
Municipal Bond Sales to Rise in January After 23% Jump in 2015.

Municipal bond sales in the U.S. are set to increase in the next month while the amount of redemptions and maturing debt falls following a year when new issues and the size of the market expanded.

States and localities plan to issue \$8.3 billion of bonds over the next 30 days, according to data compiled by Bloomberg. A week ago, the calendar showed \$5.6 billion planned for the coming month. Supply figures exclude derivatives and variable-rate debt. Some municipalities set their deals less than a month before borrowing.

Municipalities have announced \$9.8 billion of redemptions and an additional \$10.3 billion of debt matures in the next 30 days, compared with the \$20.1 billion total that was scheduled a week ago.

For all of 2015, sales rose 23 percent to \$376.8 billion from the \$305.5 total in 2014, Bloomberg data show. New issues fell short of the record \$407.7 billion in 2010. The U.S. municipal market expanded by 0.7 percent this year to \$3.53 trillion.

Issuers from New Jersey have the most debt coming due this month, with \$1.6 billion, followed by Illinois at \$1.43 billion and Indiana with \$1 billion. New Jersey Turnpike Authority has the biggest amount of securities maturing, with \$1.28 billion.

Investors added \$647 million to mutual funds that target municipal securities in the week ended December 16, compared with an increase of \$825 million in the previous period, according to Investment Company Institute data compiled by Bloomberg.

Exchange-traded funds that buy municipal debt increased by \$160 million last week, boosting the value of the ETFs 0.85 percent to \$18.9 billion.

State and local debt maturing in 10 years now yields 89.2 percent of Treasuries, compared with 90.1 percent in the previous session and the 200-day moving average of 100.9 percent, Bloomberg data show.

Bonds of California and Massachusetts had the best performance over the past year compared with the average yield of AAA rated 10-year securities, the data shows. Yields on California's securities narrowed 9 basis points to 2.18 percent while Massachusetts' declined 8 basis points to 2.11 percent. Puerto Rico and New Jersey handed investors the worst results. The yield gap on Puerto Rico bonds widened 147 basis points to 11.82 percent and New Jersey's rose 8 basis points to 2.91 percent.

This story was produced by the Bloomberg Automated News Generator.

- [Doubly Bound: The Cost of Issuing Municipal Bonds.](#)
 - [Financing Infrastructure Through Resilience Bonds.](#)
 - [SIFMA Issues 2016 Municipal Issuance Survey.](#)
 - [Dealers Want MSRB, FINRA to Adopt Same, Less Costly Markup Proposals.](#)
 - [Moody's Seminar: Financial Analysis of Local Governments](#)
 - [MSRB to Implement Core Conduct Rule for Municipal Advisors.](#)
 - [GASB Issues Guidance for External Investment Pools and Pool Participants Ahead of SEC Rule Change.](#)
 - [GASB Issues Proposed Guidance on Fiduciary Activities, Asset Retirement Obligations, and Pensions.](#)
 - [Fish v. Township of Lower Merion](#) - Supreme Court of Pennsylvania holds that Township's application of business privilege tax to businesses whose sole income consisted of rent payments on leased real property was not barred by provision of Local Tax Enabling Act precluding "any tax" on leases or lease transactions; disapproving *Cheltenham Twp. v. Cheltenham Cinema, Inc.* and *F.J. Busse Co. v. City of Pittsburgh*.
 - [Ordinance 2354-12 of Tp. of West Orange, Essex County v. Township of West Orange](#) - Supreme Court of New Jersey holds that Township's redevelopment bond ordinance was not subject to referendum, where Township passed ordinance through exercise of redevelopment powers conferred on municipalities by Local Redevelopment and Housing Law.
 - And finally, although perhaps not the ideal probationer, the community service participant in [Giordanella v. City of New York](#) who attacked his supervisor with a rake is definitely your secret weapon in the event of the dreaded Zucchini Apocalypse. Shouldn't be hard to find, as he undoubtedly occupies a very, very fixed address.
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MUNICIPAL ORDINANCE - CALIFORNIA

[Harrison v. City of Rancho Mirage](#)

Court of Appeal, Fourth District, Division 2, California - December 18, 2015 - Cal.Rptr.3d - 2015 WL 9258957

Condominium owner brought complaint for declaratory and injunctive relief, alleging that city ordinance, which provided rules and regulations for renting private homes as short-term vacation rentals and required that a person over the age of 30 sign a contract, violated Unruh Civil Rights Act. The Superior Court granted city's demurrer without leave to amend, and owner appealed.

The Court of Appeal held that:

- City was not acting as a "business establishment" under the Unruh Act, and
- Owner could not amend complaint to challenge ordinance on grounds it violated planning and land use law.

City was not acting as a "business establishment" when it amended existing municipal code regarding short term vacation rentals of private homes to require that a person over the age of 30

sign a contract, and thus Unruh Civil Rights Act did not apply to city's action; city merely increased the minimum age of a responsible person from the age of 21 years to 30, and city was not directly discriminating against anyone.

ZONING - CONNECTICUT

[E and F Associates, LLC v. Zoning Bd. of Appeals of Town of Fairfield](#)

Supreme Court of Connecticut - December 22, 2015 - A.3d - 320 Conn. 9 - 2015 WL 8730002

Abutting landowner appealed decision of zoning board of appeals granting a zoning variance that allowed the vertical expansion of a nonconforming building in a business district zone. The Superior Court dismissed appeal. Abutting landowner appealed.

The Supreme Court of Connecticut held that peculiar characteristics of property that made it difficult to construct a second story on building that would comply with zoning setback requirements did not justify granting a variance, overruling *Stillman v. Zoning Board of Appeals*, 25 Conn.App. 631, 596 A.2d 1; *Jersey v. Zoning Board of Appeals*, 101 Conn.App. 350, 360, 921 A.2d 683; *Giarrantano v. Zoning Board of Appeals*, 60 Conn.App. 446, 453, 760 A.2d 132.

ANNEXATION - IOWA

[Concerned Citizens of Southeast Polk School Dist. v. City Development Bd. of State](#)

Supreme Court of Iowa - December 11, 2015 - N.W.2d - 2015 WL 8526410

Citizens group sought review of decision of city development board approving annexation of land near high school. The District Court affirmed. Citizens group appealed.

The Supreme Court of Iowa held that the notice of appeal from a final judgment or order of the district court must be filed within 30 days of the date the judgment or order was electronically filed, not the date of the notice of filing.

UTILITY DISTRICT - MISSOURI

[U.S. v. Geranis](#)

United States Court of Appeals, Eighth Circuit - December 15, 2015 - F.3d - 2015 WL 8957488

United States filed lawsuit on behalf of United States Department of Agriculture (USDA), seeking to enjoin dissolution of county sewer district. Group of voters, customers, ratepayers, and property owners moved to intervene. The United States District Court denied motion, and group appealed. While appeal was pending, parties sought court approval for asset purchase agreement to sell district's assets to private entity and finally dissolve district, and group renewed its motion to intervene. The District Court denied motion, and group appealed.

The Court of Appeals held that alleged violation of group's interest in upholding vote to dissolve

county sewer district did not establish standing to intervene.

Alleged violation of interest of group of voters, customers, ratepayers, and property owners in upholding vote to dissolve county sewer district and immediately dissolving district did not state specific individualized injury necessary to establish standing in federal court to intervene in United States government's action seeking to enjoin dissolution of county sewer district, since interests were shared by all voters who voted to dissolve district, and existing parties had not ignored or attempted to undermine vote in support of dissolution, and sought to effectuate district's dissolution in accordance with Missouri law, which required "no district shall be dissolved until all of its outstanding indebtedness has been paid."

Group of voters, customers, ratepayers, and property owners failed to show that any injury to interest in opposing repayment of revenue bond county sewer district issued to United States Department of Agriculture (USDA) was actual or imminent, and thus group did not state specific individualized injury necessary to establish standing in federal court to intervene in United States government's action seeking to enjoin dissolution of county sewer district. Through lawsuit, parties arranged a solution for repaying USDA that would lower rates, and group's alleged injury would arise only if sale of district's sewer system failed to close, USDA continued to demand payment on revenue bond, and district raised rates to pay the bond obligation.

Group of voters, customers, ratepayers, and property owners failed to establish that enforcement of Missouri environmental and administrative regulations amounted to a "personal and individual" injury necessary to establish standing in federal court to intervene in United States government's action seeking to enjoin dissolution of county sewer district, where group asserted only a generalized grievance, which was available to all members of sewer district.

Alleged violation of interest of group of voters, customers, ratepayers, and property owners in proposing on-site sewage treatment alternatives did not state specific individualized injury necessary to establish standing in federal court to intervene in United States government's action seeking to enjoin dissolution of county sewer district, since any injury group could suffer with regard to ability to construct on-site systems was not "personal and individual" to group, and it was not caused by dissolution of district.

BONDS - NEW JERSEY

[Ordinance 2354-12 of Tp. of West Orange, Essex County v. Township of West Orange](#)

Supreme Court of New Jersey - December 21, 2015 - A.3d - 2015 WL 9282972

Challengers filed action in lieu of prerogative writs, claiming that township's redevelopment bond ordinance was invalid. The Superior Court dismissed action. Challengers appealed. The Superior Court, Appellate Division affirmed.

On certification, the Supreme Court of New Jersey held that:

- Ordinance was not subject to referendum, and
- Filing of referendum petition did not modify 20-day time limitation for filing prerogative-writs action challenging validity of bond ordinance.

Township's redevelopment bond ordinance was not subject to referendum, where township passed

ordinance through exercise of redevelopment powers conferred on municipalities by Local Redevelopment and Housing Law.

Challengers' filing of referendum petition challenging township's municipal bond ordinance did not modify 20-day time limitation for filing prerogative-writs action challenging validity of a bond ordinance.

LIABILITY - NEW YORK

[Giordanella v. City of New York](#)

Supreme Court, Appellate Division, Second Department, New York - December 16, 2015 - N.Y.S.3d - 2015 WL 8825545 - 2015 N.Y. Slip Op. 09251

Employee of city department of sanitation brought personal injury action against city after he was assaulted by participant in community service program with rake, alleging city failed to provide proper security. City moved for summary judgment. The Supreme Court, Queens County, granted motion. Employee appealed.

The Supreme Court, Appellate Division, held that:

- City did not owe special duty to employee to provide proper security, and
- City did not owe statutory duty to employee pursuant to statute directing employers to comply with health and safety regulations.

City did not voluntarily assume duty to city employee, who worked for department of sanitation, for injuries he sustained when he was assaulted with rake by community service participant, and thus city did not owe special duty to employee.

City did not owe statutory duty to department of sanitation employee, who was injured when community service participant assaulted employee with rake, pursuant to statute which applies to recognized hazards that are causing or are likely to cause death or serious physical harm to its employees and directs employer to comply with health and safety regulations.

IMMUNITY - OKLAHOMA

[Gowens v. Barstow](#)

Supreme Court of Oklahoma - December 15, 2015 - P.3d - 2015 WL 8922587 - 2015 OK 85

Motorist brought action against driver of emergency vehicle, who was paramedic supervisor, and his employer, for property damage and injuries sustained in automobile collision. The District Court found that driver was negligent and reckless and awarded motorist damages capped at \$125,000 under the Government Tort Claims Act (GTCA). Employer appealed. The Court of Civil Appeals reversed. Motorist petitioned for writ of certiorari, which was granted.

The Supreme Court of Oklahoma held that:

- Trial court's finding that driver was acting within scope of his employment when he collided with motorist was reasonable;
- Acts performed with reckless disregard do not automatically rise to level constituting malice or bad

faith, as to result in acts being outside of scope of employment under GTCA, overruling *Fehring v. State Ins. Fund*, 19 P.3d 276;

- Evidence supported finding that driver acted with reckless disregard for safety of others;
- Trial court was not required to apportion liability to city; and
- Motorist was entitled to cap of \$125,000 in damages.

Acts performed with reckless disregard do not automatically rise to a level constituting malice or bad faith, as to result in those acts being outside of the scope of employment under the Governmental Tort Claims Act (GTCA) and, while malice or bad faith can be inferred from conduct exhibiting reckless disregard for the rights of others, such determination shall be made on a case-by-case basis; overruling *Fehring v. State Ins. Fund*, 19 P.3d 276.

ZONING - PENNSYLVANIA

[Wyomissing Area School Dist. v. Zoning Hearing Bd. of Wyomissing Borough](#) **Commonwealth Court of Pennsylvania - November 25, 2015 - A.3d - 2015 WL 7566242**

School district applied for zoning permit to erect a fence around athletic fields. Zoning hearing board denied the application. School district appealed, also filing a complaint in mandamus and a motion for peremptory judgment in mandamus, seeking to compel the grant of application. The Court of Common Pleas, Berks County, affirmed, dismissing the mandamus action. School district appealed.

The Commonwealth Court held that:

- Construction of fence around athletic fields located on school property would not amount to an expansion of property's current accessory athletic use, and thus did not require school district to request a special exception under borough ordinance;
- Construction of fence would not create a new "stadium use" and, thus, did not require school district to request a special exception under borough ordinance; and
- Evidence was insufficient to support finding that construction of fence would violate borough ordinance.

UTILITIES - TEXAS

[Kidd v. Texas Public Utility Commission](#)

Court of Appeals of Texas, Austin - November 25, 2015 - S.W.3d - 2015 WL 7697794

Individuals brought action against Public Utilities Commission, following denial of their request for public hearing on their request for rulemaking processes to address concerns related to deployment of certain meters by electric utilities.

The District Court granted Commission's plea to jurisdiction seeking dismissal of individuals' claims. Individuals appealed.

The Court of Appeals held that individuals did not have right to public hearing by Commission and, thus, trial court did not have subject matter jurisdiction over action.

Individuals, who requested that Public Utilities Commission conduct public hearing on their request

for rulemaking processes to address concerns related to deployment of certain meters by electric utilities, did not have right to hearing, and, thus, trial court did not have subject matter jurisdiction, under Administrative Procedure Act, over their action brought against Commission following denial of their request for hearing. While provision of Act waiving sovereign immunity for declaratory judgment action challenging validity of agency rule required individuals to complain of Commission rule to successfully invoke court's jurisdiction, individuals' claims arose in admitted absence of rule and focused on procedure Commission employed prior to its decision not to adopt a rule, and provision of Act governing opportunity for public hearing prior to adopting rule did not impose non-discretionary duty upon Commission to provide individuals with hearing.

ZONING - WASHINGTON

[Concerned Friends of Ferry County v. Ferry County](#)

Court of Appeals of Washington, Division 2 - December 15, 2015 - P.3d - 2015 WL 8927147

Citizens and public interest groups filed petition in the Superior Court for review of Management Hearings Board order finding county in compliance with Growth Management Act (GMA) for designation of agricultural lands of long-term commercial significance. The Board then granted certificate of appealability allowing direct review which was granted.

The Court of Appeals held that:

- County's point system for designating agricultural resource lands was consistent with GMA; Ordinance assigning point values to parcels from least to most suitable soils was consistent with GMA and comprehensive plan;
- Ordinance could assign one point to parcels more than five miles from urban growth area and zero points to parcels within five miles;
- Ordinance could calculate farm size based only on ownership of contiguous parcels;
- Setting contiguous block of 500 acres or more for designation as agricultural land was reasonable attempt to find the smallest minimum size that would prevent scatter; but
- Failure to designate as agricultural resource land over 2,816 acres qualifying under county ordinance failed to comply with comprehensive plan and GMA.

[Investment Returns: Defined Benefit vs. Defined Contribution Plans.](#)

The brief's key findings are:

- The analysis compares returns by plan type from 1990-2012 using data from the U.S. Department of Labor's Form 5500.
- During this period, defined benefit plans outperformed 401(k)s by an average of 0.7 percent per year, even after controlling for plan size and asset allocation.
- In addition, much of the money accumulated in 401(k)s is eventually rolled over into IRAs, which earn even lower returns.
- One reason for the lower returns in 401(k)s and IRAs is higher fees, which should be a major concern as they can sharply reduce a saver's nest egg over time.

[Download Full Brief.](#)

Center for Retirement Research at Boston College

by Alicia H. Munnell, Jean-Pierre Aubry and Caroline V. Crawford

December 2015

Doubly Bound: The Cost of Issuing Municipal Bonds.

A new study looks at the one-time fees that governments pay the finance firms that help them sell their bonds in the municipal market. These fees are in addition to the published interest rate the government pays the investors who actually buy the bonds. The study, commissioned by the University of California at Berkeley and the ReFund America Project, found that the average government issuer pays finance firms a 1.02 percent cut from their bond sale. But this percentage varies widely and tends to be larger for smaller issuers.

For example, a \$2.1 million bond issued by the Dehesa School District in Southern California incurred \$200,138 in fees — more than 9 percent of the principal amount. That means the school district is paying interest on more than \$2 million in debt but in actuality received only \$1.9 million after the bond sale. “Had this issuance followed the 1.02 percent average, its issuance fees would have been nearer \$21,000,” wrote the report’s author, Marc Joffe, who is also a Governing contributor. “In our findings, six California school districts incurred costs in excess of 8.5 percent.”

The report, however, offers solutions for lowering or equalizing costs. For one, better transparency could provide a template for standardized reporting. This report was done using public records requests, but the increasing popularity of government websites that detail their finances is also a potential venue for reporting such fees. Another idea relates to the millions of dollars government issuers pay annually to get so-called CUSIP numbers, which are like social security numbers given to each bond issuance. The CUSIPs protect each issuance and its data as unique, but Joffe noted that the benefits “do not appear to merit the costs,” suggesting that the charge from the privately operated CUSIP Service Bureau could reasonably be much lower.

[Read the Study.](#)

GOVERNING.COM

BY LIZ FARMER | DECEMBER 18, 2015

SIFMA Survey Forecasts Issuance, Interest Rates, Trends for 2016.

Municipal participants who responded to a recent survey conducted by the Securities Industry & Financial Markets Association predict a total of \$431.5 billion of new issuance arriving in the market in 2016.

The survey was conducted from Nov. 11 to Dec. 18. The forecasts represent the median values of all submissions of individual member firms that participated, including Citigroup, First Southwest Company, FTN Financial, JPMorgan, Loop Capital Markets LLC, Piper Jaffrey, Raymond James & Associates Inc., RBC Capital Markets, Wells Fargo Advisors, William Blair & Co.

The prediction on volume includes both short and long-term issuance — and is up slightly from the \$428.8 billion of issuance that was estimated in 2015, according to the New York and Washington, D.C.-based U.S. securities industries group. Actual issuance for the year to date has totaled \$377.29 billion of long term bonds and \$32.30 billion of short term notes.

According to the survey, respondents predict \$388.5 billion of long term issuance and \$43 billion of short term next year.

Long-term tax-exempt issuance will reach \$347.5 billion in 2016, according to respondents' predictions, while issuance of alternative minimum tax securities is forecasted at \$10.5 billion in 2016.

Participants expect to see issuance of \$30.5 billion of taxable municipal debt.

Refundings are predicted to comprise less of the total issuance, falling to 55%, according to the participants, from the 62.2% they had predicted for 2015.

Variable-rate demand obligation issuance will trend away from the record lows predicted for this year as \$8.0 billion of VRDO paper is forecasted to come to market in 2016.

Floating rate note issuance debt to the tune of \$12.5 billion is expected to surface in the coming year – after the 2015 volume of about \$5.3 billion missed respondents' expectations on last year's survey for \$12.5 billion in FRN debt in 2015.

In terms of use of proceeds, 62.5% of respondents believe that the largest issuing sector will be general purpose, followed by transportation, education and housing. The general purpose sector has been the largest issuing sector by gross amount in prior years, according to SIFMA.

Meanwhile, the curtailment of the tax-exemption on municipal bond interest once again ranked as a top concern among respondents going into the New Year. Participants said its elimination would have the greatest impact on the municipal market, while fiscal pressures resulting from underfunded pensions and the possibility of a default by one single, large and prominent issuer are also among their chief concerns.

For the purpose of the survey, a default was defined as the occurrence of a missed interest or principal payment or a bankruptcy filing, according to SIFMA.

Overall, respondents said they expect 30 issuers to default on a total par value of \$69 billion in 2016 – with a bulk of the par amount in defaults consisting of defaults in Puerto Rico-related debt.

At least one respondent named Basel III capital and liquidity requirements among the factors with the highest importance in 2016, while two others cited “oil bust” and “authority to access Chapter 9” as their primary concerns in the New Year.

Interest rates were another hot topic for the participants, who predicted that the federal funds rate will rise to 0.50% by the end of March 2016, up from 0.38% at the end of December.

They expect it to gradually increase to 1% by the end of 2016, according to the survey.

The ratio of municipals to Treasuries, participants said, is expected to decline before again rising at the end the coming year.

Predictions call for the ratio of the yield on 10-year triple-A general obligation municipal securities

to the 10-year Treasury benchmark to fall to 88.5% by the end of December 2015, after peaking to 103.21% at the end of September. However, respondents said that ratio will rise to 90.5% by December 2016.

Respondents expect the two-year Treasury note to increase to 1.65% by the end of 2016 from 1% at the end of December 2015. Additionally, they predict that the 10-year Treasury note yield will increase to 2.75% from 2.33% at the end of December 2015.

