs about the initiative for its members. The association noted last month the SEC is requesting an “extraordinarily short turnaround for the settlements” once offered, as few as five to 10 days.

In February, the association stated as part of a similar crackdown in the private sector, 72 broker and underwriter firms paid more than $18 million over three rounds of settlements “for failing to identify misstatements and omissions before offering and selling bonds.” The association said it wasn’t clear how many issuer settlements it was pursuing.

The SEC declined to comment, through its press office.

by B.A. Morelli

The Gazette

Jul 8, 2016 at 10:01 pm

P3s and Tax-Exempt Bonds: Butler Snow

In the past, states and local governments have relied in large part on low-cost tax-exempt financing to meet their infrastructure needs. While there is a growing consensus that our present infrastructure needs are great, many states and local governments are finding it more difficult to continue to borrow to address such needs due to a number of factors, including constitutional and statutory debt limitations, mounting pension liabilities and flat and/or declining revenues. As a result, a number of states and local governments have turned to public-private partnerships (“P3s”) to address infrastructure needs. P3s have been successfully used in Western Europe and Canada for many years but have only recently taken root in the United States. A P3 is an arrangement between a governmental entity and a private entity that allows for greater private sector investment and participation in public projects. Sectors where P3s have been used include transportation, energy (including municipal electric and gas generation and distribution facilities, as well as renewable energy projects), telecommunications, water and wastewater, governmental buildings, healthcare, education, housing (affordable, senior, student and military) and hospitality. While Federal tax law requirements often force governmental entities to choose between low-cost tax-exempt financing and P3s, there are a number of proposals pending that would expand the ability of governmental entities to use both together.

Under Federal tax law, governmental entities may only issue tax-exempt governmental bonds to finance projects where there is little to no private business use. Private business use can arise from any number of arrangements with private entities, including leases and management contracts. Until recently, management contracts generally had to fit within one of the safe harbors set forth in IRS Rev. Proc. 97-13, which essentially only allows for compensation to the private party to be a fixed amount or a fixed amount per unit of service. However, the IRS has recently provided more flexibility with the respect to the terms of such arrangements. Notice 2014-67 added to the list of allowable agreements an agreement where the compensation paid to a private party may include a percentage of gross revenues or expenses of a facility (but not both) so long as the term of the contract is not more than 5 years. In addition, the Notice clarified that a productivity reward generally does not cause the compensation to be based on a share of net profits, which would result in private use, if the eligibility for such award is based on the quality of the services rather than increases in revenues or decreases in expenses and the amount is a stated dollar amount. Even more

recently, the IRS released Private Letter Ruling1 201622003, which approved a management contract where a portion of the compensation is an incentive fee that is partly triggered by a variant of net profits. The IRS found that the incentive fee was not structured in such a way that its amount rose in proportion to increases in net profits or fell in proportion to decreases in net profits, and therefore ultimately was not based on a share of net profits. The IRS has indicated that it intends to publish further guidance on management contracts sometime this year, and it is our hope that such guidance will allow for even more flexibility with respect to the terms of such agreements.

In addition to guidance on management contracts, in 2015, the IRS released final allocation and accounting regulations that will also help to facilitate P3s. These regulations allow for "mixed-use" projects where the governmental portion is financed with tax-exempt bonds and the private portion is financed with equity. In addition, with respect to partnerships, the new regulations look through to the partners so that the amount of private business use is only the private partner's use of the property.