THE BOND BUYER

BY CHRISTINE ALBANO

DEC 23, 2015 1:50pm ET

Muni Bonds Winner in 2015; Junk Bonds Big Loser.

Municipal bonds have been the biggest winner in the U.S. fixed-income universe this year, while junk bonds have been the biggest loser.

The report card captures a balancing act among investors during a year of uncertain global growth, punctuated by a sharp decline in oil and other commodities, concerns about a slowdown in China's economy and the Federal Reserve's first interest-rate increase since 2006.

Many investors shed their exposure to corporate bonds sold by lower-rated firms, led by the energy sector that bore the brunt of the bear run in oil.

But with U.S. Treasury yields remaining stubbornly low—contrasting to bond bears' predictions of much higher yields this year—many dabbled into municipal bonds and high-grade mortgage-backed securities, or MBS, to obtain relatively higher income.

U.S. municipal bonds have posted a total return—including price gains and interest payments—of 3.19% this year through Tuesday, according to data from Barclays PLC.

MBS has returned 1.38%, while U.S. government debt has returned 1.03%.

On the losing side: junk bonds posted a negative return of 5.28%. Its sibling—investment-grade corporate debt—had a negative 0.68% return.

Another loser: Treasury inflation-protected securities, with a negative return of 1.8%. Lower oil prices have reduced inflation concerns, which sapped the appeal of financial assets that offer a hedge against higher consumer prices.

The S&P 500 stock index has returned 1.1%—including price gains and dividend payments, this year through Tuesday, according to FactSet.

THE WALL STREET JOURNAL

by MIN ZENG

Dec 23, 2015

Report Says 2016 Could Be New Era In Bond Refinancing In The Project Finance Sector.

OVERVIEW

- We believe that 2016 could usher in a new era in bond refinancing in the project finance sector.
- Our research shows that institutional investor interest and refinancing conditions for loans made and priced at the height of the global financial crisis are now ripe for capital market takeouts.
- Assuming that deal flow matches the high demand for infrastructure investment within the institutional investor market, we believe financing conditions for long-dated debt transactions in the capital markets can only get better.

LONDON (Standard & Poor's) Dec. 22, 2015—With the end of the low interest rate cycle now clearly in sight, and the likely consequence of this on swap rates, Standard & Poor's believes 2016 could herald a new era in project finance bond refinancings.

"Assuming that deal flow matches the high demand for infrastructure investment within the institutional investor market, we believe financing conditions for long-dated debt transactions in the capital markets can only get better," said Standard & Poor's credit analyst Michael Wilkins, in the report published today, "Project Finance: Rate Rise May Herald A Wave Of Refinancing In The Bond Market."

Rising rates could actually provide a boost to refinancings of infrastructure project debt in the capital markets.

In today's low-yield environment, insurers and asset managers are particularly eager to invest in real assets such as infrastructure. That's because these projects provide inflation-linked, relatively attractive risk-adjusted returns, with a low correlation to the economic cycle and healthy cash flow and income yield. Also, those low interest rates have meant banks have been able to fund themselves at a historically low cost. This has led to ample liquidity in the market and has helped increase bank lending to project finance and infrastructure (see "Are Rumors For Global Project Finance Bank Lending's Demise Greatly Exaggerated?" published Jan. 14, 2015, on RatingsDirect).

At the same time, the amount of issuance in the project bond market has ticked higher over the last couple of years, which has also been partly due to low interest rates. Low interest rates have also been a factor in the upsurge in direct lending and private placements to infrastructure projects from institutions. Yet the number of capital market refinancings of bank loans via new project bond issues hasn't matched this trend, partly due to the disincentives of breaking the swaps associated with bank financings.

However, with the prospect of a low-rate cycle coming to an end, this picture changes. As swap rates go up, the breakage costs for swaps are reduced on a mark-to-market basis, making breakage costs less punitive. Accordingly, refinancings of infrastructure project debt in the capital markets may receive a boost as a consequence.

Standards & Poor's Ratings Services' research shows that institutional investor interest and refinancing conditions for loans made and priced at the height of the global financial crisis are now ripe for capital market takeouts. Our simulations show that the mark-to-market swap breakage cost saving could be as high as 40% for some project loans if swap rates rise by 100 basis points (bps) from where they are today.

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

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

Ratings information can also be found on Standard & Poor's public Web site by using the Ratings search box located in the left column at www.standardandpoors.com. Alternatively, call one of the following Standard & Poor's numbers: Client Support Europe (44) 20-7176-7176; London Press Office (44) 20-7176-3605; Paris (33) 1-4420-6708; Frankfurt (49) 69-33-999-225; Stockholm (46) 8-440-5914; or Moscow (7) 495-783-4009.

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[MSRB Reminds Regulated Entities of January 1, 2016 Implementation Date of Underwriting Fee Decrease.](#)

The Municipal Securities Rulemaking Board (MSRB) reminds brokers, dealers and municipal securities dealers that amendments to MSRB Rule A-13, reducing the underwriting fee, become operative January 1, 2016. The underwriting fee is decreasing from .003% (\$.03) to .00275% (\$.0275) per \$1,000 of the par value. The reduction in the underwriting fee followed an extensive holistic review of MSRB fees by its Board of Directors.

[Read the regulatory notice.](#)

[NABL: Certain Tax-Exempt Bonds Extended in PATH Act.](#)

On December 17, 2015 the House passed The Protecting Americans from Tax Hikes (PATH) Act of 2015, a \$680 billion tax extender bill. Section 164 of the PATH Act authorizes the issuance of \$400 million of qualified zone academy bonds in 2015 and 2016. Section 171 of the PATH Act extends through December 31, 2016 tax benefits, including tax-exempt bonds, in empowerment zones. Section 171 also modifies Section 1394 of the Internal Revenue Code, concerning tax-exempt enterprise zone facility bonds. The modifications are effective for bonds issued after December 31, 2015.

The Senate is expected to approve and the President to sign the PATH Act.

[Click here](#) to view the PATH Act (See page 69 for Section 164 and page 77 for Section 171).

Mind The GAAP: Financial Reporting Impact Of New Accounting Standards For Not-For-Profits.

In April of this year, the Financial Accounting Standards Board (“FASB”) circulated a series of proposed changes to generally accepted accounting principles (“GAAP”) applicable to certain not-for-profits. These changes, which are intended to provide clearer information to donors, creditors, and other users of financial statements, may have a significant impact on not-for-profit financial reporting (which has remained largely unchanged for nearly twenty years) and will, among other things, (i) impact the reporting of operating performance in an entity’s statement of activities and related metrics in the statement of cash flows, (ii) require the use of the direct method for preparing the statement of cash flows, and (iii) modify the reporting disclosure of net assets and “underwater” endowments.

The new standards will apply to most not-for-profit organizations, including public charities and private foundations, but not to entities that provide dividends, lower costs, or economic benefits to owners, members or participants such as mutual insurance entities, credit unions, farm and rural electric cooperatives, or employee benefit plans.

FASB has not offered a timeline for when these GAAP changes will take effect and they remain subject to revision.

Some highlights of the proposed changes are:

Defining Operating Activities

Not-for-profit entities (other than healthcare entities) are currently required to report their “change in net assets,” a metric which is similar to the comprehensive income of a for-profit business. While entities now have flexibility regarding how that metric is calculated, the proposed standards will require the classification of all revenues, expenses, gains, losses or other changes in net assets as either operating or nonoperating activities, with operating activities consisting of all resources derived from or directed at carrying out an entity’s mission and available for use in the current reporting period.

Cash Flows

The proposed operating activity reporting changes will be reflected on the statement of cash flows. Specifically, certain expenditures, gifts of cash to acquire property and equipment, and cash invested for programmatic purposes will be classified as operating cash flows. Returns from non-programmatic investments will be considered investing inflows, while interest on financing will be classified with financing activities. In addition, entities will be required to report operating activity cash flows using direct method reporting (which generally involves breaking out cash flows on a line item basis, rather than showing net income as modified by certain adjustments).

Net Asset Reporting

Currently, not-for-profit entities classify net assets as unrestricted, temporarily restricted and permanently restricted. Under the proposed standards, a new category, “net assets with donor-imposed restrictions,” will replace the temporarily restricted and permanently restricted categories, with the differences among funds being described in the footnotes to the financial statements. In addition, the unrestricted category will be renamed “net assets without donor restrictions.”

Underwater Endowments

Finally, the proposed standards will change the way entities report so-called “underwater” endowment funds. An endowment fund is considered to be “underwater” if the fair value of the assets and accumulated returns of the fund are less than the historical amount of the gift. Currently, GAAP requires entities to report a deduction in net assets without donor restrictions to the extent of the deficit. Under the proposed standards, entities will present the entire endowment fund, including whatever is underwater, in “net assets with donor restrictions” and disclose (i) the aggregate fair value of the underwater endowment funds, (ii) the original gift amount or the amount the entity must maintain according to donor requirements or the law, and (iii) the amount by which funds are underwater.

Apart from the administrative and reporting impact on not-for-profits, these changes may influence how donors view a not-for-profit’s health and prospects. Not-for-profits can expect more questions about their financials, both because of these changes, in the near term, and because the proposed standards will lessen the similarities between for-profit and not-for-profit reporting.

Staff and board members of not-for-profit entities should familiarize themselves with the proposed changes, and should plan to meet with their auditors and counsel to evaluate how the new standards may affect their financial reporting and to determine whether any bookkeeping changes should be implemented in advance to prepare.

Patterson Belknap Webb & Tyler LLP

Article by Dahlia B. Doumar and Justin Zaremby

Last Updated: December 14 2015

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

[Muni Experts Lament Rates, Credit Concerns, Volume as Year Ends.](#)

Municipal experts awaiting this week’s Federal Reserve’s decision on interest rates said a host of other stressors — from a lack of supply and credit concerns to unfunded pension liabilities and yield-curve positioning — were high on their list of concerns.

It’s been a year of headline-making news for troubled municipalities, political and government leaders, municipal legislation, market trends and federal regulation, but municipals took it in stride, according to analysts.

“Municipal investors have undergone a nerve-racking couple of years, having to contend with the irrational threat of rising rates, the downgrade of very high-profile credits, the potential for market dislocating defaults, a shrinking high-yield sector and sporadic liquidity flare-ups — just to name a few,” Vikram Rai, head of Citi’s municipal strategy group wrote in a Dec. 3 municipal outlook called “A Year on the Edge.”

And 2015 was no different. It had its share of everything from general market and seasonal volatility, to credit distress and fiscal debacles, and high-profile bankruptcies and defaults. Municipal analysts, strategists, portfolio managers, and experts reflecting on 2015 said, at times,

there were more downs than ups.

Dan Heckman, senior fixed-income strategist at U.S. Bank Wealth Management, said a lack of net new supply was most problematic for him this year.

He said he was challenged to find municipal bonds that fit into his investment-grade quality bias and longer-term investment parameters. U.S. Bank Wealth Management manages \$130 billion of total assets, but declined to disclose the amount of municipal assets under management.

Initially, heavy refunding activity in the first half of 2015 gave Heckman hope for more robust volume throughout the second half of the year.

"That really gave us a firm confidence that the market would do very well this year in the face of rising rates," he said on Dec. 1. But his thesis "took a hit" mid-year, and "the decline in new issuance is actually getting worse, not better as we finish this year," Heckman said.

LACK OF SECONDARY TRADING

"We have tried to overcome a lack of supply in investment-grade bonds," he said. "We have tried very aggressively buying everything we see, but it's very hard when there is not a lot of secondary trading." He said recent layoffs in fixed-income trading operations contributed to the lack of trade flow and availability of bonds this year.

In a market and economic report released a day after his interview with The Bond Buyer, Heckman held out hope for a late-year supply burst.

"We expect issuance to surge in the month of December due to an above-average maturity schedule," he wrote in a report for the week of Nov. 30. "In addition, this may be the last chance for issuers to refinance their debt prior to the Fed beginning to normalize the policy rate. The recent flattening of the yield curve could also add to the issuer incentive to refund in December," he said in the report.

Heckman said the prospect of rising rates could have a swifter impact on the short end of the yield curve, and that he continues to be pressed to find long-term paper to fit his needs at year end.

"We believe bond portfolios should focus on an average maturity of five to seven years, and should include normal allocations to longer-term bonds, rather than focusing on short-term bonds," he wrote in his Dec. 2 report.

"We would emphasize credit exposures since spreads are fair relative to high-quality securities, and the premium offered for lower-quality credits tends to compress in rising interest rate regimes," he said. Heckman said buyers can find some benefits from the relatively steep muni yield curve since it mirrors the Treasury curve.

"This offers investors some 'extra' yield to compensate for the risk of longer maturities in a rising rate environment," Heckman added. He is, however, avoiding certain credits, particularly those struggling with pension liabilities.

Anthony Valeri, senior vice president and investment strategist at LPL Financial, said the potential Fed rate hikes will be a headwind for municipals going into 2016.

"While they have historically held their value slightly better than comparable Treasuries during periods of rising rates, [municipal bonds] cannot completely disconnect from rate hikes," he wrote in

a Dec. 8 fixed-income outlook.

Valeri believes a significant increase in overall municipal debt growth is unlikely in the remainder of 2015. "States and municipalities battle with still-tight budgets that will likely keep bond issuance for new infrastructure projects limited," he wrote in his report.

Valeri also believes net supply is likely to be limited in 2016, which should provide support to prices. "Like taxable bonds, municipal bonds are likely to witness a low-return environment as well and not escape the challenges facing all bond investors in 2016," he wrote.

John Mousseau, director of municipal investments at Cumberland Advisors, said the relative attractiveness of municipal bonds was one thing that remained consistent through the year, amid volatility in credit, liquidity and issuance. He said there may be some added opportunities to pick up attractive municipals if a late December supply burst surfaces as issuers attempt to current-refund bonds with 2016 call dates.

"This will be large, but not like the bulge we saw last year," he said in a recent interview. "In any case, munis of higher- grade variety at 4% are still a giveaway, in our opinion."

But the opportunity could be short-lived depending on when the Fed decides to act, Mousseau said. He said once the Fed hikes begin, muni-Treasury yield ratios could decline, partly due to higher Treasury yields and declining municipal yields as the municipal supply subsides.

AVOIDING NEGATIVE ARBITRAGE

"If you go to decently lower ratios, that will prompt a flood of advanced refundings with calls out in the 2021 range," he said. He said many issuers have largely focused solely on advance-refunding bonds out to 2018 and 2019 to avoid the negative arbitrage beyond those years eating into the cost savings.

That behavior could change, however, based on potentially declining ratios.

"With a roll-down the yield curve and lower ratios, refundable bonds with calls from 2021 to 2023 come into play," Mousseau said. The municipal-to-Treasury ratios will most likely end 2015 near their five-year average, according to Valeri of LPL.

As of Dec. 1, the 30-year ratio was at 104% and the 10-year at 95% — just slightly lower than the start of November, when there was intermediate- and long-term bond outperformance, he said. "We think that the recent strength signals near-term caution, but believe that municipal bonds have attractive long-term valuations," Valeri noted.

Peter DeGroot, managing director at JPMorgan Securities predicts municipals will outperform Treasuries on a relatively modest lift in long-dated yields. By mid-year 2016, "we believe that the Federal Reserve will have established a gradual approach to normalizing interest rates," DeGroot wrote in a Nov. 25 municipal market outlook.

He estimates that the two, five, 10-year and 30-year U.S. Treasury yields will be at 1.35%, 2.10%, 2.50% and 3.15%, respectively, about halfway through 2016, and further rising to 1.75%, 2.50%, 2.75% and 3.25%, respectively, by year end.

"Below expected economic growth would serve to limit the Fed tightening cycle and keep the curve closer to its current shape and absolute levels than we have forecast," DeGroot added.

POLICIES DIVERGE

Dawn Mangerson and Jim Grabovac, co-portfolio managers at McDonnell Investment Management in Oakbrook, Ill., said economic and monetary policy divergence was the key driver of capital market returns and valuations across global markets in 2015.

The consequence was a further strengthening of the dollar that added downward pressure on commodity prices broadly.

“This guided our expectations toward a benign outlook for inflation and limited upside potential for longer-term interest rates in the U.S.,” the managers wrote in a Nov. 30 email.

Going forward, they expect economic and monetary policy to play an “outsized” role in 2016. Economic recovery entering its seventh year and additional labor market gains could afford the Federal Reserve “the opportunity to boost short-term rates off the zero-lower bound for the first time since 2008,” they wrote.

“With global growth moderating, however, and relatively large interest rate differentials in favor of the U.S., we expect a stronger dollar will continue to dampen inflation and U.S. growth at the margin, thereby limiting both the scope and the alacrity with which the Fed pursues its attempt at policy normalization.

Analysts said 2016 should offer a fresh start and new value opportunities for municipal investors, even if volume is down.

JPMorgan forecasts net supply of negative \$58 billion in 2016, and approximately negative \$58 billion in issuance over 2016 — a 20% decrease from the negative \$73 billion expected for full year 2015.

The seasonal factors approaching 2016 appear to be displaying a typical pattern with heavy mid- and end-of-year coupon and redemption periods showing low net supply, according to DeGroot of JPMorgan.

In addition, net supply is expected to support prices during January and February, with net negative \$16 billion in supply over the two month period, he said.

“In 2015, expected richening of ratios in the January-February period failed to materialize as 10-year U.S. Treasury yields fell to two-year lows of 1.67%, and supply for the two months was a near record \$62.5 billion,” DeGroot wrote.

July and August saw net negative supply of \$34 billion, or 24% above forecasted net supply for these months, he added. DeGroot called the relative performance in 2015’s June to August period “solid,” with average 10-year muni-Treasury ratios of 99% versus an average of 102% for the March to May period.

The firm anticipated positive October and November net supply of \$4.7 billion, but recently reported that net supply is trending to about negative \$6 billion after leaner-than-expected issuance over the two months.

DeGroot is among those keeping an eye on potential defaults in Puerto Rico-based issuers. The commonwealth had a tumultuous year that brought intense fiscal and economic strain and included several credit downgrades, an admission by Gov. Alejandro Garcia-Padilla that the island’s debtors couldn’t meet their responsibilities in the current economy, and a call for federal government

assistance and pleas for special legislation allowing Chapter 9 bankruptcy.

"Fortunately, the impact to the broader fund community is far less dramatic given relative concentrated representation of Puerto Rico bonds across mutual funds and that Puerto Rico bond prices have been marked down considerably," DeGroot said in his report.

"Moreover, credit and cash flow difficulties in Puerto Rico are not systemic across the asset class and are highly idiosyncratic in nature," DeGroot added.

Heckman said he will remain bullish through the first quarter of 2016 as he monitors two key market factors — the possibility of continuing interest rate increases and municipalities that have "severely underfunded pension liabilities." He believes the Fed will be "slow" and "methodical" when it comes to rate hikes in the New Year.

"Once they get into a rising interest-rate environment it's very difficult to see where they may stop, and that might have some dynamic impact on the yield curve," he said. "We have seen it flatten to a degree already."

He said a rising rate environment could benefit the long end of the curve and trigger some changes to his municipal portfolio strategy. "We could see an environment where we go from a longer-dated portfolio to a barbell strategy," he said.

STAYING CAUTIOUS

He, too, will be cautious about some sectors, including higher education, which faces changes to demographics and declining student population. And he'll keep an eye on Puerto Rico as it continues its fiscal and economic "saga," focusing on how Puerto Rico handles a \$1 billion coupon payment due Jan. 1. He currently doesn't own any Puerto Rico paper.

DeGroot said there are risks ahead and investors should be prepared for the unexpected, as was the case this year.

"The forecast for the shape and magnitude of yield changes in 2016 is remarkably similar to our forecast heading into this year," DeGroot said in his report. However, the expected yield changes in 2015 did not materialize as gross domestic product growth of 2.1% underperformed an estimate of 2.7% and "the Fed chose to be more deliberate than we had anticipated," he said.

"Not surprisingly, we view lower growth and inflation as the primary risks to our 2016 forecast as well," DeGroot said. "Our interest rate forecast does not portend a repeat of this year's spike in advance refunding volume and steep drop in longer dated yields, but a recurrence is clearly a risk to performance as we progress through 2016."

THE BOND BUYER

BY CHRISTINE ALBANO

DEC 15, 2015 10:18am ET

[**The Bond Lawyer - Fall 2015**](#)

The Bond Lawyer®

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Dealers Want MSRB, FINRA to Adopt Same, Less Costly Markup Proposals.

WASHINGTON - Dealer groups want the Municipal Securities Rulemaking Board and Financial Industry Regulatory Authority to adopt the same approach, but one that is less costly and burdensome, for requiring dealers acting as principals to disclose to retail customers the markups and markdowns on muni trades.

The self-regulators' proposals are not currently aligned. The Securities Industry and Financial Markets Association also is urging them to allow dealers to choose between several approaches.

The groups made their comments in responding to the MSRB and FINRA markup proposals.

The MSRB, initially proposed dealers disclose on their confirmations a "reference price" of the same security traded on the same day, but changed course in late September after receiving complaints. Instead it proposed requiring dealers to disclose markups, which it defined as "the difference between the price to the customer and the prevailing market price for the security." In its proposed changes to MSRB Rule G-15 on confirmation, the MSRB also asked commenters to weigh in on whether their previous reference price idea would be a better fit for the market.