In addition to tax-exempt governmental bonds, Federal tax law currently allows tax-exempt private activity bonds to be issued to finance a variety of specified projects, including airports, water and sewer infrastructure, solid waste facilities, public education facilities and highway infrastructure. In fact, a number of large P3 projects in the transportation sector have paired credit assistance under the Transportation Infrastructure Finance and Innovation Act ("TIFIA") with tax-exempt qualified highway facility private activity bonds. There are also several administration and congressional proposals to enhance existing private activity bonds and to add new categories of private activity bonds. As part of his 2016 proposed budget, President Obama presented the concept of qualified private infrastructure bonds and there is proposed legislation in Congress that would create Move America Bonds, both of which would help encourage private investment in infrastructure through P3s by allowing for tax-exempt financing of certain types of public facilities where there is private use. Another legislative proposal would add to the list of tax-exempt private activity bonds certain types of governmental buildings and thus allow for state and local governments to utilize tax-exempt financing for P3 projects involving public libraries, public universities and colleges, courthouses, public hospitals and health care, research and laboratory facilities, government offices, and public safety facilities. Under current law, the amount of many private activity bonds that may be issued annually is limited, but water and wastewater infrastructure P3 projects, which municipalities all over the country have increasingly looked to in order to fulfill the massive need for capital improvements in that sector, could be bolstered by proposed legislation that would remove this volume cap limitation for private activity water and wastewater bonds. In a related development, Congress also recently amended the Water Infrastructure Finance and Innovation Act ("WIFIA," and modeled after TIFIA) to allow the use of tax-exempt bonds with WIFIA credit assistance.

All in all, leaders in Washington seem to have recognized the growing use of P3s by state and local governments, have taken positive steps to facilitate the combination of P3s and low-cost tax-exempt financing, and are poised to take further action in this area.

by Michael J. Bradshaw

Last Updated: July 6 2016

Butler Snow LLP

What MSRB Wants to Change in New Academic Data Product with SEC.

WASHINGTON – The Municipal Securities Rulemaking Board is asking the Securities and Exchange Commission to approve rule changes to create a new academic trade product with anonymous dealer identifiers.

The MSRB said in its filing that establishing the data product, which would only be available to researchers associated with a higher education institution, "would add to the MSRB's current offering of data products and further the MSRB's mission to improve the transparency of the municipal securities market."

The self-regulator said it may consider expanding the distribution of the product at some point in the future after the SEC approves the preliminary introduction.

Dealers are currently required to report all executed transactions in munis to the Real-Time Transaction Reporting System within 15 minutes of the time of trade. The MSRB makes some of that post-trade information available to the general public for free and allows data vendors, industry utilities and others to access more information on a subscription basis. However, none of the available information currently contains dealer identifiers.

The new academic data product would be subscription based and require the researchers to pay a fee.

Academics largely welcomed the new idea when it was first proposed last summer, agreeing that it would bring more transparency to the municipal market. But some dealer groups relayed member concerns that the product and availability of identifiers would open them up to reverse engineering.

The MSRB said in its filing to the SEC that it took those past concerns into account while updating the original version.

Bond Dealers of America said in a September 2015 comment letter about the product that it felt the current information the MSRB makes available to the public includes a "sufficient level of detail to support rigorous study." The Securities Industry and Financial Markets Association added that it did not feel the MSRB would put enough protections in place to prevent the reverse engineering.

One possible remedy SIFMA suggested was to change the "aging" requirement for the data to four years from the two MSRB originally proposed. Other individuals and firms made suggestions ranging from one year to four. The MSRB ultimately decided to change its requirement to a mandatory three-year wait before data can be released, after reviewing the comments.

SIFMA also recommended that the MSRB exclude primary trades from the product's data sets, arguing the currently available public data without dealer identifiers is already subject to reverse engineering.

The MSRB agreed with that suggestion and said in its filing to the SEC that the product would not include list offering price and takedown transaction, which can be used to identify primary market transactions.

The self-regulator, which acknowledged that reverse engineering was a possibility, also listed other steps it plans to take to combat the practice and any harm that could result from it.

Those measures include: providing unique data sets with different anonymized dealer identifiers to each academic; requiring subscribers to sign an agreement stating they will not attempt to reverse engineer the data; prohibiting redistribution of the data in the product; and mandating users disclose each intended use of the data. It would also require the data to be returned or destroyed if the researcher's subscription agreement is terminated.

The board has also promised to clarify the potential liability an academic would have under the subscription agreement and define key terms necessary to complying with the changes in the text of any final agreement an academic would sign before receiving the data product.

The Bond Buyer

By Jack Casey

July 1, 2016

BAML Regains Lead; PFM, California Retain Top Spots.

Bank of America Merrill Lynch stormed back in the second quarter to rank first among municipal underwriters for the first half of 2016, increasing its par amount and market share from a year earlier.

League Tables

Public Financial Management Inc. remained atop the financial advisor league table and the state of California was the largest municipal issuer.