FINRA's proposal more closely resembles the MSRB's original reference price idea and would require dealers to disclose the differential between the price to the customer and the dealer's reference price.

Bond Dealers of America and SIFMA both said they appreciate the regulated efforts and support giving customers more information, but are troubled by the differing proposals from the two regulators. The MSRB and FINRA must adopt identical requirements and language for any final rule,

they said. Any rule would also have to include specific guidance on acceptable ways of determining a markup or reference price under the regulation.

“As currently formulated, the proposals lack necessary specificity, present unworkable challenges in application and operation, risk misleading the very customers they are intended to protect, and have the potential to undermine bond market liquidity,” SIFMA said in a joint letter from associate general counsel and co-head of the municipal securities division Leslie Norwood and managing director of the capital markets division Sean Davy.

BDA chief executive officer Mike Nicholas said BDA “strongly urges regulators to pursue a harmonized rule that represents the least cost, least complex, and most understandable disclosure method,” which neither of the regulators’ proposals would accomplish, as written.

Under the MSRB’s markup proposal, a dealer buying or selling bonds for its own account would be required to disclose the markup or markdown on a customer’s confirmation when: it executes a transaction on the same side of the market as the customer; the transaction is greater than or equal to the size of the customer’s, and: the dealer transaction occurs within two-hours of the customer transaction.

Those markups and markdowns would have to be disclosed both as a total dollar amount and as a percentage of the principal amount of the customer transaction, according to the MSRB. Even if the markup did not have to be disclosed, a dealer would have to provide the investor a hyperlink and URL address to the “Security Details” page for the muni on EMMA, as well as a time of execution for the customer’s trade.

The MSRB would limit this proposed rule to the secondary market by excluding transactions in new issue securities executed at the list offering price by members of the underwriting group.

There are also two organizational caveats to the rule. If a dealer is executing a transaction from an affiliate’s inventory of munis, the rule would require the dealer to “look through” to the affiliate’s transactions with the “street” and other customers to see if the affiliate had a same-side of the market transaction within the two-hour window. Dealers that have independently operating trading desks would be exempt from disclosing markups if they could prove that the customer transaction occurred separately from the principal trading desk that executed the dealer’s same-side market transaction and that the desk was not aware of the retail customer transaction.

SIFMA said it agrees with the MSRB’s proposal to limit the rule to retail investors and also supports the two-hour time window, which “generally would provide pricing information that is more representative of the market at the time of the customer transaction.” The group added that the timeframe would address any concerns that firms would wait to trade outside of the two-hour limit because MSRB data shows 96% of all trades that were followed by another trade in the same municipal security on the same day had the second trade occur within two hours.

BDA said it would prefer the disclosure instead be based on a full trading day, as FINRA has proposed, because it would minimize technology costs and operational complexity that would come from a shorter time period.

Both groups agreed that the MSRB’s proposal would result in substantial costs on dealers and urged further study of the cost-benefit breakdown of implementing such a rule. SIFMA said the costs and burdens would be “enormous” because of necessary technology changes and ongoing considerations like compliance reviews, internal audits, and training of personnel.

A better solution, according to SIFMA, would be to give firms a flexible framework that would allow them to choose to adopt something either similar to FINRA's framework, or the MSRB's proposed standard, or a different standard that would fit into the regulators' goal of disclosing reference prices, subject to further guidance.

Some firms already disclose markups, whether they use a prevailing market price disclosure framework or some other method, SIFMA said. A system that gives flexibility instead of a single standard may fit better in the existing dealer community, Norwood and Davy added.

One example SIFMA suggested is to allow firms to use a Cusip-specific volume weighted average price, produced by EMMA, as a reference for customers on confirmations. Using a VWAP may also be easier to explain to customers, Norwood and Davy said. It also would lower the cost of implementation because firms would be able to use regulators' already existing systems for the information instead of having to develop their own.

Nicholas made a similar argument in his letter saying use of the centralized data on EMMA is the "least complex, lowest cost proposal" available.

"BDA recommends that regulators leverage the transaction data that they already hold to provide the type of retail confirmation disclosure the proposals are designed to create," he said. "This method represents a more efficient way of delivering a confirmation disclosure."

If the MSRB decides to pursue something similar to its current proposal, SIFMA asked that dealers have at least three years to implement the necessary changes because they will also be preparing for an industry-wide switch to a two-day settlement cycle.

THE BOND BUYER

BY JACK CASEY

DEC 14, 2015 4:32pm ET

[Messer, GFOA Pushing HQLA Bill in Congress.](#)

WASHINGTON - Rep. Luke Messer, R-Ind., and local finance officers plan to continue to push a bill that would treat investment grade and actively traded municipal securities as high quality liquid assets under a bank liquidity rule adopted by bank regulators in 2014.

Messer, who introduced the bill in May, spoke Friday with Government Finance Officers Association members gathered for the group's winter meeting in Washington.

The bipartisan bill, co-sponsored by Rep. Carolyn Maloney, D-N.Y., is a response to a rule from the Federal Reserve Board, Office of the Comptroller of the Currency, and Federal Deposit Insurance Corp. The rule requires banks with at least \$250 billion of total assets or consolidated on-balance sheet foreign exposures of at least \$10 billion to have a high enough liquidity coverage ratio - the amount of HQLA to total net cash outflows - to deal with periods of financial stress. The compliance date for the rule is Jan. 1, 2017.

But the rule does not currently count municipal securities as HQLA, even though foreign sovereign debt would receive that classification.

Messer's bill would require the three bank regulators to treat munis that are investment grade and actively traded in the secondary market as Level 2A assets, the same level as some sovereign debt and government sponsored debt of Fannie Mae and Freddie Mac. Messer's bill would also allow for munis to account for up to 40% of a bank's HQLA.

Messer said he is "very optimistic" about the bill's chances if it is brought to a vote on the House floor. The House Financial Services Committee, where Messer sits, approved the bill by a vote of 56 to 1 on Nov. 3. Messer said Sens. Chuck Schumer, D-N.Y., and Mike Rounds, R-S.D., have both showed an interest in pursuing similar legislation in the Senate.

Spokespersons for Schumer and Rounds could not be reached for comment.

The committee vote on the bipartisan bill "is no small feat in today's partisan Washington," Messer said, but he added he and groups like GFOA still have a lot of work to do after running out of time to get it included in one of the financial packages Congress plans to pass by the end of the year.

"There are few issues that have the kind of broad consensus that this seems to be developing and you have all kinds of folks in government willing to sign on and endorse this," Messer said. The next step is to get the bill's ideas and any debate about its purpose circulating in the Senate to get some "champions" for the bill in that chamber, he said.

Messer predicted the proposed House bill will be passed in the first half of 2016, if not in the first quarter.

Dustin McDonald, director of GFOA's federal liaison center, said the group has been working to prioritize the bill in Congress by meeting with senators and coordinating with other municipal groups on letters to legislators explaining the need for it. A recent letter sent to every member of the House urging them to support the bill's passage was signed by 15 muni groups.

Bills in Congress can often "go from zero to 60" in a short amount of time, McDonald said during the meeting. He said he wants to make sure GFOA is ready with letters and other support if the HQLA bill is suddenly being considered in the full House and Senate.

Movement on the bill in the Senate was slowed by the Senate Committee on Banking, Housing, and Urban Affairs, which had been focusing on a contentious regulatory relief bill for banks that includes proposed changes to the Dodd-Frank Act, he said.

McDonald, who took part in a panel discussion that was hosted by the Municipal Bond Club of New York last week in New York City, said that there was a consensus among everyone in the room that the rule was bad and would have a negative impact on the muni market.

"I think Pat McCoy clearly laid out the concerns of issuers, which are that the failure to classify municipal securities as HQLA will increase borrowing costs for state and local governments to finance public infrastructure projects, as banks will likely demand higher interest rates on yields on the purchase of our bonds during times of economic stress," said McDonald.

McCoy, the director of finance for the Metropolitan Transportation Authority in New York was on the panel along with George Friedlander from Citi, Hugh McGuirk from T. Rowe Price, and Don Winton from Crews & Associates.

The event was the club's first of its kind and was a huge success with over 120 attendees. The MBCNY has been putting together more events to go along with their annual bond school, as the goal of the club is to provide a sense of community to the municipal bond industry.

Meanwhile, McDonald told GFOA members, “While we are making great progress, this fight isn’t over and there is still a lot of work to be done to win, which presents us with an opportunity to work more closely together and engage our members of Congress to cosponsor HR 2209.”

While GFOA is hopeful the bill in the House follows a timeline like the one Messer predicted during his remarks, McDonald said there is a possibility that if the bill does not gather enough momentum to be brought forward for a vote on its own, it will have to be put into a year-end financial package in 2016.

“Somewhere in between optimism and realism is when Congress is going to act,” he said.

THE BOND BUYER

BY JACK CASEY and AARON WEITZMAN

DEC 14, 2015 12:34pm ET

Regulators Open to Idea of Special Issue Price Rules for Competitive Deals.

WASHINGTON – Tax regulators are open to the idea of writing special issue price rules that would treat bonds sold in competitive deals differently than those sold in negotiated deals, Treasury Department associate tax legislative counsel John Cross told issuers meeting here on Friday.

Muni market groups have asked for special treatment for competitive deals in comments on issue price rules the Treasury Department and the Internal Revenue Service proposed in June.

“We’re going to take another good look at whether we can do something more on competitive sales,” Cross said during a panel on issue price at the winter meeting of the Government Financial Officers Association’s debt committee.

Cross said a case can be made for special rules because most of the issue price rules are based on corporate rules and competitive deals are unique to the muni market. He and debt committee members also said tax regulators should be supportive of competitive deals because the pricing is more competitive and transparent.

Cross said that, at one point, tax regulators looked at a full year of trades and the prices of more than \$200 billion of bonds on EMMA, the Municipal Securities Rulemaking Board’s website that contains muni trade data as well as disclosure information. The data suggested that there may not be a lot of pricing abuses, he said. But there have been enforcement cases and other examples of pricing abuses, he added.

Issue price is important because it is used to help determine the yield on bonds and whether an issuer is complying with arbitrage rebate or yield restriction requirements, as well as whether federal subsidy payments for direct-pay bonds such as Build America Bonds are appropriate.

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

But tax regulators became concerned that some dealers were “flipping” bonds — selling then to

another dealer or institutional investor who then sold them again almost simultaneously, with the prices continually rising before the bonds were eventually sold to retail investors.

Treasury and the IRS tried to tighten the rules in 2013 by proposing new ones that replaced the “reasonable expectations” standard with actual sales and increased the definition of “substantial amount” to 25% instead of 10%.

Those rules drew many complaints so Treasury and IRS scrapped them and proposed new rules in June that said the issue price of a maturity would generally be the first price at which 10% of the bonds are actually sold to the public. If 10% of a maturity hasn’t been sold by the sale date, the issue price will be the initial offering price of the bonds sold to the public, as long as the lead or sole underwriter certifies to the issue that no underwriter filled an order from the public after the sale date and before the issue date at a higher price than the initial offering price. An exception can be made if the market moved after the sale date, but the underwriter must document any market movements justifying a higher price.

Issuers say they need to know the issue price at the sale date and worry that if longer maturities of bonds take longer to sell, that can skew the issue price.

Cross also talked about rules and guidance “on the ‘to do’ list” or priority guidance plan that would facilitate public-private partnerships. Treasury and IRS want to liberalize the safe harbors for longer term management contracts so that the contracts would not result in too much private use that would jeopardize the tax-exempt status of bonds.

They also want to look remedial actions that could be taken with regard to leases under change of use rules so that bonds could remain tax-exempt if a bond-financed facility was leased to a private party.

THE BOND BUYER

BY LYNN HUME

DEC 11, 2015 3:35pm ET

[Moody's Seminar: Financial Analysis of Local Governments](#)

About This Seminar

This seminar provides an in-depth workshop on the financial statements seen in U.S. public finance. With real-world case studies, delegates will learn where to find information in an audit, what the line items mean, and key ratios and trend analysis used by Moody’s analysts.

General Information

The \$2.7 trillion public finance market has undergone unusual stress in the past year, as the weakened economy has impacted revenue streams securing public finance debt, the credit crisis has limited market access for some issuers, and the strength of most mono-line insurers has been diluted. As a result, investors have more reason than ever to keep abreast of their portfolios and analyze their holdings. This seminar is designed to provide attendees with the tools to analyze local government financial statements, with a focus on the unique accounting methods and credit

concerns seen in public finance. The course makes use of real-world case studies and exercises to provide practical hands-on training.

For more information, dates, times, and to register, [click here](#).

[GFOA: Urge Federal Policy Makers to Classify Municipal Securities as High Quality Liquid Assets!](#)

Learn more at the GFOA's [Liquidity Coverage Ratio Rule/HQLA Resource Center](#).

TAX - PENNSYLVANIA

[Fish v. Township of Lower Merion](#)

Supreme Court of Pennsylvania - December 21, 2015 - A.3d - 2015 WL 9282331

Taxpayers sought declaratory judgment, challenging township's imposition of its business privilege tax on taxpayers' lease revenue and application of registration requirements for any "business, trade, occupation or profession."

The Court of Common Pleas found in favor of township. Taxpayers appealed. The Commonwealth Court affirmed in part and reversed in part. Review was allowed.

The Supreme Court of Pennsylvania held that Township's application of business privilege tax to businesses whose sole income consisted of rent payments on leased real property was not barred by provision of Local Tax Enabling Act precluding "any tax" on leases or lease transactions. Prohibition on lease taxes did not encompass a similar proscription as to privileges related to leases; disapproving *Cheltenham Twp. v. Cheltenham Cinema, Inc.*, 548 Pa. 385, 697 A.2d 258, and *F.J. Busse Co. v. City of Pittsburgh*, 443 Pa. 349, 279 A.2d 14.

[GAO State and Local Governments' Fiscal Outlook.](#)

A new [federal report on state and local fiscal health](#) contains an astonishing prediction: that total tax revenues for the sector — as a percentage of gross domestic product (GDP) — won't return to their 2007 historical high until 2047. A big reason, according to the Government Accountability Office (GAO), is that property and income tax revenues spiked as a percentage of GDP leading up to the recession. But because of less growth in those two areas now — and because sales tax revenues continue to have less impact as the economy shifts from one based on goods to one based on services — it will take decades for total revenues to hit that 2007 peak again.

The GAO report also predicts that state and local governments will continue to face a gap between revenue and spending during the next 50 years — in other words, they'll keep spending more than they make. The gap is largely being driven by pension and health-care costs. "State and local governments would need to make substantial policy changes to avoid these fiscal imbalances in the future," according to the report.

TAX - UTAH

[DIRECTV v. Utah State Tax Com'n](#)

Supreme Court of Utah - December 14, 2015 - P.3d - 2015 WL 9016406 - 2015 UT 93

Satellite television providers brought a constitutional challenge to Utah's pay-TV sales tax scheme. The scheme provides a sales tax credit for "an amount equal to 50%" of the franchise fees paid by pay-TV providers to local municipalities for use of their public rights-of-way. Not all pay-TV providers pay franchise fees, however. Cable providers employ a business model that triggers franchise fees (and, by extension, the tax credit); satellite providers use a different model that triggers no such fees (or credit).

The satellite providers filed suit, asserting that Utah's tax scheme unconstitutionally favors local economic interests at the expense of interstate commerce. In this challenge, the satellite providers assert claims under the dormant Commerce Clause of the U.S. Constitution and the Uniform Operation of Laws Clause of the Utah Constitution.

The Fourth District Court dismissed claims. Satellite providers appealed.

The Supreme Court of Utah held that:

- Tax credit did not violate dormant Commerce Clause, and
- Credit did not violate Uniform Operation of Laws Clause of State Constitution.

State did not violate dormant Commerce Clause by providing sales tax credit in amount equal to 50% of franchise fees paid by pay-television providers to local municipalities for use of their public rights-of-way, even though cable providers benefited from credit and satellite providers did not. Credit provided no benefits to business entities based in state at expense of those who were not, and credit was triggered only by a company's self-chosen business model.

State did not violate Uniform Operation of Laws Clause of State Constitution by providing sales tax credit in amount equal to 50% of franchise fees paid by pay-television providers to local municipalities for use of their public rights-of-way, even though cable providers benefited from credit and satellite providers did not. State had a rational basis for limiting tax credit to cable providers because only cable companies incurred franchise fees.

TAX - ALABAMA

[City of Pike Road v. City of Montgomery](#)

Supreme Court of Alabama - December 11, 2015 - So.3d - 2015 WL 8569354

Property owner filed interpleader action to resolve dispute between the City of Montgomery and the City of Pike Road concerning police jurisdiction over manufacturing plant located in unincorporated section of County and the corresponding right to sales and use taxes.

The Circuit Court entered judgment in favor of Montgomery and Pike Road appealed.

The Supreme Court of Alabama held that:

- Police jurisdiction could expand to include area within three miles of city limits only after either a federal decennial census or a municipal census established that population exceeded 6,000 inhabitants, and
- City's population was not proper subject of judicial notice.

Municipality's police jurisdiction could expand to include area within three miles of its city limits only after either a federal decennial census or a municipal census established that population exceeded 6,000 inhabitants, and, the jurisdiction could not expand based on United States Census Bureau's estimate showing population in excess of 6,000. (Per Justice Stuart with three Justices concurring and a Special Justice concurring in result).

City population between federal decennial censuses was not proper subject of judicial notice in cities' dispute over whether population of smaller city grew to exceed 6,000 residents and smaller city's police jurisdiction grew to three miles beyond its city limits. City's population was the subject of dispute. (Per Justice Stuart with three Justices concurring and a Special Justice concurring in result).

[GASB Statement 68: What's the Impact on Higher Education?](#)

In this CreditMatters TV segment, Standard & Poor's Director Jessica Wood describes the effect of GASB 68—a reporting requirement related to pension reporting—on higher education entities and certain charter schools.

[Watch the video.](#)

Dec. 21, 2015

[Nossaman: Top Public Finance Attorneys Urge Regulatory Changes to Foster More P3's.](#)

We all know how hard it is to change federal statutes these days—you need an Act of Congress and the President to sign the bill. Last week, a group of the top public finance lawyers in the US offered an approach relating to the use of tax exempt bonds that wouldn't require a change in tax statutes but instead could be accomplished through a change in the regulations relating to the so-called "private use" test. As the group pointed out in its letter to high ranking US Treasury officials, Congress itself has made it clear that Treasury had the authority to adopt other, more flexible rules.

The US is unique in the world in its use of tax exempt financing to finance a variety of infrastructure. To benefit from this source of debt capital, a project must not have private use nor can debt service be repaid from private business revenues. The issue for P3's arises because of the long-term operation and maintenance responsibilities that are a feature of many P3 contracts. Current IRS rules limit the length and method of compensation payable to a private party in a way that makes it almost impossible to effectively transfer long-term life cycle risk to the private sector. There are notable exceptions to these rules for specific types of infrastructure, such as qualified transportation facilities, airports and ports and water/wastewater facilities but in many cases there are so many

requirements applicable to issuing these “private activity bonds” tax exempt financing is not available.

The question for P3’s is when do long-term operation and management services and payment for these services create “private use” for purposes of the tax exempt bond rules? In the past the IRS has published somewhat prescriptive revenue procedures that describe “safe harbor” provisions for management contracts relating to the term of the contract and the manner of compensation. The problem is these “safe harbor” provisions predate the development and growth of the P3 delivery model. Over the last several years, through published notices and private letter rulings, the IRS has indicated that strict adherence to the “safe harbor” provisions may not preclude the use of tax exempt financing. Furthermore, the IRS recently published regulations relating to the allocation and accounting of revenues from a bond financed facility that recognize merely sharing these revenues with a private entity will not adversely impact the tax exempt financing for the project. And recent private letter rulings for water/wastewater facilities, solid waste disposal facilities and electrical transmission and distribution systems recognize the need for flexibility in this area. The Treasury Department released a 2014 white paper on “Expanding our Nation’s Infrastructure through Innovating Financing” describing in detail the use of an availability payment contract where the public owner makes service fee payments to a private manager subject to compliance with specific performance standards and provided the facility is available for general public use.

In addition to several specific “fixes” to the “safe harbor” provisions on the term of the contract and how compensation is paid, the attorney group is proposing a general framework that focuses on the primary purpose of the project—is the arrangement designed to transfer the benefit of the lower cost of tax exempt financing to a private party or are there sufficient controls on the activities of the private party exercised by the public owner to achieve the primarily public purpose of the project.

This simple fix to the current “safe harbor” rules relating to private management contracts could go a long way to increasing the use of the P3 delivery approach for much needed public infrastructure.

Nossaman LLP – Barney A. Allison

USA December 14 2015

Financing Infrastructure Through Resilience Bonds.

Cities across the United States and around the world are facing increasingly frequent severe weather events. Many local governments and public utilities are overexposed and underinsured for these risks. They are also coping with aging and failing infrastructure systems that increase the potential for catastrophic losses.

One way for cash-strapped local governments to increase both protection and insurance against disasters is through a new financial tool called resilience bonds. In a [new report](#), my co-author James Rhodes and I lay out how these would work.