BAML closed the quarter with a par amount of $20.76 billion in 161 issues, or 17.5% market share for the second quarter. For the first half, the firm finished at $33.98 billion in 283 deals, for a 15.8% market share, up from $27.85 billion in 263 deals or 13% market share in the first half of 2015, according to data from Thomson Reuters.

Overall, the top 10 firms combined for a total par amount of $214.51 billion in 6,417 transactions compared to $215.01 billion in 6,839 transactions in the first half of last year.

"It's a spectacular opportunity right now and we are working hard at helping our clients to come to market and take advantage of the low rates," Jonathan Nordstrom, head of municipal sales and trading at Raymond James, which climbed two places to eighth in the first half ranking. "There is excellent interest in muni bonds and we are even seeing the international customer coming in, it's an incredible market right now but rates could go lower."

Citi, which finished in first place after the first quarter, dropped back down to second place with a total of $27.29 billion in 290 deals or 12.7% market share in the first half. That compares with to $25.34 billion in 279 deals or 11.8% market share in the same period last year, when Citi was also in second place.

For the second quarter, Citi had a par amount of $14.05 billion or 11.8% market share. Citi was the lead bookrunner on some of the largest deals so far this year, including the $2.9 billion general obligation sale in March from California and the $2.4 billion LaGuardia airport deal, which was the biggest airport and alternative minimum tax deal to ever hit the market.

JPMorgan finished both the quarter and first half in third place. For the quarter, the bank had $13.56 billion in 133 transactions or 11.4% market share. JPMorgan finished the half with $22.03 billion in 221 deals or 10.3% market share, down from $24.67 billion in 245 deals or 11.5% market share in the first half of last year, when it also ranked third.

Morgan Stanley finished the first half in fourth place, with $14.91 billion or 7% market share, down from $18.02 billion or 8.4% market share a year earlier. They also finished in fourth place for the second quarter, winding up with $7.92 billion or 6.7% market share for the past three months.

Rounding out the top five is Wells Fargo, which moved up one spot from last year and finished the first half with $14.75 billion or 6.9% of the market, which compares to $11.54 billion or 5.4% in the first half of 2015, which was good for sixth place.

RBC Capital Markets was sixth with $10.94 billion, followed by Stifel with $9.14 billion but had the most number of deals with 485.

Raymond James was the biggest mover, jumping up two spaces to number eight with $8.98 billion.

“We are pleased with how the year has gone, working hard to try and increase market share and influence and impact on our customers,” said Nordstrom. “Our competitive underwriting desk has done a great job of pulling business and that is connected with our sales force, who continues to get better. We are seeing more engagement with customers and that has helped propel our performance.”

Piper Jaffray was ninth with $8.13 billion and Barclays finishes the top 10 with $6.97 billion.

Financial Advisors

Public Financial Management was once again atop the first half league tables for financial advisors, as they increased its par amount and market share from last year. PFM finished the half with $39.50 billion or 21.9% market share, which was up from the $35.65 billion and 19.8% market share from the first half of 2015.

“PFM was pleased to increase our market share during the first half of the year compared to the first half of 2015, even as bond volume declined,” said John Bonow, chief executive officer and managing director for the PFM Group. “We believe that the increase is due to two factors: our consistent ability to help clients identify refinancing opportunities in the prevailing low rate environment and a good number of clients focused on creative and sustainable ways to finance much needed projects and infrastructure.”

Bonow said low borrowing rates seem to have real traction as the world digests the U.K. exit path from the European Union.

“Domestic economic indicators continue to be mixed, but worldwide financial and economic uncertainty will likely depress the appetite for the Federal Reserve to take action on rate increases and that may encourage many state and local governments to make longer-term commitments to infrastructure and social program investments,” he said.

Bonow said he expects PFM to continue to bring effective solutions to its current and future clients who understand the value PFM provides through our practical and sustainable financial solutions to their challenges.

Hilltop Securities, which was in third place at the end of the first quarter, moved up into second

place to finish the first half, the same position they were in at the end of the first half last year. Hilltop's par amount was $18.49 billion. Public Resources Advisory Group finished the half with $17.36 billion for third place, after finishing the first quarter in second place.

The two biggest movers in the ranking were the firms rounding out the top five: Acacia Financial Group Inc. and Kaufman Hall and Associates Inc.

Acacia moved up to fourth, after finishing the first half of 2015 in sixth place. The New Jersey based company finished the first half with $8.30 billion, up from the $4.21 billion in the first half of 2015.

Kaufman Hall and Associates moved into the fifth spot after posting $4.04 billion in the first half of this year.

Negotiated Underwriting

BAML claimed the top spot for underwriting negotiated deals, with a par amount of $22.39 billion for the first half this year, compared with $17.78 billion during the same period last year when it finished third. Citi remained in second, the same spot as in the first half last year, with $19.91 billion. JPMorgan, which was in first at this point last year, fell to third with $15.50 billion. Morgan Stanley was fourth with $10.83 billion and RBC fifth with $10.68 billion.

Wells Fargo ranked sixth with $10.61 billion, followed by Stifel with $8.74 billion, Piper with $7.00 billion, Raymond James with $6.84 billion and Barclays with $6.31 billion.

Competitive Underwriting

BAML finished the first quarter atop the ranking for competitive-only deals with $11.59 billion, followed by Citi with $7.39 billion. JP Morgan was third with $6.52 billion. Robert W Baird & Co., was fourth with $4.28 billion, moving up from sixth at this point last year and Wells Fargo was fifth with $4.14 billion, as it made the biggest year-over-year leap, moving up from sixth place a year ago.

Morgan Stanley was sixth with $4.08 billion, followed by Raymond James with $2.14 billion, Hutchinson Shockey Erley & Co. with $1.24 billion, Piper with $1.13 billion and FTN Financial Capital Markets with $885 million.

Top Issuers

The state of California is the No. 1 issuer for the first half of the year, retaining the top spot it held after the first quarter of the year. In total so far this year, the Golden State has issued $4.52 billion of bonds.

"Our general obligation bonds are what we issued the most of so far this first half," said Tim Schaefer, deputy treasurer, public finance, for California Treasurer John Chiang.

The Golden State came with a whopping $2.9 billion GO sale in March, which was more than half refunding. The final amount was split into $1.1 of new money and $1.8 of refunding, which gave the state $294 million of present value savings. In April, they came back with $1.5 billion, which was mostly refunding and they netted another $195 million of PV savings.

Schaefer said that refundings are driving the volume.

"With interest rates as low as they are, we are being very aggressive in refunding everything we can get our hands on as long as it makes economic sense," he said. "The market has been very kind to us

in the last 18 months, offering us very attractive yields and trading at much tighter spreads from the MMD scale that our ratings would imply."

Schaefer also said that the state is in much better financial position than it has been in a long time and that the market appears to be telling us they have greater confidence in the state's ability to manage it out of tough situations.

"As long as the supply and demand stays this way, we will take advantage. We are high grade, but not yet triple-A, so that hand full of basis points of extra yield makes a difference."

Although an issuer from the west coast held the top spot, the east coast was well represented with four of the top five spots, including three issuers from New York City.

The New York Transportation Development Corp. was second with $3.25 billion, most of which came during the mega LaGuardia deal.

The NYC Transitional Finance Authority was third with $2.65 billion, followed closely by the Commonwealth of Massachusetts with $2.64 billion. The NYC Metropolitan Transportation Authority rounds out of the top five with $2.62 billion.

The Bond Buyer

By Aaron Weitzman

July 6, 2016

State Groups Challenging G-37 Ask Court to Consolidate Cases.

WASHINGTON – Three state Republican parties challenging the constitutionality of a revised Municipal Securities Rulemaking Board anti-pay-to-play rule are asking a federal circuit court to streamline the legal process by consolidating their two pending cases.

The Tennessee Republican Party filed a challenge to the MSRB's revised Rule G-37 on political contributions for muni advisors as well as dealers on April 12 in the U.S. Court of Appeals for the Sixth Circuit in Cincinnati. The challenge named the Securities and Exchange Commission and MSRB as respondents because MSRB rules are subject to SEC approval. The court's jurisdiction covers Tennessee, Kentucky, Michigan, and Ohio.