The idea is to link insurance coverage that public sector entities can already purchase (such as catastrophe bonds) with capital investments in resilient infrastructure systems (such as flood barriers and green infrastructure) that reduce expected losses from disasters. This connection between insurance and infrastructure is important because just as life insurance doesn’t actually make you physically healthier, catastrophe bonds do not reduce physical risks and only payout when disasters strike.



The linkage is designed to reduce risks, akin to how quitting smoking or exercising regularly lowers life insurance costs. In the case of resilient infrastructure, investing in coastal protection or seawalls helps avoid physical and financial disaster. Resilience bonds combine these two different types of investments by modifying traditional catastrophe bonds to provide insurance savings that can be captured as rebates to invest in resilient infrastructure projects.

Why does this matter for cities? Five reasons:

Federal and state disaster relief funds are already stretched thin. In 2014 alone, eight U.S. weather-related disasters exceeded \$1 billion in losses each. More expensive disasters mean local governments can no longer afford to rely exclusively on traditional sources of disaster relief.

Rapid response funding is a top priority. Many communities wait years for funding commitments to materialize after major disasters. Unlike most traditional property insurance policies, resilience bonds can be structured to provide rapid response funds in the wake of a disaster.

Availability and affordability of insurance is a growing problem. Following Superstorm Sandy, traditional property insurance premiums skyrocketed. Entities like the New York Metropolitan Transportation Authority went to the catastrophe bond market for more cost-effective and affordable coverage. In 2013, the MTA secured \$200 million in coverage for future Sandy-like storm surge events.

Meeting insurance compliance requirements is getting more complex. Like mortgage lenders that demand proof of flood insurance, cities and public utilities are often required to hold different types and amounts of insurance to meet regulatory requirements. Resilience bonds can help meet these compliance obligations while creating a pathway for long-term savings and risk-reduction.

Resilient infrastructure is especially difficult to finance with traditional revenue and payback models, because the benefits are often diffuse and realized far into the future. Capturing more value from these projects is essential for their success. Resilience bonds can serve as a tool to incentivize performance-based design for risk reduction and facilitate timely completion to enable direct value capture.

The recent climate change agreement in Paris highlighted how cities around the world have committed to investing to increase resilience. But a successful resilient infrastructure project means a community was not devastated. These kinds of “invisible successes” pose a challenge for public investments. Linking insurance and infrastructure investment offers a new path forward for governments to monetize these successes, make better use of taxpayer dollars, limit the growing pressure on public disaster assistance, and leverage the capital markets to both expand insurance coverage and increase protection for vulnerable communities.

December 16, 2015 1:30pm

by Shalini Vajjhala

Nonresident Senior Fellow, Metropolitan Policy Program

Shalini Vajjhala is a nonresident senior fellow with the Metropolitan Policy Program. She is founder & CEO of re:focus partners, a design firm dedicated to developing integrated resilient infrastructure solutions and innovative public-private partnerships for vulnerable communities around the world.

Reed Smith: Green Bonds - How to Unlock Its Full Potential?

The green bond market is currently one of the fastest-growing fixed-income segments, with issuances tripling between 2013 and 2014. There is a sense of excitement and optimism surrounding the market – initially led and developed by the multilateral development banks (MDBs) and international financial institutions (IFIs), but now actively promoted, sponsored and supported by the private sector.

However, an estimated US\$65.9 billion worth of green bond issuance taking place in 2015 is merely scratching the surface for the potential growth in the green bond markets. If the target to limit the increase of average global temperatures to well below 2 degrees Celsius – as envisaged in the Paris climate change agreement – is to be met, it will only be possible with the use of climate finance, raised predominantly from the private sector, supporting the investments necessary to change the way in which we currently source our energy.

The purpose of this paper is to examine the current state of play for green bonds, and the impediments to unlocking that growth potential.

[Read the full Briefing.](#)

16 December 2015

Reed Smith Client Alerts

Author(s): Peter Zaman, Ranajoy Basu, Claude Brown, Gábor Felsen, Adam Hedley, Nathan Menon

Forever Green.

Green bonds proved to be more than a passing fad in the municipal market this year, as issuers tapped into demand for socially responsible investment.

As of Dec. 17, green bond volume has increased 48% to \$4.27 billion from \$2.88 billion in 2014 and \$693 million in 2013, according to data from Thomson Reuters.

“It’s a developing market, but we think it’s here to stay and it has the potential to grow even further,” said Jamison Feheley, head of banking and public finance at JPMorgan.

Environmental Finance Magazine ranked JPMorgan first globally as lead manager of green bonds through the third quarter. Feheley said that while green bonds are a global product, the U.S. municipal market has seen more growth in green bond issuance than anywhere else.

The green bond market is still relatively new, and subject to a learning curve, Feheley said.

“A lot of this past year was continuing to educate issuers on the green bond market generally, the fundamentals of the green bond principles and the developing market of socially responsible investors,” he said. “As the market continues to develop, we expect many of the large bond funds to increase their allocations to green projects and other social responsible components.”

The District of Columbia Water and Sewer Authority has been very active in the green bond market

over the past few years. Back in July of 2014, DC Water came to market with a \$350 million taxable fixed rate green bond with a 100-year final maturity, which was the first U.S. municipal water/wastewater utility to issue a century bond and the first U.S. green bond issuance to include an independent second party opinion.

The green bond mentioned above, financed a portion of the DC Clean Rivers Project, a \$2.6 billion effort to construct tunnels that will transport combined sewer overflows to DC Water's Blue Plains treatment facility. In October of 2015, DC Water issued another \$100 million of green bonds, which included a strategy of offering a priority order period for green portfolio and retail investors, which is believed to be the first issue to give green portfolio investors priority order status. The sale generated over \$180 million in orders.

"The green bond market has represented a great opportunity for DC Water," said Mark T. Kim, DC Water's chief financial officer. "As an issuer, we are committed to the green bond market and have established a very robust program."

According to Thomson Reuters, DC Water ranks fifth since 2013 in green bond issuance with \$450 million, behind the New York City Housing Development Corp. with \$494 million; The New York State Environmental Facilities Corp. with \$693 million; the Central Puget Sound Regional Transportation Authority, with \$942 million and the state of Massachusetts with \$1.02 billion.

Although DC Water is not first in the rankings as far as total issuance, they are constantly pushing the envelope when it comes to best practices and standardization.

"We were the first issuer to have a second party opinion on a green bond and now we are looking to improve on our own best practices," said Kim. "Right now, we are in the middle of doing a third party 'attestation' on our green bond reporting and disclosures. The purpose of the attestation is to provide our investors with additional assurance on the core elements of our green bond program. Specifically, did we spend the money the way that we said we would? Did we meet all of the commitments we made to our investors to report on the environmental outcomes and metrics of the project? The hope is that this will establish a new best practice and investors will demand it going forward."

Kim said that the hope is that the upfront investment in these best practices today will result in improved pricing for DC Water's green bonds in the future. Kim also stated that because the municipal green bond market is so new and that issuance volume has only picked up in the last year or two, there are evolving standards and best practices that DC Water is trying to establish to prevent 'green washing', which is when issuers claim their bonds are green without offering any proof or evidence to back it up.

"The market is moving towards standardization, but it will be challenging to come up with a single definition of what a green bond is across all industries and sectors," said Kim. "It would be great if we could reach consensus on a universal definition, but what should happen in my mind is that market discipline would help establish best practices. In other words, if investors simply refuse to buy less-credible green bonds and demand more rigorous and transparent reporting and disclosure practices from green bond issuers, then the expectation is that best practices will begin to emerge."

Feheley agreed, saying that while the green bond principles are voluntary, market standardization is an important consideration in order to maintain the integrity of the green bond market.

"Not everything is green so a reasonably standardized framework for the offering of green bonds will enhance the overall market," said Feheley.

While green bond sales have surged, issuers have yet to generate the expected advantage in financing costs due to demand from socially conscious investors. "In the market right now, we don't see a significant pricing differential between green bonds and traditional bonds, but we expect this may change going forward as allocations to green projects increase," Feheley said.

Kim agrees that the issue of cost of funds of green bonds versus "traditional" bonds has generated a lot of controversy as there has not been enough empirical evidence to establish whether green bonds offer a pricing benefit.

"I can say without a doubt that green bonds have diversified DC Water's investor base, but I can't say that green bonds have offered a definitive pricing benefit at this time" said Kim. "It is still a young market, still in its early days, but I don't think anyone would claim that there is a pricing penalty associated with issuing green bonds, the real question is how much of an upside benefit is there from a pricing standpoint?"

David Goodman, partner, Squire Patton Boggs LLP, who has worked on green bond deals as a bond counsel, said the green bond market can reach its full potential, as green bonds come naturally to sectors like transportation, water and sewer, education and housing - all of which are in need of more new money deals.

"With all of the unmet demand for project demand for infrastructure and the opportunities within each of those areas to accomplish projects that are green friendly and sustainable, I don't see why the trend would not continue to increase as there are financial and reputational benefits from green bonds," Goodman said.

Though growth in green municipal bonds may slow from this year's pace, issuers say green bonds are here to stay, and that efforts to educate the investors and increase transparency about the environmental benefits of projects will pay off.

"There is no question in my mind that there is a pool of capital in the market that is looking for sustainable green investments and when issuers can credibly come to market with green bonds, they can achieve investor diversification and successful bond sales," said Kim.

THE BOND BUYER

BY AARON WEITZMAN

DEC 22, 2015 12:13pm ET

[S&P: Fixing America's Surface Transportation Act's Passage Does Not Affect Grant Anticipation Vehicle Revenue Debt Ratings.](#)

NEW YORK (Standard & Poor's) Dec. 8, 2015—Standard & Poor's Ratings Services today said that its ratings on 25 issuers in the grant anticipation revenue vehicle (GARVEE) sector are unaffected by the enactment of Fixing America's Surface Transportation (FAST) Act, which President Barack Obama signed into law Dec. 4, hours before previous funding was set to expire. However, we believe FAST generally supports the sector's credit quality, due to a longer period of funding certainty and the increased funding levels that the Act provides. Funded mainly by gasoline and diesel fuel taxes deposited in the Highway Trust Fund (HTF) and \$70 billion from various sources within the general fund, the five-year, \$305 billion dollar transportation reauthorization act marks the first long-term

solution for highway and transit funding since 2005.

FAST replaces the Moving Ahead for Progress in the 21st Century, which was enacted in 2012 but provided funding for just slightly more than two years, and was extended several times for a few months, or even weeks at a time, as Congress debated various bill components. The Act covers funding through fiscal 2020 (year ended Sept. 30), which we view as preferable compared with what had become commonplace: eleventh-hour short-term extensions. Furthermore, FAST provides a 5.1% increase in highway fund distributions to states for fiscal 2016, and growth rates of 2.1% to 2.4% thereafter. Previous funding growth rates were lower, and until the FAST Act, Standard & Poor's had cited federal budget deficits as a concern affecting highway funding levels. Overall, the FAST Act authorizes \$230 billion for highways, \$60 billion for public transportation, \$10 billion for passenger rail, and \$5 billion for highway safety programs. This is an approximately 11% increase from current funding levels over five years.

Standard & Poor's ratings in the GARVEE sector range from 'A' to 'AA' for transactions where only federal funding is pledged, and as high as 'AAA' where state agencies blend the federal funding with an additional pledge of state funding. We base the relatively strong ratings in the sector on the issuers' pledge of HTF grants from the federal government.

Overall, we believe, the FAST Act's signing confirms Standard & Poor's views of ongoing and widespread Congressional support for preserving and expanding the national highway system. States and local transportation agencies that receive distributions from the HTF can confidently move forward with complex multiyear transportation projects because the questions surrounding federal funding no longer loom. We will continue to monitor the sector to evaluate how each individual state issuer might adjust its debt or capital spending plans, given the new law.

Separate from the impact on GARVEE debt, other provisions of the FAST Act includes 70% in cuts to the Transportation Infrastructure Finance and Innovation Act (TIFIA) program, from \$1 billion per year in 2015 and \$750 million in 2014 to \$275 million-\$300 million per year during fiscal years 2016-2020, although the scope of eligible TIFIA projects has been expanded. Furthermore, FAST provides \$6.2 billion for a new national freight program, and increases funding for public transportation to \$12.6 billion in 2020 from \$10.7 billion in 2015.

Cashing In on the Public Right of Way.

From parking meters to freeway lighting, governments are finding new ways to turn infrastructure liabilities into assets and improve services.

State and local governments can unlock substantial public value by discovering new ways to conceptualize their assets or operations. There is no better example than how more and more cities are now viewing their rights of ways as underdeveloped resources rather than as liabilities merely requiring costly maintenance.

This revolution in thinking began a few years ago in street parking, when cities such as Indianapolis and San Francisco sparked an entirely new way to manage it. Cities today are partnering with technology providers to replace coin-operated meters with systems that accommodate more cars, dynamic pricing, mobile payment platforms and solar-powered pay stations. Somewhat similarly, New York City is converting its obsolete streetside payphones into revenue-producing interactive

kiosks, which will use advertising revenue to bring city residents gigabit-speed wireless Internet free of charge.

Now the state of Michigan has implemented a unique public-private partnership to save money on a smart lighting solution for state freeways in the Detroit metro area. The state government is responsible for maintaining the some 15,000 freeway lights that illuminate those roads. In the past, the vast majority of those lamps have been low-efficiency, high-maintenance sodium or metal-halide fixtures. Due to obstacles including fiscal constraints, chronic vandalism and copper theft, the lighting system was operating at only about 70 percent of its potential service level at this time last year. Poor lighting on freeways is associated with increased traffic accidents and diminished regional economic activity, so suboptimal performance of the lighting system was no small problem.

Brighter freeways are safer freeways, but Michigan found a way to make them cheaper freeways, too. With Gov. Rick Snyder pushing his procurement team to look closely at alternative delivery methods for infrastructure projects, the state chose to change its existing way of doing business. Rather than simply continuing to pay for maintenance activities, the Department of Transportation now purchases freeway lighting as a service from a private consortium of equity owners, designers, contractors and operations managers.

This new model — state officials say it is the first of its kind in the United States — no longer encourages contractors to replace bulbs unnecessarily but instead rewards energy efficiency and vigilant upkeep. The consortium is responsible for bringing the performance level of the lighting system up to 100 percent over the next two years by replacing inefficient bulbs with high-efficiency LED fixtures, and it also is required to monitor, maintain and repair the system. State officials estimate that the project will save \$18 million in energy costs over the course of the 15-year contract — money that, in turn, is helping to fund the project.

In essence, Michigan has pioneered a way to mitigate the liability the lighting system poses by shifting risk to the private sector, which is more agile than slow moving government procurement models in adapting to rapidly changing technology. But even this breakthrough is only the beginning. Other jurisdictions are looking to rethink their lighting liabilities as powerful data gathering assets.

Earlier this year, for example, San Diego partnered with GE to outfit the city's lights with sensor-equipped LEDs that can collect ambient data. The pilot is testing the ways that the system could, in the future, enhance a host of municipal government functions, such as reducing traffic congestion, detecting open parking spaces and providing emergency responders with real-time views of an area before they arrive on the scene. Almis Udrys, San Diego's director of performance and analytics, said the purpose of the pilot is to explore the best hardware and software options for building a "strong analytic platform," one that also could provide information to the public in an open-data format.

We will continue to follow breakthroughs like these as governments find ways to convert liabilities into assets. What is already clear is that the staples of municipal infrastructure are beginning to emerge as connected platforms for producing broad safety and operational advantages for residents.

GOVERNING.COM

BY STEPHEN GOLDSMITH | DECEMBER 16, 2015

Craig Campbell, a research assistant at the Ash Center for Democratic Governance and Innovation at the Harvard Kennedy School, contributed research and writing for this column.

What the Fed Rate Hike Means for the Municipal Market.

Short-term interest rates will be rising for the first time in nearly a decade, the Federal Reserve Board announced Wednesday. The move means mixed results for the states and localities that borrow money in the municipal market.

Citing “considerable improvement in labor market conditions this year,” the board announced a scheduled rate hike of one-quarter percent starting in 2016. It would be the first of several small rate hikes, meaning interest rates could rise by more than 1 percent a year from now. In a statement, the Federal Open Market Committee said it is “reasonably confident that inflation will rise over the medium term to its 2 percent objective.”

The move is a signal that the board believes the economy is strong enough to keep growing without as much help from the nation’s central bank. The Fed slashed rates to zero — and has kept them there — following the 2008 financial crisis, in an effort to reboot the nation’s economy. Now, as the fiscal outlook has continued to improve, this week’s announcement was widely expected.

For those who issue municipal bonds, the rate hike has no immediate implications on any outstanding government debt. But it will likely place a slightly higher price tag on the cost of issuing debt in the coming year.

Still, many do not expect it to have a dampening effect on the municipal bond market as a whole.

For one, any government refinancing its debt will still be doing so at a significantly lower interest rate to generate savings.

Another big reason the rate hike will have a muted effect on the muni market is that the Fed’s decision only impacts short-term interest rates, not long-term ones. In fact, sometimes a hike in short-term rates can actually cause a downward tick in long-term rates — saving money for governments that can afford to issue long-term debt.

For example, between 2004 and 2006, the Fed raised the short-term rate from 1 percent to 5.25 percent. During that time period, the rates on a 10-year Treasury bond only went up a half percentage point. And yields on the 30-year bonds actually went down slightly. The reason is because when short-term interest rates are increased, it actually dampens the impact of inflation, which is what plays the larger role in setting long-term interest rates.

“The expectation is the yield curve will flatten and influence the longer term much less,” said Tim Barron, chief investment officer at Segal Rogerscasey. “So if you’re refinancing a 20-year bond, it is likely to have very modest effects.”

But the mere act of raising the rate, even though it was expected, does create a little volatility. That’s because municipal investors will be closely watching to see how soon — and by how much — the Fed raises rates again. Another small step-up next year would signal that the economy is on track with expectations. A bigger hike would indicate a faster-growing economy. If there’s not another rate hike, then it could be a sign of an economy that’s slowing down again.

So, while the impact on government issuers remains to be seen, some entities will see more immediate benefits. Pension funds welcome a higher rate because it likely means more interest income will be generated from their bond investments, said Gail Sussman, managing director at Moody’s Investors Service. The shift comes just months after pension funds reported they had

meager earnings in fiscal 2015, due in part to poor returns from global public equities.

Housing finance agencies also benefit from the rate hike. They “will see higher profit margins, greater financing flexibility, and an opportunity to grow loan portfolios in a higher-rate environment,” Sussman said.

GOVERNING.COM

BY LIZ FARMER | DECEMBER 17, 2015

Public Pensions’ Latest Challenge: Longer Lives.

Increases in retirees’ longevity are likely to make an already dismal fiscal picture look worse.

There is no shortage of self-inflicted wounds plaguing state and local government pension systems. Among the most common are failing to address funding problems even after they become clear, using pension enhancements rather than salary increases to attract and retain employees, and employing unrealistic assumptions about pension-fund investment returns to make their finances appear artificially rosy.

But San Francisco’s current pension troubles are less of the city’s own making. Sure, the fund assumes a 7.5 percent return on its investments and is currently reaping just 4 percent, but there’s a bigger problem: The city’s retirees, like Americans in general, are just living too long.

Last year the nonprofit Society of Actuaries released its first updated projections on Americans’ longevity since 2000. The organization found that the average 65-year old male would live 86.6 years, about two years longer than previously forecast, and that the average 65-year-old female would live 88.8 years, an increase of nearly two and a half years. For public and private pension funds, those additional years of drawing retirement benefits translate into a 4-8 percent jump in funding obligations.

San Francisco’s voter-approved 2011 reforms changed the pension formula for new hires and capped some payments. As a result, pension obligations were expected to peak last year, but they’re still growing, and a large part of that growth is related to retiree longevity. Pension funding is the biggest cause of a \$99 million hole in the city’s 2016-17 budget.

The numbers are particularly disheartening because in a booming economy city leaders assumed that controlling pension costs would free up money for transportation infrastructure and other upgrades. Instead, they’re left to figure out how to close a budget gap — and to worry about what to do when the local economy slows down.

What’s happening in San Francisco will likely be seen across the pension landscape as the new longevity numbers are factored in. More and more, the pension crises state and local governments face resemble the Hans Brinker story about the little Dutch boy trying to plug holes by sticking his finger in the dike. Whether self-inflicted or otherwise, there appears to be no end to the new problems.

It’s no wonder that the vast majority of private-sector employers have moved away from traditional but more expensive defined-benefit pensions. And while public-to-private-sector comparisons are often problematic, it seems unrealistic to think governments can resist that trend, as most continue

to do, and still deliver the range of public services their constituents expect. I have long advocated for public pension systems to transition to a defined-contribution model, but with a “cash balance” option for the risk-averse that guarantees a set interest rate on both employer and employee contributions.

Governments can continue to offer more-generous retirement benefits than their private-sector counterparts, but taxpayers can no longer afford to shoulder the entire risk for the seemingly endless variables that increase pension liabilities. While few would wish anything but the longest lifespans for retired public servants, it's becoming clear that increasing longevity is one of the variables that are likely to continue to bedevil the world of pension funding.