Two other groups, the Georgia Republican Party and the New York State Committee, filed a petition against the MSRB and SEC on April 13 in the U.S. Court of Appeals for the Eleventh Circuit in Atlanta. That court's jurisdiction covers Georgia, Alabama, and Florida.

The cases are now both before the Sixth Circuit after SEC lawyers successfully argued that federal appellate procedure required the case filed in the Atlanta court to be transferred because it was filed after the first petition.

Now that the two cases are pending in the same circuit court, the lawyers for the three Republican parties are arguing that consolidating them will "conserve both the court's and the parties' resources and promote the interests of judicial economy and efficiency."

The parties are asking the Sixth Circuit to set aside and vacate revisions to the rule, which has

applied to dealers since 1994 and was recently revised to include municipal advisors beginning on Aug. 17.

The MSRB, which is represented by Joseph Guerra, a co-leader of Sidley Austin's Supreme Court and appellate practice in DC, and MSRB general counsel for regulatory affairs Michael Post, previously asked that the petition filed in the Sixth Circuit be transferred to the U.S. Court of Appeals for the District of Columbia because the MSRB and SEC, as well as all counsel representing both sides in the case were located in the area.

Sixth Circuit judges denied that petition on June 30. The state parties plan to raise the same challenges to the rule in both cases, wrote one of their lawyers Christopher Bartolomucci, a partner with the law firm Bancroft in D.C., in the July 1 motion to consolidate. Edmund LaCour Jr., an associate with Bancroft, and Jason Torchinsky, a partner at Virginia-based Holtzman Vogel Josefiak Torchinsky, are also representing the Republican organizations.

Under the revised Rule G-37, municipal advisors, similarly to dealers, will be barred from engaging in municipal advisory business with an issuer for two years if the firm, one of its professionals, or a political action committee that is controlled by the firm or an associated professional, makes significant contributions to an issuer official who can influence the award of municipal advisory business.

The revised rule contains a de minimis provision like the original rule. It would allow a municipal finance professional (MFP) or a municipal advisor professional (MAP) to give a contribution of up to $250 to any candidate for whom he or she can vote for without triggering the two-year ban.

The Republican groups argue that the rule forces MAs and dealers, as well as their employees, to choose between exercising their constitutional right to support candidates through contributions and continuing to provide advisory and dealer services. That type of infringement is only allowed under Supreme Court precedent when it is done to prevent quid pro quo corruption, the parties' lawyers said, something that is not the case for political contributions that are not made in connection with efforts to control an officeholders' actions.

The state parties' lawyers also argued in previous filings that Congress did not empower the SEC or MSRB to regulate political contributions and instead made such regulation "the exclusive province" of Congress and the Federal Election Commission.

Rule G-37 was previously challenged after the SEC first approved it for dealers in 1994. Alabama bond dealer William Blount filed suit against the MSRB and SEC, arguing the rule violated his constitutional right to free speech. The D.C. Circuit rejected that argument in a 1995 ruling, saying the rule was "narrowly tailored to serve a compelling government interest."

The MSRB has maintained that the rule is a "vital measure promoting the integrity" of the muni market and has said it intends to "vigorously defend the policies it believes should be in place to address quid pro quo corruption and the appearance of this type of corruption."

The Bond Buyer

By Jack Casey

July 5, 2016

The Rise Of Social Impact Bonds.

The social impact bond or pay for success program ("PFS program") is an alternative private financing model used to test social impact programs before governments step up to finance such programs. In these programs the government contracts with a private sector intermediary to obtain social services. The intermediary obtains funds for the services by raising capital from private commercial and/or philanthropic groups. The intermediary uses these funds to pay a service provider to deliver the social services. Over a set period of time, performance of the social services is measured, usually by a third party consultant, based upon up-front established criteria. After the review period, the government pays the investors only if the performance targets are met.

As of the end of 2015, there were eight (8) established PFS contracts in the United States and more in the pipeline. The Corporation for National and Community Service through its Social Innovation Fund launched a PFS program and selected eight (8) initial grantees through which 43 programs are receiving technical assistance. Banks such as Goldman Sachs, Northern Trust, Bank of America, Merrill Lynch and Santander Bank have invested capital in PFS programs. In addition, federal legislation, known as the Social Impact Partnership Act, has been introduced to help establish PFS programs, and six (6) states (Colorado, Idaho, Massachusetts, Oklahoma, Texas and Utah) have passed PFS enabling legislation. Other states are considering legislation or participating without legislation.

Despite the trend toward expanding PFS programs, there are some criticisms. PFS programs can be more expensive than direct government funding due to costs of legal services, program administration and loan management. There are also questions about how outcomes are measured, since the "success" of most programs is measured in a relatively short time frame considering the deep-rooted social problems that are being addressed. In addition, data suggest that investors want to minimize risk and back programs where there is more evidence of possible success. Detractors of PFS programs argue that governments should finance these programs themselves based upon the probability of success. Despite the questions and criticisms, it appears from the significant increase in PFS programs that this type of investment tool is here to stay, at least in the short-term.

by Francina J. Critzman

Last Updated: July 8 2016

Miles & Stockbridge

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

How the Muni Market Sails Past Disaster.

How do they do it?

Municipal bonds maintained a trajectory to the record highs reached last week as a series of bankruptcies, budget debacles and defaults failed to damage investor confidence in the industry as a whole.

Municipal analysts and experts say decades of improvements – from enhanced disclosure and heightened enforcement to increased transparency and growth of technological advancements – have helped the broader tax-exempt market build immunity to isolated debacles in distressed municipalities.

Improved credit surveillance and information flow, advancements in online trading platforms, better market technicals, and the economy have helped investors shrug off a range of fiscal debacles from today's credit crises in Puerto Rico and Illinois, to the historic $18 billion Detroit bankruptcy in 2013 and the $2 billion Orange County, Calif., default back in 1994.

Robert Doty, president of Annapolis, Md.-based municipal securities consulting firm AGFS attributes munis' staying power to better disclosure practices and market discipline enforced by the Securities & Exchange Commission.

"The market continues to function even though we have a major issuer in the market – Puerto Rico – defaulting, and Illinois is teetering," he said.

Disclosure and Market Stability

Some analysts say the stability of the market is tied to economic progress and the general credit worthiness and demand for tax efficiency in the $3.7 trillion municipal market.

"As long as the tax base and the population remain near current levels the market will continue to let Illinois kick the can down the road," Michael Pietronico, chief executive officer at Miller Tabak Asset Management, said in an interview last week.

Overall, the municipal bond market has awarded lower borrowing costs to issuers with strengthening finances, and that has helped the market retain its positive nature in the midst of recent credit and fiscal crises, Pietronico said.

"Issuers believe market access is a right when in fact it is a privilege," he added.

"Detroit is a prime example of that phenomenon as they leaned on the rest of the state of Michigan to gain market access when in many minds they were bankrupt and unable to fund their own liabilities."

"Puerto Rico understands that 'penalty box' quite well, while states such as Illinois continue to pay a yield premium in a market starved for yield," Pietronico added.

Doty, who has over 45 years of experience in the municipal industry, said disclosure and transparency enforced by the SEC have continued to improve, protecting today's market in the face of credit debacles.

"We have a lot of guidance and the market has improved considerably," he said, referring not only to SEC disclosure and enforcement practices, but also the guidance and market support from the National Association of Bond Lawyers and National Federation of Municipal Analysts.

Problematic credits, such as the state of Illinois, Chicago, and New Jersey are viewed as "one-offs" that are isolated from the general market, according to Jeffrey Lipton, managing director and head of fixed income research at Oppenheimer & Co.

"These are high profile names that take up significant headline real estate, and for the most part, should not deliver very many surprises given the information flow and heavy analytical coverage,"

Lipton said. “The muni market is a $3.6 trillion entity with an extremely high percentage of bonds meeting timely payment of principal and interest. The asset class also experiences much higher recovery rates as compared to corporate bonds.”

David Litvack, managing director and head of tax-exempt research at U.S. Trust, Bank of America Private Wealth Management said the municipal market is “benefitting from a very favorable technical environment, in which demand for tax exempt income is overwhelming available supply.”