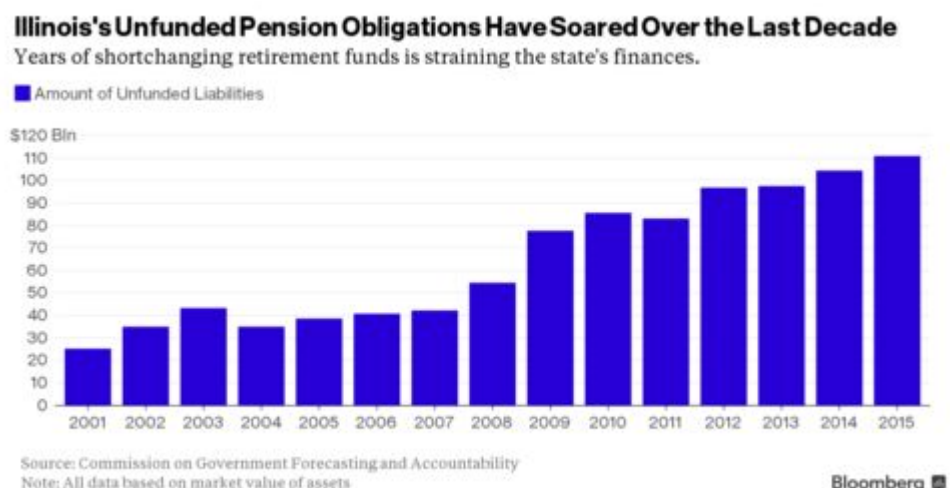
GOVERNING.COM

BY CHARLES CHIEPPO | DECEMBER 18, 2015

Illinois Record Budget Impasse Makes It Worse for the State's Pension Disaster.

As 2015 draws to a close, Illinois marks half a year without a budget. No spending plan has driven up borrowing costs, sunk its credit rating, and perhaps worst of all, exacerbated the state's biggest problem: its underfunded pensions.

Home to the least-funded state retirement system in the nation, Illinois has \$111 billion of pension debt, which breaks down to more than \$8,000 per resident. Partisan gridlock has produced the longest budget impasse in Illinois history. The stalemate has not only weakened state finances, it has kept lawmakers from finding a fix for those mounting liabilities.



“The delay on the budget is definitely delaying anything being done about the pensions,” said Dan Solender, head of municipals at Lord Abbett & Co. in Jersey City, New Jersey, which manages \$17 billion of local debt, including Illinois general-obligation bonds. The firm is underweight Illinois. “The longer you wait to try to catch up on funding, the worse the situation gets.”

Illinois's fiscal health will deteriorate further without a budget, hindering its ability to mend its

pension system. Moody's Investors Service dropped Illinois, already the worst-rated state, to the lowest investment-grade tier in October as the budget stalemate dragged on. Last month, Moody's warned that pensions are Illinois's "greatest challenge."

It's been seven months since the Illinois Supreme Court rejected the state's solution. Justices threw out the 2013 restructuring that took six attempts over 16 months to pass, despite one-party rule at the time. The measure was projected to save \$145 billion over 30 years by limiting cost-of-living adjustments and raising the retirement age.

Illinois enters 2016 snarled in partisan bickering as Governor Bruce Rauner, the state's first Republican chief executive in 12 years, and the Democrat-controlled legislature can't agree on annual appropriations, much less an overhaul of a retirement system that must withstand an inevitable legal challenge. The state constitution bans reducing worker retirement benefits.

In July, Rauner laid out a plan to create a tiered system to cut retirement liabilities. At the time, he said it would save taxpayers billions of dollars. The proposal, which included a measure to allow municipalities to file for bankruptcy protection, was never introduced, according to Catherine Kelly, his spokeswoman.

Standard & Poor's removed Illinois's A- rating from negative watch on Wednesday, a designation that usually signals a downgrade is imminent. In doing so, the New York-based company kept Illinois one step higher than Moody's and Fitch Ratings. Fitch dropped Illinois in October to BBB+, the third lowest investment grade, and Moody's cut its rank to the equivalent Baa1 later that month.

Rauner and members of his administration have regular talks on pension reform with the four legislative leaders and their staffs, according to Kelly, who reiterated the governor's call for structural changes like term limits and property tax relief.

"Illinois' pension crisis is one of the most pressing issues facing the state, and common-sense reforms are needed to achieve real savings in our pension system to ensure its long-term viability," Kelly said in an e-mailed statement.

Illinois is set to pay about \$7.5 billion to pensions this fiscal year, and another \$7.8 billion in the year that starts July 1, according to the Civic Federation, citing preliminary estimates by the retirements systems.

Delayed Payment

Even with the record budget impasse, about one of every \$5 from the state's general fund coffers is going toward pensions, according to a Civic Federation report that cites estimates from Illinois Senate Democrats published on Aug. 13. The state's four plans are only 42 percent funded based on the market value of assets, according to the Commission on Government Forecasting and Accountability. That compares to 60 percent a decade earlier.

The lack of a budget forced the state comptroller to delay a \$560 million November payment to the state retirement system. Illinois's unpaid bills totaled \$7.6 billion as of Dec. 18, according to that office. The November retirement payment will be paid in the spring when the state has more revenue from income tax collections, according to the comptroller's staff.

Investor Confidence

While Comptroller Leslie Geissler Munger has said bond payments are prioritized, the lack of budget has shaken some investors' confidence. Illinois hasn't sold bonds since April 2014, a record

borrowing drought.

The spread on its existing debt has widened. Investors demand 1.8 percentage points of extra yield to own 30-year Illinois bonds, the most among the 20 states tracked by Bloomberg. When the spread climbs, that's reflecting that investors think the problem is getting worse, said Richard Ciccarone, Chicago-based chief executive officer of Merritt Research Services.

"What's the root cause of why we're in the problem we're in?" Ciccarone said. "It's down to the pensions."

Illinois is like a patient in the emergency room, said Paul Mansour at Conning, which oversees \$11 billion of munis, including Illinois securities. The budget stalemate is the crisis at hand, and the unfunded pension liabilities is the chronic disease that's only getting worse. The budget standoff is hurting future negotiations on pension changes, he said.

"It's not an atmosphere of conciliation and compromise," said Mansour. "It's an atmosphere of conflicts."

Bloomberg Business

by Elizabeth Campbell

December 22, 2015 — 9:00 PM PST Updated on December 23, 2015 — 11:37 AM PST

[Puerto Rico Electric Wins Debt-Cutting Deal With Creditors.](#)

Puerto Rico's electric utility reached an agreement with insurance companies MBIA Inc. and Assured Guaranty Ltd. and bondholders to restructure its \$8.2 billion of debt, marking a first step by the Caribbean island to reduce financial obligations that have left the government contending with a mounting fiscal crisis.

The deal brings together the Puerto Rico Electric Power Authority, the largest U.S. public-power provider, insurers and others such as hedge funds that hold 70 percent of its debt, the agency, known as Prepa, said in a statement late Wednesday. Its obligations would be cut by more than \$600 million, with investors taking losses of about 15 percent by exchanging their bonds for new securities. The transaction aims to free up cash so the utility can modernize plants. The pact requires that lawmakers approve the deal by Jan. 22.

"It gives us liquidity, it gives us breathing room," Lisa Donahue, Prepa's chief restructuring officer, said in a telephone interview Wednesday night. "It gives us cash to invest in infrastructure and to provide, ultimately, sustainable clean power for Puerto Rico."

The accord will result in the largest-ever restructuring in the \$3.7 trillion municipal-bond market. It may be viewed as a potential guide for how other Puerto Rico agencies could cut their debts as the government rapidly runs out of cash.

Puerto Rico, with a population of 3.5 million, owes \$70 billion, more than any U.S. state except California and New York. Governor Alejandro Garcia Padilla is seeking to reduce that debt load by asking investors to take losses on their commonwealth holdings.

Averting Default

The agreement enables the utility to avoid defaulting on a \$196 million interest payment due Jan. 1 and free up funds by refinancing \$115 million of debt if lawmakers approve the deal next month. The insurers will provide a surety bond of as much as \$462 million that will guarantee repayment in the event of a default.

MBIA's National Public Finance Guarantee Corp. will provide as much as \$344 million of that, according to a Dec. 24 financial filing from the company.

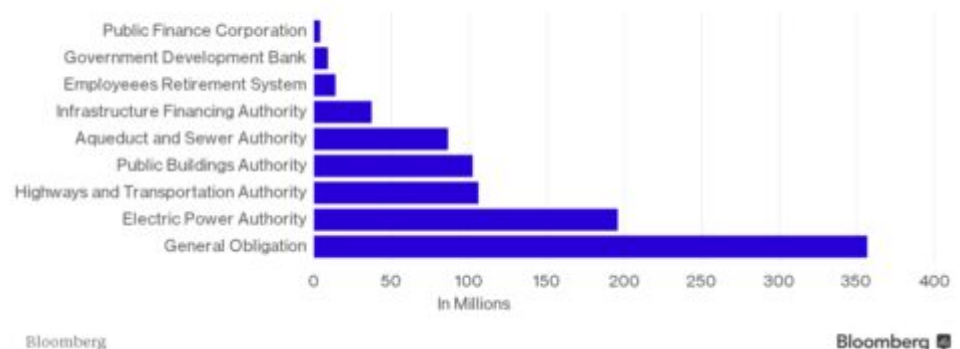
A Prepa bond maturing July 2026 traded Thursday at an average price of 58 cents on the dollar, up from an average 53 cents on Dec. 18, data compiled by Bloomberg show. The average yield was about 12 percent.

"The physical infrastructure of Prepa is in dire need of repair, so we're happy they've made some progress," Phil Fischer, Bank of America Merrill Lynch's head of municipal research, said in an interview. "We really need to know the details to know whether or not it effectively solves the problem."

Prepa has been negotiating for more than a year. The process shows the difficulty Puerto Rico faces in seeking to persuade investors to accept less than they're owed on its bonds, which were sold by more than a dozen different arms of the U.S. territory. Garcia Padilla said on Dec. 9 that the commonwealth may default as soon as January because it has run out of cash.

Puerto Rico's New Year's Eve Bill

Puerto Rico and its agencies face nearly \$1 billion in interest payments due Jan. 1.



Under the restructuring, investors holding about 35 percent of the debt will take a 15 percent loss by exchanging their securities for new ones repaid with revenue from a customer surcharge that flows directly to a trustee. The transaction must be executed by June 30. Other bondholders, such as individual investors, will have the option to participate.

Shares Rally

Shares of MBIA and Assured Guaranty climbed Thursday. MBIA jumped 10 percent to \$6.87 by 11:03 a.m. in New York. Assured rose 3.7 percent to \$27.76.

Dominic Frederico, Assured Guaranty's president and chief executive officer, said Thursday that the deal lays the groundwork for a "settlement that fosters modernization, long-term sustainable rates for ratepayers and continued access to efficient capital markets financing for Prepa."

Greg Diamond, a spokesman for MBIA, said the company didn't have a comment beyond a financial

filing Thursday that details the agreement.

The parties reached a tentative accord on Dec. 17 after Donahue flew from Puerto Rico to New York to craft a plan before an existing bondholder deal expired, according to a person with knowledge of the talks who asked for anonymity because the discussions are private.

The restructuring would be the first step in Puerto Rico's goal to reduce its obligations. It follows Garcia Padilla's failed attempt this month to persuade Congress to include a provision in a \$1.1 trillion spending bill to allow commonwealth agencies to file for bankruptcy protection, just as U.S. local governments and publicly owned corporations can. Without the power to have debt written off in court, Prepa's only option has been to negotiate with bondholders.

The consent of the insurers, who had balked after an earlier deal was struck by bondholders, is the final piece in a plan to ease Prepa's debt payments so it can invest in rehabilitating a system that uses crude oil to produce electricity. It would give Prepa debt-service relief for five years of more than \$700 million.

The deal still needs approval from Puerto Rico lawmakers, who are set to reconvene on Jan. 11. "That's our next big milestone that we're working on," Donahue said.

Bloomberg Business

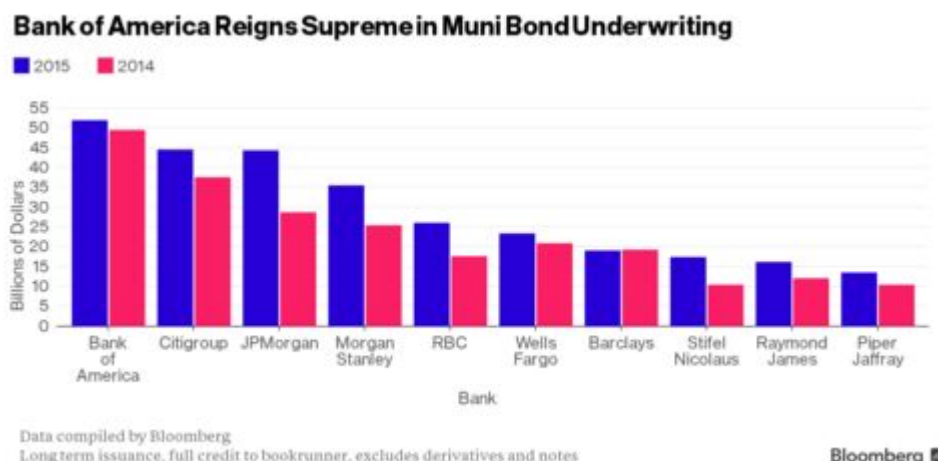
by Michelle Kaske

December 23, 2015 — 8:31 PM PST Updated on December 24, 2015 — 8:40 AM PST

[Bank of America Tops Municipal Underwriter Ranks for Fourth Year.](#)

John Lawlor, the head of Bank of America Corp.'s municipal-bond department, is a graduate of the U.S. Naval Academy. In 2015, he navigated the second-largest U.S. bank by assets to the top of the muni-bond underwriting table for the fourth straight year.

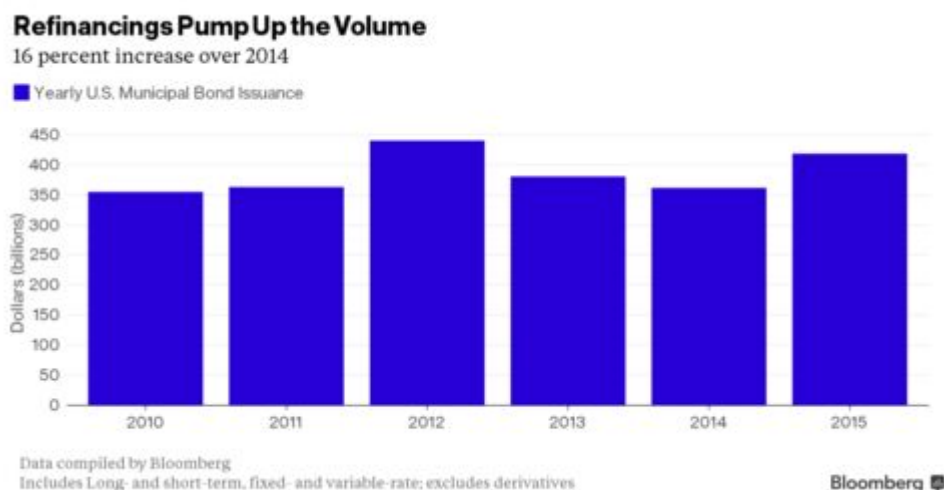
Charlotte, North Carolina-based Bank of America managed almost \$52 billion of state and local government debt sales through Dec. 22. Citigroup Inc. and JPMorgan Chase & Co. and Citigroup Inc. are battling for second place, according to data compiled by Bloomberg.



One notable absence from the top 10: Goldman Sachs Group. Inc., which fell to 11th place from eighth last year. Taking Goldman's place is Stifel Nicolaus & Co., the investment banking unit of Stifel Financial Corp. The St. Louis-based bank is moving up the charts after acquiring string of regional firms in the last few years, including California-based Stone & Youngberg LLC and E.J. De La Rosa & Co.

States and local governments have issued about \$420 billion of long-term and short-term debt this year, 16 percent more than 2014 and the most since 2012. Volume was boosted by refinancings of higher cost debt in advance of the first interest-rate increase in nine years. Of the 10 biggest deals this year, only Georgia borrowed more for new projects than to refinance debt. Bank of America managed the biggest deal of the year, a \$2.2 billion issue by New Jersey's Economic Development Authority.

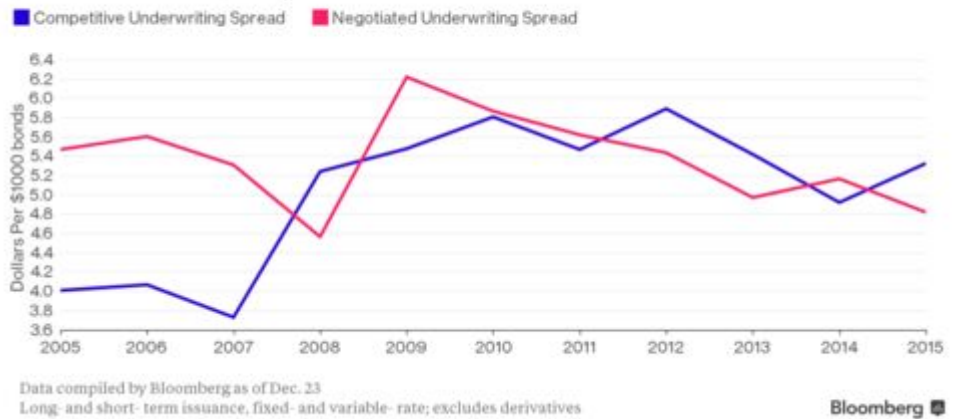
Municipal issuers may sell \$389 billion of long-term bonds next year, down about 1 percent from 2015, according to a survey by the Securities Industry and Financial Markets Association.



While banks underwrote more bonds, they were getting paid less for it. Fees that Wall Street charges U.S. cities and states to sell bonds fell to lowest in seven years as banks competed for market share. The underwriting fees on the New Jersey EDA deal totaled \$10.1 million, or \$4.6 per \$1,000 of bonds. That's 20 cents less than the average negotiated underwriting spread of \$4.8 per \$1,000 bonds this year.

Muni Bond Underwriting Is Getting Less Lucrative

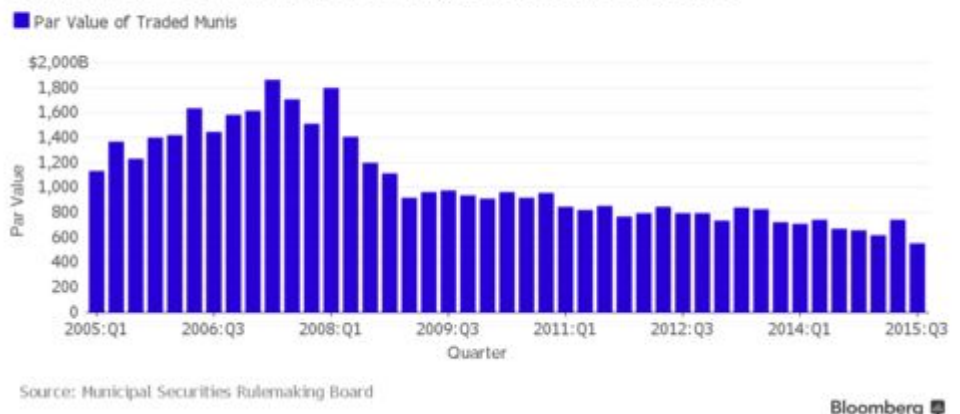
Fees on no-bid deals reach 7-year lows



Profits were also depressed by sparse trading. Trading volume fell to the lowest level in at least 10 years during the third quarter, a period of low and volatile yields, which kept investors on the sidelines.

Municipal-Bond Trading Volume Hits New Low

Low yields and volatile markets curb trading to the least in over a decade.



Bloomberg News

by Martin Z Braun and Sowjana Sivaloganathan

December 23, 2015 — 9:00 PM PST Updated on December 24, 2015 — 7:05 AM PST

[Tax-Exempt Hospitals Face Payments to Host Towns in New Jersey.](#)

New Jersey's nonprofit hospitals, which have long enjoyed a tax exemption, would have to make payments to their host communities to cover the cost of municipal services under a bipartisan measure making its way through the state legislature.

Lawmakers are responding to a June court ruling which found that the 40-acre Morristown Medical Center owed local property taxes because of "blurred lines" between its nonprofit and for-profit

businesses. The 687-bed hospital's owner agreed in November to pay the town \$15.5 million over the next decade.

The decision opened the door for other municipalities that host nonprofit businesses, including hospitals and universities, to challenge their tax-exempt status. Hospitals in Illinois, Pennsylvania and Iowa also have faced challenges as towns struggle to balance budgets.

"It's not a stretch to say that every nonprofit that owns property should be looking at this," Linda Czipo, executive director of the Center for Non-Profits, an organization based in Mercerville, New Jersey that advocates for the groups in Trenton and Washington. "We're concerned about how the whole property-tax issue might play out for the broader nonprofit community."

The judge who issued the Morristown ruling is also presiding over a lawsuit against Princeton University, New Jersey's only Ivy League school. Residents are challenging its exemption because it collects drug-patent royalties that it shares with faculty.