New deals are oversubscribed, and low nominal rates have caused credit spreads to tighten over the last few years as investors search for yield, he said.

“We believe Puerto Rico’s credit problems have not resulted in contagion to the broader muni market, because the commonwealth is seen as an outlier,” Litvack added.

Puerto Rico’s fiscal and economic declines with associated bond defaults are not expected to have a systemic impact upon the broader municipal market, because its fiscal story has been widely publicized in recent years, according to Lipton.

“There has been a substantive shift in trading participants and commonwealth bond ownership to more sophisticated investors such as hedge funds and distressed buyers,” Lipton said in an interview last week. “We continue to believe that any temporary market sell-off that may be triggered by a Puerto Rico event could give rise to buying opportunities,” he said.

Historical Comparison

Decades of industry advancements – some as basic as information flow – have helped the market evolve and strengthen.

“In the 1970’s the market still had physical certificates and coupons to clip,” John Donaldson, director of fixed income at The Haverford Trust Co. said last week. “Today, municipal bonds trade and settle like any other issue.”

Transparency has evolved and contributed to better market participation.

“We can see the details on any public issue from our Bloomberg terminal; we can access updated financial reports with a click,” Donaldson said. “Back then it could easily take a week to get information necessary to make a decision on a credit you did not own.

“Price information in the form of MSRB trading data is also transparent. Secondary market pricing in the 1970’s was anything but transparent,” he added.

The advent of official statements on general obligation deals helped to define the practice of increased disclosure to and education of investors over the last three decades, Doty of AGFS said.

The market in recent years has fared significantly better than it did back in the mid-1970s when New York City faced default on its GO debt in 1975 due to the ill effects of a stagnant economy, according to Doty. It narrowly avoided default after the Teacher’s Union agreed to invest $150 million to buy Municipal Assistance Corporation bonds, followed by a $1.3 billion in federal loans to the city for three years.

“The market was extremely disruptive when New York City had its problems, but it’s a contrast, and the difference in my view is that investors can distinguish between credits and back then they couldn’t,” Doty said. “Official statements weren’t being used very much for GOs, and New York City

didn’t use one until 1975.”

Now, traders are able to value so-called troubled bonds based on the specific risk and arrive at yields that satisfy the investor community – something that couldn’t be done in the 1970s because the pricing and credit information wasn’t easily and readily accessible, Doty of AGFS said.

Despite the distressed outliers, investors can rely on municipal bonds for capital preservation, portfolio liquidity, tax-exemption, as well as strong credit quality, Lipton said.

“The muni market of 2016 has, in some ways, become an extension of 2015, but overall performance is poised higher this year,” he added. “Muni bond buyers have been nicely rewarded just by staying invested and clipping their coupons,” he added. “Year-to-date, Barclays shows munis have returned 4.49%, versus 5.52% for Treasuries.”

Lipton said a so-called “perfect storm” may create an attractive municipal bond market that may lead to even lower yields – even with the ongoing debacles.

“A more accommodative Fed, the Brexit vote – with all of the associated uncertainty – variability in economic data, strong market technicals, and an enduring competitive edge are all converging,” Lipton said. “This dynamic is expected to extend the market’s 38 consecutive-week run of positive mutual fund flows, despite noted retail and institutional resistance to currently lofty prices.”

The Bond Buyer

By Christine Albano

July 1, 2016

MSRB Reminds Municipal Securities Dealers of July 18, 2016 Effective Date of Changes to Trade Reporting Requirements.

The Municipal Securities Rulemaking Board (MSRB) reminds municipal securities dealers that amendments to MSRB Rule G-14 on transaction reporting become effective on July 18, 2016. The amendments will enhance the post-trade price transparency information provided through the MSRB’s Real-Time Transaction Reporting System by:

- Establishing a new indicator for customer trades not involving transaction-based compensation;
- Establishing a new indicator for alternative trading system (ATS) transactions;
- Expanding the application of the existing list offering price and takedown indicator to cases involving distribution participant dealers and takedown transactions that are not at a discount from the list offering price; and
- Eliminating the requirement for dealers to report yield on customer trade reports and, instead, enabling the MSRB to calculate and disseminate yield on customer trades.

View the regulatory notice.