Tax Code

The Morristown hospital's tax-exemption challenge, like those in other states, arose in part from President Barack Obama's signature 2010 legislation designed to shrink the number of Americans without health insurance, and in large measure due to a wave of consolidations in the hospital industry. While the existence of a new generation of joint operations and profit-based services cropped up in order to trim costs, hospitals were still operating under a tax code put in place around the turn of the last century.

"The law as it was written in 1913 really didn't apply today," said Senator Joseph Vitale, a Democrat from Woodbridge. "It's a new day of doing business for hospitals."

Vitale is co-sponsoring a bill that would establish a payment formula for nonprofit hospitals that have for-profit businesses, such as doctor groups. The new payments would be less confusing for the governments who would have to decide how to assess the bills for the hospitals, and are designed to be lower than the full levies they might otherwise face, said Senator Robert Singer, a Republican from Lakewood who is also a co-sponsor.

"This is an opportunity for hospitals to keep their heads above water," Singer said. "As municipalities get cash-strapped, they are looking at every resource, and the Morristown case was a 'my ship has come in' moment."

The legislation would obligate the hospitals to make "community service contributions" of \$2.50 per bed a day to host municipalities to defray costs such as police, fire and ambulance crews. Many poor, inner-city hospitals or those deemed money-losing by the state would be exempt under the bill, which passed a Senate committee this month.

Statewide Solution

Hospitals account for 140,000 jobs in the state and see more than 18 million patients a year, according to the New Jersey Hospital Association, the state-level trade group representing almost 400 health-care organizations. The association supports the measure.

"Clearly, the Morristown tax court decision has created a great deal of uncertainty, for hospitals and municipalities alike," Betsy Ryan, NJHA's president, said in a statement. "Our goal was to support a statewide solution that would strike a fair balance."

In New Jersey, property taxes make up almost all of the local revenue used to fund town, county and school budgets. While hospitals can serve as a community's economic anchor, the towns — and their residents — are footing the bill for the cost of services such as police and fire.

Nonprofits employ 314,000 people in New Jersey, nearly 10 percent of the state's private workforce.

Nicole Sizemore, a spokeswoman for Governor Chris Christie, declined to comment on pending legislation.

"What folks forget is that for most non-profits the margin is razor thin," said Andrew Dick, an Indianapolis attorney who represents hospitals in tax-exemption cases for Hall, Render, Killian, Heath & Lyman P.C. "If they had to pay the property taxes, that could be enough to push them into the red."

Bloomberg News

by Terrence Dopp

December 28, 2015 — 4:57 AM PST

Municipal Bond Sales to Rise in January After 23% Jump in 2015.

Municipal bond sales in the U.S. are set to increase in the next month while the amount of redemptions and maturing debt falls following a year when new issues and the size of the market expanded.

States and localities plan to issue \$8.3 billion of bonds over the next 30 days, according to data compiled by Bloomberg. A week ago, the calendar showed \$5.6 billion planned for the coming month. Supply figures exclude derivatives and variable-rate debt. Some municipalities set their deals less than a month before borrowing.

Municipalities have announced \$9.8 billion of redemptions and an additional \$10.3 billion of debt matures in the next 30 days, compared with the \$20.1 billion total that was scheduled a week ago.

For all of 2015, sales rose 23 percent to \$376.8 billion from the \$305.5 total in 2014, Bloomberg data show. New issues fell short of the record \$407.7 billion in 2010. The U.S. municipal market expanded by 0.7 percent this year to \$3.53 trillion.

Issuers from New Jersey have the most debt coming due this month, with \$1.6 billion, followed by Illinois at \$1.43 billion and Indiana with \$1 billion. New Jersey Turnpike Authority has the biggest amount of securities maturing, with \$1.28 billion.

Investors added \$647 million to mutual funds that target municipal securities in the week ended December 16, compared with an increase of \$825 million in the previous period, according to Investment Company Institute data compiled by Bloomberg.

Exchange-traded funds that buy municipal debt increased by \$160 million last week, boosting the value of the ETFs 0.85 percent to \$18.9 billion.

State and local debt maturing in 10 years now yields 89.2 percent of Treasuries, compared with 90.1 percent in the previous session and the 200-day moving average of 100.9 percent, Bloomberg data

show.

Bonds of California and Massachusetts had the best performance over the past year compared with the average yield of AAA rated 10-year securities, the data shows. Yields on California's securities narrowed 9 basis points to 2.18 percent while Massachusetts' declined 8 basis points to 2.11 percent. Puerto Rico and New Jersey handed investors the worst results. The yield gap on Puerto Rico bonds widened 147 basis points to 11.82 percent and New Jersey's rose 8 basis points to 2.91 percent.

This story was produced by the Bloomberg Automated News Generator.

Bloomberg Data News

December 28, 2015 — 3:47 AM PST

Fitch Rates Illinois GOs 'BBB+'; Outlook Stable.

Fitch Ratings-New York-23 December 2015: Fitch Ratings has assigned a 'BBB+' rating to the following general obligation (GO) bonds of the state of Illinois:

-\$480 million GO bonds, series of January 2016.

The bonds are expected to sell competitively on Jan. 14, 2016.

In addition, Fitch affirms the following rating:

-\$26.2 billion in outstanding GO bonds at 'BBB+'.

The Rating Outlook is Stable.

SECURITY

Direct general obligation, full faith and credit of the state of Illinois.

KEY RATING DRIVERS

REDUCED FLEXIBILITY: The rating reflects the continued deterioration of the state's financial flexibility during its extended budget impasse. Illinois' inability to balance its operations, eliminate accumulated liabilities, and grow reserves during a period of economic expansion leaves it vulnerable to the next economic downturn.

ONGOING BUDGET GAPS: After four years of nominally balanced operations that benefitted from temporary tax increases, the fiscal 2015 budget was only balanced through extensive one-time action and a budget has not been enacted for fiscal 2016, which began on July 1. The state continues to spend in most areas at the fiscal 2015 rate, which is expected to lead to a sizeable deficit. As was the case during the most recent recession, this deficit spending is likely to be addressed by deferring state payments and increasing accumulated liabilities.

LONG-TERM LIABILITIES HIGH: The state's debt burden is above average and unfunded pension liabilities are exceptionally high. The state has limited flexibility with regard to pension obligations following the May 2015 Illinois Supreme Court decision that found the 2013 pension reform unconstitutional. Pensions remain an acute pressure on the state's fiscal operations.

ECONOMY A CREDIT STRENGTH BUT RECOVERY WEAK: The state benefits from a large, diverse economy centered on the Chicago metropolitan area, which is the nation's third largest and is a nationally important business and transportation center. Economic growth through the current expansion has lagged that of the U.S. as a whole.

RATING SENSITIVITIES

NEED FOR STRUCTURAL BALANCE: The Stable Outlook incorporates the expectation that the state of Illinois will use one-time solutions to nominally balance the fiscal 2016 budget but will not achieve more permanent, structural solutions in a time frame that will have a significant impact on fiscal 2016.

Failure to enact measures that lead to ongoing budget balance beyond fiscal 2016 could lead to negative rating action. Successful implementation of measures to enact a structurally balanced budget and reduce accumulated budget liabilities may lead to positive rating action.

CREDIT PROFILE

The 'BBB+' rating on the GO bonds of the state of Illinois reflects the deterioration of the state's financial flexibility as its budget stalemate continues deep into the current fiscal year. With the national economic expansion now extending into a sixth year, Illinois has failed to capitalize on economic growth to restore flexibility utilized during the last recession or to find a solution to its chronic mismatch of revenues and expenditures. Once again, the state has displayed an unwillingness to address numerous fiscal challenges, which are now again increasing in magnitude as a result.

Temporary increases in personal and corporate income tax rates in place for four years, from Jan. 1, 2011 through Dec. 31, 2014, closed or partially closed the budget gap across five fiscal years. However, with their expiration, and the failure to enact a spending plan within expected revenues, the budget gap has ballooned. As a result, the state finds itself with a current operating deficit, structural budget deficit, cash crunch, and accumulation of accounts payable that approaches its highest level at the depth of the recession. As the fiscal year progresses, fewer options remain for closing the gap on a current year basis, pushing the potential solutions into fiscal 2017.

ONE-TIME SOLUTIONS CLOSED 2015 GAP

The current budget stalemate follows a fiscal 2015 when a significant gap was closed primarily through the use of one-time fund sweeps rather than on-going spending or revenue action. The enacted budget for fiscal 2015 relied on approximately \$2 billion in one-time revenues to achieve balance, given the anticipated expiration of the temporary taxes half-way through the fiscal year. These included interfund borrowing, use of prior year surplus to prepay fiscal 2015 Medicaid expenses, underfunding of specific budget line-items, and an increase in anticipated accounts payable.

Upon taking office in January 2015, and finding a budget gap that was larger than expected, the current administration proposed, and the legislature enacted, an additional \$1.3 billion in fund sweeps and approximately \$300 million in budget reductions. However, despite some revenue overperformance, particularly in personal income tax collections, the lack of a structural solution in fiscal 2015 left the state in a weak fiscal position in developing the fiscal 2016 budget.

FISCAL 2016 SPENDING SUBSTANTIALLY ABOVE EXPECTED REVENUES

The governor and state legislature have not come to agreement on a spending and revenue plan for

the current fiscal year, which began July 1, 2015, for which there is a large projected deficit that reflects the full-year impact of the temporary tax expirations.

Despite the absence of an enacted budget, due to continuing and permanent appropriations, court orders and consent decrees, and an enacted appropriation for schools, the state is spending approximately 86% of its budget at the fiscal 2015 enacted rate during the budget impasse. Continuing to spend at this rate, without further appropriations or other changes, is forecast to almost fully expend currently anticipated revenues. However, Fitch believes a significant portion of the remaining 14% of the budget, which includes major funding items such as group health insurance and higher education, will ultimately have to be covered with state revenue. Based on currently expected revenues, and without further adjustments to spending, this would lead to as much as a \$4 billion to \$4.7 billion operating deficit, or 13% to 15% of revenues. This deficit would most likely be addressed by an increase to the accumulated accounts payable balance. The state notes that it has already taken approximately \$1 billion in actions to reduce spending in funds other than the general revenue funds, to reallocate to the general revenue fund, although the latter requires legislative action.

HIGH LONG-TERM LIABILITIES; STRONG RETIREE BENEFIT PROTECTIONS

Illinois' long-term liabilities, particularly pension liabilities, are very high for a U.S. state. Illinois is the weakest of the states in terms of its ratio of debt and unfunded pension liabilities to personal income, at 24.7% as of 2014, is well above the median for states. This compares to Fitch's calculated median of 5.8% for U.S. states.

As reported under the new reporting requirements of GASB 67, the PERS fiduciary net position as a percentage of the total pension liability was 40% as of June 30, 2015. Annual pension contributions, which total almost \$7 billion in fiscal 2016, or 22% of expected revenues, have been increasing significantly but remain below actuarially-calculated levels. Growing pension contributions have been crowding out other expenditure growth and absorbing revenue growth, in Fitch's view.

Illinois has no ability to unilaterally modify retiree benefits, as legal protections in the state are exceptionally strong. In May 2015 the Illinois Supreme Court found 2013 pension reform unconstitutional in a strongly worded decision. The ruling left pensions as an acute pressure on the state's fiscal operations, with spending demands that are more inflexible than is the case for other states.

There is an irrevocable and continuing appropriation for all GO debt service, and continuing authority and direction to the state treasurer and comptroller to make all necessary transfers from any and all revenues and funds of the state. The state funds debt service in advance by setting aside 1/12 of principal and 1/6 of interest every month for payments due in the ensuing 12 months.

TEPID ECONOMIC GROWTH

Illinois' economic performance, while positive, has lagged that of the U.S. as a whole. Employment growth has been well below the national average through the recovery/expansion period and has weakened relative to the U.S. in recent months. Non-farm employment grew at just a 0.6% year-over-year rate in November 2015. Through November 2015, the state has recovered only 72% of jobs lost in the downturn, among the weakest of the states at less than half the national recovery rate. Both GDP and personal income declined at a steeper rate in Illinois during the recession and have been increasing at a slower rate during the expansion.

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Additional information is available at 'www.fitchratings.com'.

Public Pension Network Opposes Additional Pension Reporting in Puerto Rico Specific Legislation.

**National Conference of State Legislatures (NCSL)
International Association of Fire Fighters (IAFF)
United States Conference of Mayors (USCM)
Fraternal Order of Police (FOP)
National Association of Counties (NACo)
National Education Association (NEA)
National League of Cities (NLC)
International City/County Management Association (ICMA)
National Association of Police Organizations (NAPO)
National Association of State Auditors Comptrollers and Treasurers (NASACT)
American Federation of State, County and Municipal Employees (AFSCME)
Government Finance Officers Association (GFOA)
International Public Management Association for Human Resources (IPMA-HR)
National Conference of State Social Security Administrators (NCSSSA)
National Conference on Public Employee Retirement Systems (NCPERS)
National Council on Teacher Retirement (NCTR)
National Association of State Retirement Administrators (NASRA)**

December 11, 2015

VIA FACSIMILE: (202) 224-2499

The Honorable Mitch McConnell

Majority Leader
United States Senate
Washington, DC 20510

Dear Majoriy Leader McConnell:

On behalf of the national organizations listed above, representing state and local governments, elected officials, employees and retirement systems, we are writing to express our strong opposition to public pension requirements contained in the Puerto Rico Assistance Act of 2015 (S. 2381). These provisions are not limited to the territory of Puerto Rico, but impose a federal mandate on all state and local governments in areas that are the fiscal responsibility of sovereign States and localities, and are conflicting, administratively burdensome and costly.

The provisions are not germane to the underlying legislation, nor do they protect benefits, save costs or improve retirement system funding. They also have neither been introduced this Congress as stand-alone bills nor received consideration under regular order, including in the many hearings pertaining to Puerto Rico.

State and local government retirement systems are established and regulated by state laws and, in many cases, further subject to local governing policies and ordinances. State and local governments have and are taking steps to strengthen their pension reserves and operate under a long-term time horizon. Since 2009, every state has made changes to pension benefit levels, contribution rate structures, or both. Many local governments have made similar modifications to their plans. A compendium of information that corrects many misperceptions regarding the financial condition of these governments and their retirement plans can be found here: State and Local Fiscal Facts: 2015.

Federal interference into the fiscal affairs of state and local governments is neither requested nor warranted. Therefore, we strongly urge the exclusion of provisions impacting state and local government retirement systems from legislation relating to Puerto Rico assistance or any other legislation under consideration.

If you have any questions or would like additional information, please feel free to contact any of our organizations' legislative staff listed below. We would be more than happy to meet with your office to discuss this important matter further.

Sincerely,

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Fixed Income Outlook 2016: Have Rising Interest Rates Been Priced Into Bonds?

With the Fed finally raising rates — and more hikes likely to come — we look at the opportunities and dangers in fixed income in the New Year

The markets yawned when the Federal Open Market Committee raised its target by 25 basis points for the federal funds rate on Dec. 16, since the widely anticipated move had already been priced into the market. When the Third Avenue Focused Credit Fund halted redemptions from its high-yield fund in early December, there was much consternation but no contagion into other junk bond vehicles.

In a November interview, Kathy Jones, chief fixed income strategist for the Schwab Center for Financial Research, pointed out that the markets had already priced in the Fed rate hike. “Look at two-year notes,” she said, “they’re yielding almost 90 bps; a year ago they were yielding 22, 23, so clearly the market has discounted a couple of rate hikes at the short end.”

However, the pace of further Fed increases in 2016 and the prospects for more volatility, especially in the currency markets, along with more quantitative easing by the European Central Bank and its counterparts in Japan and China, may well affect yields next year.

As for the Fed itself, in a Dec. 22 note to investors, George Rusnak, co-head of global fixed income strategy for Wells Fargo Advisors, pointed out that in its Dec. 16 statement, the Fed “included the word ‘gradual’ twice when referring to the path and probability of future rate hikes. The addition of this word indicates that the Fed will be quite cautious before making future rate increases.”

Just as the Fed communicated regularly before taking action on Dec. 16, Rusnak believes the Fed “will work to clearly guide the markets prior to rate hikes in order to avoid market disruptions.”

As Treasuries are expected to fade, here’s where the biggest money managers are finding value. Below, we look at the outlook for some specific fixed income sectors. As for the bigger picture for bonds, Timothy Paulson, fixed income investment strategist for Lord Abbett, said in a note to investors on Dec. 21 that the consensus in 2016 is for rising interest rates and a flattening yield curve, in which rates on shorter-maturity issues rise faster than those of longer maturity.

Despite that consensus, Paulson reminded investors that “markets move when expectations change, and those expectations could be volatile as we get more information on economic data” throughout the year. Paulson also reports that Lord Abbett has already seen “some increase in risk premium in asset classes like high yield, emerging-market bonds, and leveraged loans, where yield spreads widened meaningfully in 2015.”

Wells Fargo’s Rusnak said he expects the Fed to raise rates “only two to three times in 2016” and thinks it “very unlikely that the Fed will consider going back down to a zero interest rate policy (ZIRP) anytime soon.”

Jones said Schwab’s view on how fixed income investors should react to higher rates “is that if we’re

going to see a flatter yield curve and higher volatility, then we're cautious on credit — we're neutral on high yield, we're underweight EM bonds and international developed market bonds because we think the dollar will continue to go up."

So what does Jones like? "We're looking at the upper tranches of the credit quality spectrum," she said.

Moreover, she suggested that investors might want to use a barbell strategy, where you have some short-term paper — CDs, cash — that will adjust as short-term rates move up and add to the bond portfolio "some high-quality intermediate term bonds to generate the income" that clients need.

Municipals

Dan Solender, director of municipal bonds at Lord Abbett, is bearish on munis for 2016, arguing that "supply should remain on the higher side" but will be matched by "consistently strong" demand. Writing in a Dec. 21 note, Solender said he believes that "other than the few high-profile troubled issuers in the headlines, credit quality should remain on a positive trend, based upon tax revenue strength and the volume of upgrades compared to downgrades from the credit rating agencies." Munis from those "high-profile" issuers — Illinois and Puerto Rico — will "remain under pressure," he predicts, but "their issues should remain isolated and not affect the entire market."

Among the trends he thinks will continue in 2016 is that individual investors will decrease holding individual bonds in favor of managed products, while banks will decrease their municipal bond holdings due to regulatory pressure and to reduce their risk. Solender thinks Fed rate hikes could increase investor demand for munis and concludes that the muni market "has had a good 2015; we think it is well positioned for 2016."

Emerging Markets

Schwab's Jones says she is underweight EM bonds moving into 2016, and PIMCO analysts Richard Clarida and Andrew Balls agree, saying that "emerging markets remain a potential source of volatility." Writing in the firm's December Cyclical Outlook, Clarida and Balls say their "baseline view is there will be less macro spillover from China to the rest of the world, via commodity and trade channels, in the next 12 months compared with the past 12 months." They argue that China's slower growth trajectory "is now priced into macro forecasts and markets." They warn, however, that the Chinese government's policy, "especially foreign exchange policy, is a key source of risk."

Overall, the PIMCO analysts see fixed income opportunities not in EM debt, but "across investment-grade, high-yield, U.S. bank senior debt and bank capital in Europe."

High-Yield Bonds

Steven Rocco, high-yield portfolio manager at Lord Abbett, acknowledges that the high-yield space showed turbulence in 2015, "owing in large part to weakness in the energy and mining and metals sectors." For 2016, unless the U.S. economy heads into recession, which he calls "not a likely outcome," he is bullish on high yield. Should U.S. consumer spending continue to advance at a 3% clip in 2016, that would benefit "key high-yield sectors such as retail and restaurants."

As Treasuries are expected to fade, here's where the biggest money managers are finding value. Lord Abbett sees the default rate on high-yield issues "rising to about 4.5% during 2016, versus a level of around 2% in 2015, with most of the increase coming from energy and metals issuers." But even that development could yield "some buying opportunities within the high-yield market if the default number comes in below the expected level." Rocco argues that "the real wild card in the

market ... will be demand for crude oil; any bounce in demand could help spark a rally in energy bonds in the late second half of 2016."

Writing on Dec. 15, Anthony Valeri of LPL Financial says that "the origin of high-yield weakness has come from the lowest-rated tiers of the high-yield market but has infected the broader market." While volatility will persist, he nevertheless believes the high-yield bond market "offers good value at current prices for suitable long-term investors but the near-term still looks challenging. Current default expectations in both the overall high-yield market and in the energy sector, 9% and 16%, respectively, are overly pessimistic, but they take a backseat to trading flow dynamics, which can overpower fundamental drivers in the short run."

Russ Koesterich, BlackRock's global chief investment strategist, sounds a cautious note. "While we believe high yield (outside of issues from energy and other natural resources firms) can stabilize in 2016, the reality is that we're getting late in the credit cycle." To Koesterich, that suggests that "U.S. stocks and bonds may continue to struggle, unless we see a more meaningful acceleration in the global economy."

ThinkAdvisor

By James J. Green

Group Editorial Director
Investment Advisor Group
ThinkJamieGreen

December 23, 2015

Illinois Dodges Rating Downgrades Ahead of January Bond Sale.

Dec 23 Illinois on Wednesday avoided a downgrade of its relatively low credit ratings ahead of the state's planned sale of \$480 million of bonds next month.

Fitch Ratings affirmed a BBB-plus general obligation rating with a stable outlook. Standard & Poor's removed the immediate threat of a downgrade of Illinois' A-minus rating, but placed a negative outlook on it.

An impasse between Illinois' Republican governor and Democrats who control the legislature has left the state without a budget for the fiscal year that began on July 1. The stalemate contributed to October downgrades by Fitch and Moody's Investors Services of Illinois' ratings, which were already the lowest among the 50 states, to just three steps above "junk."

Both S&P and Fitch warned on Wednesday that Illinois' rating could be downgraded if the state fails to enact measures to address its fiscal problems.

"The negative outlook reflects our view that we could lower our rating to the 'BBB' category should Illinois reach a budgetary agreement that does not make significant improvements to its budgetary alignment," S&P analyst John Sugden said in a statement.

S&P, which said a downgrade was a possibility over the next six months, projected Illinois will end fiscal 2016 with a \$4 billion to \$5 billion operating deficit and that its unpaid bill pile, a barometer of

a structural budget imbalance, would hit \$10 billion.

Fitch said the state has set a Jan. 14 competitive sale of \$480 million of GO bonds. Illinois, once a top issuer of municipal bonds, has been absent from the public debt market since May 2014.

The new deal will mark the first bond sale under Governor Bruce Rauner, who took office last January. His office did not immediately respond to a request for comment.

Even before its ratings fell into the low-investment grade triple-B level, Illinois was paying a hefty penalty to sell debt given its huge unfunded pension liability and chronic and large structural budget deficit.

Illinois' so-called credit spread over Municipal Market Data's benchmark triple-A yield scale stood at 170 basis points for bonds due in 10 and 30 years.

REUTERS

CHICAGO | BY KAREN PIEROG

(Editing by Matthew Lewis)

U.S. Municipal Bonds on Solid Footing Heading Into 2016.

CHICAGO/NEW YORK Dec 23 - Manageable supply, healthy demand and stable credit outlooks should aid U.S. municipal bond performance in 2016 despite the Federal Reserve hiking interest rates, analysts and investors said.

While municipal bonds are ending 2015 on top of the fixed-income heap, some market analysts expect positive but smaller returns next year.

Tax-exempt bonds beat U.S. Treasuries and corporate and mortgage debt on Bank of America Merrill Lynch's master indices, with year-to-date total returns of 3.27 percent as of Dec. 17. Barclays' muni index returns as of Monday of 3.23 percent also outperformed every other U.S. and Canadian fixed-income index.

BofA believes munis can generate about 3.1 percent in returns next year, according to Philip Fischer, a municipal research strategist.

"We think the muni market is in good condition," he said.

Morgan Stanley's forecast calls for more-modest returns of 1.25 percent. However, Barclays' muni analysts project total tax-exempt returns to turn slightly negative at -1.0 percent to -0.5 percent in the coming year.

"Higher Treasury rates, rich valuations and headline risks are set to make 2016 a lackluster year for the municipal market," Barclays said in a Dec. 4 research note.

Last week's Fed rate hike and the promise of fatter yields could entice investors who have been sitting on the sidelines with cash to come back into the muni market.

"I think the odds are pretty good that the damage to munis specifically from (federal monetary

policy) will be very modest,” said Chris Mier, a managing director at Loop Capital Markets.

Yields on Municipal Market Data’s benchmark triple-A scale are ending 2015 close to where they began the year, with 10-year bonds at 1.93 percent and 30-year bonds at 2.82 as of Tuesday.

But tax-exempt munis, which spent much of the year yielding more than comparable taxable U.S. Treasuries, were yielding less heading into 2016. The 10-year muni/Treasury ratio stood at 86.3 percent and the 30-year at 95.2 percent on Tuesday. Past periods of tightened monetary policy have lowered the ratio, signaling munis were outperforming taxable debt, according to analysts at Janney.

As of Friday, states, cities, schools and other issuers sold \$376.6 billion of munis, 20 percent more than in the same period in 2014, with refunding volume outpacing new money issuance, according to Thomson Reuters data.

Projections for 2016 issuance range from \$325 billion to \$450 billion as still-low interest rates, even after the Fed’s rate hike and an anticipated yield curve flattening, should continue to accommodate refundings, while pent-up infrastructure needs could spur an uptick in new money deals.

Nicholas Venditti, portfolio manager at Thornburg Investment Management, said supply may initially climb as the Fed rate hike could set off a scramble by muni issuers seeing their “last chance to issue at these incredibly low rates.”

Still, Dan Heckman, senior fixed-income strategist at U.S. Bank Wealth Management, foresees a “big issuance problem.”

“Refundings are increasingly going to dwindle,” he said. “It’s very hard to get ballot initiatives passed that might translate to new issuance.”

Demand remains strong with 11 straight weeks of hefty net inflows to muni funds as of the week ended Dec. 16, according to Lipper.

REUTERS

BY KAREN PIEROG AND HILARY RUSS

(Reporting by Karen Pierog and Hilary Russ; Editing by Dan Grebler)

[Not Your Grandfather's Municipal Market: Investors Eye Recovery Value.](#)

Tainted from the Detroit bankruptcy and mired in the Puerto Rico debt crisis, investors are re-evaluating the former safe haven of the bond world, municipals, and emphasizing recovery values in their credit work.

Bonds that had what is known as an unlimited tax general obligation pledge once held the apex of security for muni investors as debt offering documents promised that a municipality would tax its citizens as much as needed in order to make good on its debt payments. Plummeting tax collection rates and a population exodus made this difficult for the Motor City, leading to its historic bankruptcy.

The Detroit case left holders of the unlimited tax GOs with a recovery of 74 cents on the dollar while retirees kept almost all of their benefits, inciting an about face in investor calculus. Now, lawmakers

are pushing legislation to assure bondholders of the formerly sacred debt's "secured status" in bankruptcy.

California passed Senate Bill 222 into law this year, while Illinois' bankruptcy bill HB 4214 floats in the legislature. Michigan and Nebraska have legislation on the table promising investors a statutory lien on revenue sources. Meanwhile, investors embroiled in Puerto Rico's debt crisis are battling bankruptcy eligibility in and of itself.

Lawyers agree that the statutory lien could improve recovery values in a Chapter 9 bankruptcy, making bondholder claims secured. The feature helped bondholders in the Central Falls, Rhode Island case, although it was not litigated.

These legal developments may affect the bargaining power afforded to capital markets creditors in future bankruptcies, as they make lien protection unambiguous for bondholders, said Robert Christmas of Nixon Peabody.

And the market seems to agree. Detroit tested its market access in August for the first time since emerging from bankruptcy, coming to market with \$245 million in debt, backed by a lien on income tax revenues. The formerly-insolvent city managed to woo investors with 4.5% yields, high for the A credit rating, but arguably low for a city that gave bondholders a haircut.

The successful issuance highlights an evolving approach to municipal investing. Investors are pricing in the statutory lien status, which is only relevant in a bankruptcy, noted William Bonawitz, director of research at PNC Capital Advisors.

Lower yields mean lower costs for borrowers, which leads some to argue that the legislation would be beneficial to cities and school districts nationwide. Others claim it creates an uneven playing field for creditors.

As muni players catch up to their corporate counterparts in the area of recovery analysis, they may hit a brick wall. There is little precedent to determine whether the new legalese will provide investors the security they hope for. Moreover, municipalities can't simply cease to exist.

If a judge is faced with deciding between funding the public safety and health requirements of a municipality or paying bondholders, the judge might favor tax-paying citizens, investors tell Debtwire.

Recovery analysis is distinctly different in public finance. Buyers of distressed corporate debt can walk away with equity in a company, while a municipality's biggest assets are its taxpaying citizens. There is no way to boost value so that investors walk away with a bigger piece of the pie.

Municipalities granting secured status to more and more bonded debt could reach a point where the revenue stream backing the bonds becomes diluted, and the value of the lien itself deteriorates, Bonawitz concluded.

Forbes

By Gunjan Banerji

Gunjan Banerji is a reporter for Debtwire Municipals covering distressed credits, particularly in Illinois and Michigan. She also covers education. She can be reached at Gunjan.Banerji@debtwire.com.

The Muni Trades That Pushed Pimco to the Top in Year of Distress.

Pacific Investment Management Co.'s high-yield municipal-bond mutual fund is jockeying for the top returns of 2015 after picking winners among pockets of distress. Here are the calls that put it there:

Puerto Rico, the junk-rated Caribbean commonwealth saddled with \$70 billion of debt and a stagnant economy? Stay away.

Chicago, which lost its investment grade from Moody's Investors Service in May because its pensions are underfunded by \$20 billion? Jump in.

Tobacco bonds, 80 percent of which Moody's predicts will eventually default as cigarette consumption declines faster than anticipated? A buying opportunity.

"Those were our big credit decisions," said David Hammer, who co-manages the \$583 million fund with Joe Deane in New York.

The fund returned 5.9 percent through Friday, continuing a neck-and-neck race with Invesco Ltd.'s high-yield muni portfolio for the first-place title among open-end funds with at least \$100 million in assets, data compiled by Bloomberg show.

Together, the decisions are a microcosm of the year that was in the \$3.7 trillion municipal market. Bond buyers sought extra yield as interest rates remained near generational lows, yet many were hesitant to invest in Puerto Rico and Chicago until their financial paths became clearer.

Zero Puerto Rico

In Puerto Rico, the way forward only got murkier in 2015. So Pimco kept its allocation to commonwealth bonds at zero as Governor Alejandro Garcia Padilla said the island needs to restructure its debts to emerge from a severe fiscal crisis. This month, he said the U.S. territory could default on Jan. 1, when almost \$1 billion of interest is due.

It took the Puerto Rico Electric Power Authority more than a year to reach a tentative agreement last week with bondholders and insurers to lower its \$8 billion debt, showing how difficult such talks are without the threat of filing for bankruptcy. Getting Chapter 9 extended to the commonwealth hasn't gained traction in Congress. The U.S. Supreme Court in 2016 will rule on the island's Recovery Act, a measure allowing for the Puerto Rico's publicly owned corporations to restructure debt that was struck down in court.

"A key part of our decision to not invest in Puerto Rico up until now is the lack of a clear set of rules to provide Puerto Rico debt relief, which we think is inevitable," Hammer said. "We want to know what the rules are before we're willing to commit investor capital."

The call paid off: Junk-rated Puerto Rico bonds have plunged 13 percent this year, the third worst of all market segments tracked by Barclays Plc.

"I'd expect us to remain very cautious on Puerto Rico until we have a set of investable rules," Hammer said. "There will be a lot of noise without a lot of clarity, and that's not good for bond

prices.”

Chicago as Junk

Some investors extended their caution to Chicago, the only big city besides Detroit that Moody’s deems junk. Some of its securities fell by more than 10 cents on the dollar in less than a week after the May downgrade, on speculation that Chicago would face a liquidity crisis because the rating cut exposed it to as much as \$2.2 billion of payments to banks if it couldn’t refinance its debt.

Pimco saw it as a buying opportunity. The high-yield fund took a \$9 million position in general obligations due in 2033 that the city issued in July, making it the fund’s sixth-largest single holding by Sept. 30, Bloomberg data show. The debt priced at 98.5 cents on the dollar to yield 5.64 percent. It last traded in October at 103.6 cents to yield 5 percent.

Chicago avoided a cash squeeze by refinancing. The securities went on to rally after Mayor Rahm Emanuel in October pushed through the biggest property-tax increase in the city’s history — \$543 million over the next four years — to help pay the pension-fund bills at the root of the its distress. Emanuel, a Democrat who won re-election in 2015, had resisted raising the levy for years even though it was lower than surrounding localities.

“Our view was that we would get a property-tax increase out of Chicago, that it would go a long way in beginning to address their fiscal imbalances when it comes to underfunded pension liabilities, and that the market would reward Chicago for demonstrating that they have not just the ability but the willingness to raise revenues,” Hammer said.

While the city has challenges ahead, the property-tax increase “does fundamentally improve their credit outlook,” Hammer said.

Tobacco Overload

On the topic of credit outlooks, no major segment of the municipal market seemed to have a worse prognosis heading into 2015 than tobacco bonds.

The agencies that sold the debt, which is repaid from legal-settlement money that states and localities receive from cigarette companies, didn’t anticipate that smoking would decline as much as it has since they started issuing the securities more than a decade ago. Because of that oversight, four out of five will eventually default, Moody’s said in a September 2014 report.

While that could still be the case, failures to pay may be pushed back. Cigarette consumption held steady this year for the first time since 2006. That sparked a rally in the riskiest tobacco bonds: they’ve gained 14 percent in 2015, the second-best of any market segment.

That’s been a boon for Pimco because the three largest holdings in its high-yield fund are tobacco bonds from New Jersey and Ohio.

“The tobacco sector has had pretty significant outperformance versus the broader high-yield muni market,” Hammer said. “Tobacco is still pretty attractive versus other traditional, less-liquid, lower-rated muni names.”

Bloomberg

by Brian Chappatta

Judge Rejects San Bernardino's Bankruptcy Proposal.

Judge says plan doesn't contain enough information for bondholders

A federal judge said San Bernardino's leaders need to explain their plan to have the southern California city exit bankruptcy protection by repaying a fraction of its debts instead of raising taxes.

U.S. Bankruptcy Judge Meredith Jury Wednesday rejected—for a second time—the city's proposal to cut debts, saying it didn't contain enough information for bondholders, retirees who face health-care cuts and others to vote on the proposal. She agreed to consider another draft of the plan at a March 9 hearing in U.S. Bankruptcy Court in Riverside, Calif.

Several groups protested the bankruptcy-exit plan's wording, arguing that city leaders should explain why they can't pay a class of debt valued between \$130 million and \$150 million more than 1 cent on the dollar. That includes \$52 million owed to bondholders who extended money to the city so it could pay pensions.

Bondholders' lawyers have objected to the plan, saying the city should raise taxes instead. In court papers, they pointed out that voters in northern California city of Stockton approved a sales tax of at least \$28 million annually to help that city emerge from bankruptcy earlier this year, according to their projections filed in U.S. Bankruptcy Court in Riverside, Calif.

A sales tax increase of 0.25% to 8.50% for San Bernardino could bring in more than \$150 million over the next 17 years, they said in court papers filed earlier this year.

At Wednesday's hearing, Judge Jury didn't say whether she thought the 1% payment rate was fair. Instead, she said city leaders need to better explain why that amount has remained the same since they suggested new ways to cut costs.

"The city does need to disclose further why it has arrived at a decision that you can't raise taxes or otherwise increase revenues that way," Judge Jury said. "The city's position on that needs to be clarified."

San Bernardino officials plan to continue making full payments into the pension fund run by California Public Employees' Retirement System, also known as Calpers, which distributes that money to thousands of retired city workers.

City officials decided to make pension payments, even though federal judges in charge of Detroit and Stockton's bankruptcy cases ruled that pensions could indeed be cut. In its plan, San Bernardino said it considered breaking ties to Calpers but determined that it wasn't realistic if the city wanted to attract workers.

Pension benefits enjoy strong protections by states. Some pension plans have tried to overcome shortfalls by cutting benefits for future hires or reducing cost-of-living adjustments. But filing for bankruptcy protection gives a city or county the power to cut contracts, including pension agreements that promise payments for retired and current city workers.

Bondholder officials have criticized that decision through San Bernardino's bankruptcy.

By KATY STECH

Dec. 24, 2015 9:14 a.m. ET

Write to Katy Stech at katherine.stech@wsj.com

'Safe' Puerto Rican Debt Stirs Worries.

Investors uneasy that island will redirect money from Cofina bonds to pay off general-obligation debt

As Puerto Rico runs out of cash and approaches a Jan. 1 due date for about \$1 billion in debt payments, investors increasingly are uneasy about the fate of bonds sold with a near guarantee.

The bonds, backed by sales taxes and known by the Spanish acronym Cofina, were issued starting a decade ago to plug budget gaps and repay other lenders. The debt at the time was considered the island's safest offering, and Cofina bonds soon became the biggest chunk of Puerto Rico's debt outstanding.

Now, as the struggling commonwealth redirects money intended for some debt to pay bonds with better legal protections, some analysts are predicting it will soon target Cofina bonds to avoid defaulting on its constitutionally protected general-obligation debt. Such a move would spark a showdown over its two most-sacrosanct obligations.

A spokeswoman for Puerto Rico declined to comment on Cofina.

As a sign of the concern, many of the Cofina bonds already trade below 60 cents on the dollar, less than benchmark debt from the island.

Some Cofina creditors aren't waiting for the government to act, saying in a public statement last month that any effort to use the money for other purposes without their permission would violate the U.S. and Puerto Rico constitutions. "As one of the very few secured creditors in the Puerto Rico debt structure, we expect that our property rights will be protected," the statement said.

"If the commonwealth defaults on its general-obligation debt, then bondholders are going to sue Puerto Rico to raid the sales taxes that back Cofina," said Matt Fabian, partner at the research firm Municipal Market Analytics. "And if they don't pay Cofina, those bondholders will sue, saying they have a property right to that revenue above all stakeholders."

The looming conflict highlights the interconnectedness of Puerto Rico's debt, the complexity of the island's effort to negotiate competing legal claims on its dwindling cash and the nationwide breadth of creditor exposure to the fiscal crisis on the island.

Puerto Rico owes investors about \$70 billion and has struggled with a decadelong recession and declining population, leading Gov. Alejandro García Padilla to call its debts unpayable. The commonwealth defaulted on bond payments in August and is in restructuring talks with creditors. It has also turned to the U.S. Congress for access to bankruptcy protections.

Investors in Cofina range from mutual funds to hedge funds to individual retirees, an array of interests that characterizes Puerto Rico bondholders. About 130 municipal-bond mutual funds had

Cofina holdings at the end of September, according to data from investment researcher Morningstar Inc. Many creditors own general-obligation debt, too. Bond insurers also back billions of dollars of Cofina debt, along with other Puerto Rico bonds.

About \$4 billion of the Cofina debt was sold as zero-coupon bonds, which function like savings bonds. Investors buy the debt for less than face value and receive no interest payments—instead collecting a larger amount when the bonds mature, often decades in the future. The setup allows the issuer to avoid interest payments until the debt matures much later.

Some analysts say that structure enabled the island to dodge hard choices, piling a long-term financial problem atop Puerto Rico's immediate crisis.

"This is a classic example of how Puerto Rico got into this mess," said Sergio Marxuach, public-policy director at the Center for a New Economy, a think tank in San Juan.

Those zero-coupon bonds make it hard to say exactly how much Puerto Rico owes Cofina investors, which the island says in different disclosures is either \$15.2 billion or \$16.6 billion. Municipal Market Analytics puts the figure closer to \$17.5 billion, saying the bonds increase in value as time goes by.

In 40 years, when the last zero-coupon bonds mature, the full payment to bondholders is scheduled to be about \$25 billion—about one-quarter of the money borrowed through Cofina and two-thirds of the amount owed, that research firm found.

Some say negotiations ultimately will, and should, ensue over the Cofina bonds, as untangling legal claims between general-obligation and Cofina debt is likely to result in delay and uncertainty. Puerto Rico's power authority reached a consensus restructuring deal with creditors last week after more than a year of talks.

"Gridlock will be complicated, time consuming, expensive, uncertain and result in less for investors rather than more," said James Spiotto, managing director at the municipal-bond consulting firm Chapman Strategic Advisors, which consults on financial restructuring.

THE WALL STREET JOURNAL

By AARON KURILOFF

Dec. 27, 2015 8:27 p.m. ET

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

[Pension Risks Point to Higher 2016 Borrowing Costs for Some U.S. Cities.](#)

NEW YORK — Some U.S. cities may have to pay higher interest rates to borrow money in 2016 as they contend with a host of new pressures on their underfunded public pensions, including new reporting rules and the impact of this year's tepid investment returns.

The recession-era ghost of public pensions problems will continue haunting the \$3.7 trillion U.S. municipal bond market next year, investors and analysts told Reuters.

Investors are expected to demand greater compensation, especially for financially weak

municipalities that for the first time will have to move unfunded pension liabilities from the footnotes of financial statements to their balance sheets.

"A lot of local (general obligation bonds) don't have, in my opinion, the cheapness to compensate for this new information flow we're going to get," said R.J. Gallo, senior portfolio manager at Federated Investors in Pittsburgh.

When interest rate spreads widen on a city's general obligation (GO) debt, its existing debt underperforms and usually leads to higher rates for new borrowing.

Investment losses during the last U.S. recession - which ended in 2009 - laid bare the fact that many states and cities shortchanged their public employee retirement systems for years. In the third quarter of 2015, unfunded liabilities rose nationally to a near three-year high of \$1.71 trillion combined, according to Federal Reserve data.

To be sure, municipal bonds outperformed every other U.S. fixed income product in 2015, returning 3.23 percent as of Dec. 21, according to Barclays' Municipal Bond index.

But well-known pension problem spots like Chicago, and states such as Illinois, New Jersey, Pennsylvania, Connecticut and Kentucky will continue to be causes for investor concern.

In addition, a new rule from the Governmental Accounting Standards Board (GASB) that moves unfunded liabilities onto city and state balance sheets is expected to highlight new problem areas.

The rule, GASB 68, will make lesser-known places like Billings, Montana appear in worse shape than previously thought, according to a forthcoming report by the Center for Retirement Research at Boston College.

Reuters exclusively reviewed a draft of the report, which is expected to show that in 92 cities that pay into a cost-sharing state pension plan, unfunded liabilities as a percentage of city revenues will nearly double, to 70 percent in aggregate from 37 percent.

Cities that participate in such state plans do not always have control over their contributions or shortfalls. But other cities that run their own independent plans, such as New Haven, Connecticut, are also expected to look worse.

The rule is in effect for fiscal years ending June 30, 2015 and later. While it will not increase actual liabilities or change required pension contributions, it will make shortfalls more apparent and potentially raise risk premiums.

Moody's Investors Service has a stable 2016 outlook for both state and local government sectors - with the exception of those "unable to make progress toward funding large pension liabilities."

Compounding the picture is a changing perception about the GO bond pledge itself after the cities of Detroit and Stockton bankruptcy judgments put bondholders below pensioners - making an underfunded pension a bigger potential problem for investors which buy GO debt.

"The GO pledge, the pledge that the municipal market for its entire existence viewed as sacrosanct, now isn't," said Nicholas Venditti, portfolio manager at Thornburg Investment Management in Santa Fe. "Given the strength of the muni market this year, I don't believe investors have been compensated in general for that incremental risk."

By REUTERS

DEC. 22, 2015, 1:54 P.M. E.S.T.

(Reporting by Hilary Russ; Additional reporting by Lisa Lambert; Editing by Daniel Bases and Bill Rigby)

Bankrupt San Bernardino Spars With Creditors Over Police Spending.

(Reuters) – The bankrupt California city of San Bernardino won praise from bondholders on Wednesday for its handling earlier this month of the massacre that killed 14 people, but at the first significant court hearing since the attack, creditors questioned a plan to increase spending to bolster the police force.

U.S. Bankruptcy Court Judge Meredith Jury also praised the city for its handling of the shooting by a married couple.

Creditors were concerned with their treatment in San Bernardino's proposed plan to exit Chapter 9 protection.

Bondholders questioned the city's plan to spend \$159 million over 20 years to increase police staffing, improve technology and replace aging vehicles, and another \$24 million set aside as a bankruptcy reserve.

Representing EEPK, the Luxembourg-based bank and the city's second-largest creditor, Vince Marriott said the plan was "completely opaque," and the city needed "to explain in more detail what it is, what it is for, and how it is calculated."

San Bernardino has proposed to pay a penny on the dollar on nearly \$50 million in pension obligation bonds held by EEPK.

The city's police force has fallen from about 350 sworn officers in 2009 to 290 today. The city has also slashed police pensions and overtime and wants to introduce a salary cap.

The city said that more than half of the police department's squad vehicles require replacement, with many having been driven beyond 100,000 miles as a result of deferred maintenance. And outdated technology is not capable of dealing with the region's increased crime, the city said.

City officials have described San Bernardino, with a population of 205,000 and located 65 miles east of Los Angeles, as one of the most thinly policed U.S. cities of its size. Residents worry that their city is not safe, and the number of homicides this year has reached 40, near the 42 investigated last year.

In May, San Bernardino proposed a plan to exit bankruptcy, called a plan of adjustment, that would virtually eliminate retiree health insurance costs, and outsource its fire, emergency response and trash services.

At the same time, the city would pay its largest creditor, the state pension fund CalPERS, in full, an approach taken in the recent bankruptcies of Detroit, Michigan and Stockton, California.

San Bernardino declared bankruptcy in 2012 with a \$45 million deficit. Along with Detroit and Stockton, its bankruptcy has been closely watched by the \$3.6 trillion U.S. municipal bond market.

The case is In Re: City of San Bernardino, California, Case No. 6:12-BK-28006-MJ in the U.S.

Bankruptcy Court, Central District of California.

By REUTERS

DEC. 23, 2015, 7:57 P.M. E.S.T.

(Reporting by Robin Respaut; Editing by Leslie Adler)

Puerto Rico Utility Reaches Deal With Bond Insurers in Effort to Avoid Default.

Puerto Rico's beleaguered electric utility announced new progress late Wednesday in its continuing efforts to avoid a default on as much as one-eighth of the island's total debt of \$72 billion.

Officials said that two bond insurers had agreed to take part in a five-year restructuring plan for the Puerto Rico Electric Power Authority, an islandwide monopoly. The insurers' involvement signaled that Prepa had found a way to satisfy its bondholders, who expect to be paid about \$177 million on Jan. 1, without having to part with that much cash itself.

Prepa is one of 13 branches of the Puerto Rican government scheduled to make bond payments on Jan. 1, for a total of around \$902 million.

Cash is in short supply, and the island's governor, Alejandro García Padilla, has warned that if he must choose between paying bondholders and providing essential public services, he will provide the services. His warnings have given rise to intense speculation as to which types of bond debt may be paid, and which may not.

The bond insurers participating in the restructuring deal were said to be operating units of Assured Guaranty and National Public Finance Guarantee. An official with knowledge of the negotiations said a third bond insurer with a smaller exposure, Syncora Guarantee, might join the process later.

On Jan. 1, the two participating bond insurers will purchase \$50 million of new revenue bonds from Prepa; a creditors' committee known as the Ad Hoc Group will purchase an additional \$65 million worth of bonds. Those purchases will give Prepa \$115 million of fresh cash, which it can use to honor a large part of its scheduled bond payment due that day. Prepa is expected to make the rest of the payment out of its own resources, according to people familiar with the talks.

In other respects, the restructuring plan resembles terms that were made public earlier this year. They called for giving Prepa five years' worth of interest-rate relief, which would save the utility more than \$700 million.

In addition, the creditors have agreed to permanently reduce Prepa's outstanding bond principal by more than \$600 million, according to a summary provided by the utility. This would be accomplished through a debt exchange, in which the holders of Prepa's current, junk-rated bonds could turn them in and receive new investment-grade bonds.

Lisa J. Donahue, Prepa's chief restructuring officer, said that to make sure the new bonds qualify for investment-grade ratings, the two bond insurers had agreed to backstop them by posting a type of financial guarantee, called a surety. The idea is to make investors want to exchange their shaky old bonds for the new ones, despite the lower face value, by making the new bonds a better credit risk.

The debt exchange is not expected to take place until next summer, and, until then, the negotiators must steer the deal around a number of obstacles. The first will fall no later than Jan. 23 — a deadline for the Puerto Rican legislature to pass enabling legislation for the deal. Legislators have so far shown little appetite, because they would also have to request a rate increase for Prepa.

Elected officials anywhere would be reluctant to authorize a rate increase in an election year, but in Puerto Rico the increase would come in the wake of new taxes imposed because of the financial crisis, school and hospital closings, and other painful austerity measures.

In addition, a large number of Prepa's bondholders continue to stay aloof from the restructuring talks, perhaps hoping an even better deal might appear later.

The creditors on board so far represent about 70 percent of Prepa's \$9 billion debt; they include the Puerto Rico Government Development Bank, mutual funds, hedge funds, and banks that finance Prepa's fuel purchases.

The holders of the remaining 30 percent of the debt have not yet signed onto the deal, and it is not clear whether enough of them ever will, at least under the incentives proposed by the current deal. But one more factor is expected to come into play in the first half of 2016: There are signs that Congress is preparing to make some form of bankruptcy protection available to Puerto Rico.

Currently, none of the island's government bodies have any legal standing to take shelter in Chapter 9 municipal bankruptcy. But that could change soon, and the bankruptcy laws include what are known as cramdown provisions, which make it possible for a bankruptcy judge to force holdout creditors to accept a deal.

THE NEW YORK TIMES

By MARY WILLIAMS WALSH

DEC. 24, 2015

[Puerto Rico Needs Debt Restructuring Authority: U.S. Treasury Secretary.](#)

NEW YORK — Puerto Rico needs debt restructuring authority under U.S. bankruptcy law to address what the Obama Administration has previously called an “escalating crisis”, U.S. Treasury Secretary Jack Lew, said on Fox Business Network TV on Thursday.

U.S. House of Representatives Speaker, Republican Paul Ryan, has instructed committees to work with Puerto Rico's government to come up with a solution to the island's financial problems and said this should be crafted by the end of March.

The House is expected to hold a Jan. 5 hearing on the U.S. territory's financial problems.

Puerto Rico has some \$70 billion in debt, a poverty rate of 45 percent, and has been in recession for nearly a decade. On Jan. 1 it faces roughly \$1 billion in debt payments and officials have warned of a default on some of that paper.

With debt of more than \$8 billion and inefficient operations, PREPA had been one of the crucial public agencies to restructure, and remained separate to a wider restructuring of the island's debt

which officials have been attempting.

POWER UTILITY AGREES DEAL WITH CREDITORS

On Wednesday Puerto Rico's electric power utility PREPA said it has agreed a deal with creditors, including holdout bond insurers, on a restructuring of its debt, a move seen as key to fixing the island's faltering economy.

"It's a good feeling that we have been able to get disparate creditors together to agree to a path forward," said PREPA's Chief Restructuring Officer Lisa Donahue. "The one thing that made it doable is that everyone recognized there was a problem and that we needed to solve it together."

PREPA said it reached a deal with creditors holding 70 percent of its debt, which comes after months of negotiations and over a year of extensions to a creditor agreement.

"There was always a sense that this thing (PREPA) was going to get done. Maybe a bit slower than I would have expected... The question becomes, does that provide a model to the rest of the debt? I don't necessarily think so," said Joe Rosenblum, director of municipal credit research at AllianceBernstein in New York.

"Some people might seize on it as Puerto Rico can sit down and negotiate with bondholders. I think the rest of the bondholders for the rest of the debt presents a much more complex problem," Rosenblum said, noting how PREPA's deal was driven by the utility's economics whereas other debt involves taxes and political considerations.

PREPA, which provides electricity to Puerto Rico's roughly 3.5 million residents, charges consumers far more than the average customers pay in the U.S. mainland and has been under pressure to convert to generally cheaper and cleaner natural gas. Donahue said the utility had been working to improve customer service and that the restructuring plan calls for investment in gas.

A September deal with a group representing about 35 percent of its bondholders saw those creditors agree to swap bonds for new notes, receiving 85 percent of existing bond claims. Bond insurers National Public Finance Guarantee Corporation, a unit of MBIA and Assured Guaranty, however, did not sign on.

PREPA said Wednesday that the insurers had agreed a deal which calls on them to provide a \$462 million surety bond. That would fund a debt service fund that backstops an investment grade rating for the new bonds being issued under the bondholder deal, according to a source familiar with the deal.

Assured Guaranty said it will issue surety insurance policies of up to \$113 million to support the deal.

The price of Assured's stock traded up 87 cents a share to \$27.64 while MBIA's rose 61 cents a share to \$6.85 in early New York trading. Year-to-date, Assured is up 6.4 percent while MBIA is down 28.3 percent.

The deal includes similar terms to the original bondholder deal such as PREPA receiving debt service relief of more than \$700 million, a cut to PREPA's principal debt burden by more than \$600 million. It sees a narrowing of the utility's cash projected cash deficit by more than \$675 million.

It also calls for creditors to refinance \$115 million of an interest payment due Jan. 1. Creditors are committing that if PREPA makes the payment in full on Jan. 1 they will purchase new bonds from

PREPA of \$115 million, the source said. PREPA owes \$302 million on Jan.1 according to the utility's press office.

The deal requires enactment of necessary legislation, an investment grade rating for the new bonds and getting more bondholders to participate, the source said, as after the exchange offer, PREPA must not have any more than \$700 million of the existing PREPA debt outstanding.

By REUTERS

DEC. 24, 2015, 11:30 A.M. E.S.T.

(Reporting by Megan Davies; Additional reporting by Daniel Bases in New York and Timothy Ahmann in Washington; editing by Stephen Coates and Clive McKeef)

[A Puerto Rican Utility Makes Progress Toward a Debt Deal.](#)

Puerto Rico's beleaguered electric utility announced progress in its continuing efforts to avoid a default on as much as one-eighth of the island's total debt of \$72 billion.

Officials said that two bond insurers had agreed late Wednesday to take part in a five-year restructuring plan for the Puerto Rico Electric Power Authority, an islandwide monopoly. The insurers' involvement signaled that Prepa had found a way to satisfy its bondholders, who expect to be paid about \$177 million on Jan. 1, without having to part with that much cash itself.

Prepa is one of 13 branches of the Puerto Rican government scheduled to make bond payments on Jan. 1, for a total of around \$902 million.

Cash is in short supply, and Gov. Alejandro García Padilla has warned that if he must choose between paying bondholders and providing essential public services, he will provide the services. His warnings have given rise to intense speculation as to which types of bond debt may be paid, and which may not.

At the same time, the governor announced that public workers and retirees would be paid their customary Christmas bonuses this year, for a total government outlay of about \$120 million.

The bond insurers now participating in the restructuring deal are Assured Guaranty and National Public Finance Guarantee. An official with knowledge of the negotiations said a third bond insurer with a smaller exposure, Syncora Guarantee, might join the process later.

Until now, the bond insurers had held back from Prepa's restructuring talks, because the deal taking shape would involve reductions of bond principal and interest, and for the insured bonds the insurers would have to cover investors' losses. Only about \$2.5 billion of Prepa's \$9 billion of debt is insured, however.

The chief executive of Assured Guaranty, Dominic J. Frederico, said Thursday that he was "committed to continue working cooperatively with Prepa and other stakeholders to implement the terms of Prepa's recovery plan." High hurdles still remain, but Mr. Frederico said that if the deal were successful it could help Prepa modernize its antiquated generating plants while keeping electricity rates sustainable.

On Jan. 1, the terms call for the two bond insurers to purchase \$50 million of new revenue bonds from Prepa; members of a creditors' committee known as the Ad Hoc Group will purchase an additional \$65 million worth of bonds. Those purchases will give Prepa \$115 million of fresh cash, which it can use to honor a large part of its scheduled bond payment due that day. Prepa is expected to make the rest of the payment out of its own resources, according to people familiar with the talks.

In other respects, the restructuring plan resembles terms that were made public earlier this year.

They include a five-year payment moratorium, lower interest rates and a permanent reduction of Prepa's outstanding bond principal by more than \$600 million. This would be accomplished through a debt exchange, in which the holders of Prepa's current, junk-rated bonds could turn them in and receive new investment-grade bonds.

Lisa J. Donahue, Prepa's chief restructuring officer, said that to make sure the new bonds qualify for investment-grade ratings, the two bond insurers had agreed to backstop them by posting a type of financial guarantee, called a surety. The idea is to make investors want to exchange their shaky old bonds for the new ones, despite the lower face value, by making the new bonds a better credit risk.

Assured Guaranty said in a statement that the surety would be issued "in exchange for a market premium."

The debt exchange is not expected to take place until next summer, and until then the negotiators must steer the deal around a number of obstacles. The first will fall no later than Jan. 23 — a deadline for the Puerto Rican legislature to pass enabling legislation for the deal. Legislators have so far shown little appetite for this, because they would also have to request a rate increase for Prepa.

Elected officials anywhere would be reluctant to authorize a rate increase in an election year, but in Puerto Rico the increase would come in addition to new taxes imposed because of the financial crisis, school and hospital closings, water rationing and other painful austerity measures.

Furthermore, a large number of Prepa's bondholders continue to stay aloof from the restructuring talks, perhaps hoping an even better deal might appear later.

The creditors on board so far represent about 70 percent of Prepa's \$9 billion debt; they include the Government Development Bank for Puerto Rico, mutual funds, hedge funds, and banks that finance Prepa's fuel purchases.

The holders of the remaining 30 percent of the debt have not yet signed on to the deal, and it is not clear whether enough of them ever will, at least under the incentives proposed by the current deal. But one more factor is expected to come into play in the first half of 2016: There are signs that Congress is preparing to make some form of bankruptcy protection available to Puerto Rico.

Currently, none of the island's government bodies have any legal standing to take shelter in Chapter 9 municipal bankruptcy. But that could change soon, and the bankruptcy laws include what are known as cramdown provisions, which make it possible for a bankruptcy judge to force holdout creditors to accept a deal.

THE NEW YORK TIMES

By MARY WILLIAMS WALSH

DEC. 24, 2015

GASB Issues Guidance for External Investment Pools and Pool Participants Ahead of SEC Rule Change.

Norwalk, CT, December 23, 2015 — The Governmental Accounting Standards Board (GASB) today issued guidance addressing how certain state and local government external investment pools and participants in external investment pools may measure and report their investments in response to changes contained in a U.S. Securities and Exchange Commission (SEC) rule due to take effect in April 2016. References to that rule were previously incorporated in GASB literature.

[GASB Statement No. 79](#), *Certain External Investment Pools and Pool Participants*, permits qualifying external investment pools to measure pool investments at amortized cost for financial reporting purposes. The Statement provides guidance that will allow many pools to continue to qualify for amortized cost accounting.

For governments, these external investment pools function much like money market funds do in the private sector. Government investment funds pool the resources of participating governments and invest in short-term, high-quality securities permitted under state law. By pooling their cash together, governments benefit in a variety of ways, including from economies of scale and professional fund management.

GASB Chair David Vaudt said, “The new guidance for qualifying external investment pools and participants in external investment pools will help them to avoid confusion when the regulatory rule changes become effective. Statement 79 will allow those pools the option of continuing to measure and report their investments at amortized cost.”

Existing standards provide that external investment pools may measure their investments at amortized cost for financial reporting purposes if they follow substantially all of the provisions of the SEC’s Rule 2a7. Likewise, participants in those pools are able to report their investments in the pool at amortized cost per share.

Reporting at amortized cost reflects the operations of external investment pools when they transact with participants at a stable net asset value per share. Not having the option to report under amortized cost would represent a significant change from current practice for both pools and pool participants.

Statement 79 replaces the reference in existing GASB literature to Rule 2a7 with criteria that are similar in many respects to those in Rule 2a7. Although the Board considers those criteria to be relevant, it also believes that external investment pool accounting and financial reporting standards should not be subject to regulatory changes that might be made in the future when those changes were not originally intended to be applied to those pools.

The Statement also establishes additional note disclosure requirements for qualifying pools and for governments that participate in those pools. These required disclosures include information about limitations or restrictions on participant withdrawals.

GASB Issues Proposed Guidance on Fiduciary Activities, Asset Retirement Obligations, and Pensions.

Norwalk, CT, December 22, 2015 — The Governmental Accounting Standards Board (GASB) today issued three Exposure Drafts proposing accounting and financial reporting guidance related to fiduciary activities, certain asset retirement obligations, and pension issues.

The Exposure Draft, *Fiduciary Activities*, would establish guidance regarding what constitutes fiduciary activities for financial reporting purposes, the recognition of liabilities to beneficiaries, and how fiduciary activities should be reported. The proposed Statement would apply to all state and local governments.

The Exposure Draft, *Certain Asset Retirement Obligations*, would establish guidance for determining the timing and pattern of recognition for liabilities related to asset retirement obligations and corresponding deferred outflows of resources. An asset retirement obligation is a legally enforceable liability associated with the retirement of a tangible capital asset, such as the decommissioning of a nuclear reactor.

The Exposure Draft, *Pension Issues*, addresses practice issues raised by stakeholders during the implementation of Statements No. 67, *Financial Reporting for Pension Plans*, and No. 68, *Accounting and Financial Reporting for Pensions*.

“These proposed standards are designed to improve the reporting of important activities and transactions in governmental financial statements,” said GASB Chair David A. Vaudt. “The proposals addressing fiduciary activities and certain asset retirement obligations would establish guidance in areas where little or none exists today. The Exposure Draft addressing pension issues comes in response to issues raised by GASB stakeholders as they carried out the process of implementing the recent pension standards. Together, these proposals are designed to improve consistency, comparability, and clarity in governmental accounting and financial reporting.”

[Read the Exposure Drafts.](#)

Stakeholders are encouraged to review and provide comments on the Exposure Drafts by the following dates:

- Pension Issues—February 12, 2016
- Fiduciary Activities—March 31, 2016
- Certain Asset Retirement Obligations—March 31, 2016.

Pension Issues

The objective of this proposed Statement is to improve consistency in the application of accounting and financial reporting requirements for employers related to pensions and for pension plans by addressing certain practice issues.

Specifically, this proposed Statement would address issues regarding:

- Presentation of payroll-related measures in required supplementary information
- Selection of assumptions and the treatment of deviations from the guidance in Actuarial Standards of Practice for financial reporting purposes
- Classification of payments made by employers to satisfy employee contribution requirements.

Fiduciary Activities

Governments currently are required to report fiduciary activities in fiduciary fund financial statements. Existing standards are not explicit, however, about what constitutes a fiduciary activity

for financial reporting purposes. Consequently, there is diversity in practice with regard to identifying and reporting fiduciary activities.

The central objective of this proposed Statement is to enhance the consistency and comparability of fiduciary activity reporting by state and local governments. The proposal also is intended to improve the usefulness of fiduciary activity information, primarily for assessing the accountability of governments in their roles as fiduciaries.

Certain Asset Retirement Obligations

Existing laws and regulations require state and local governments to take specific actions to retire certain capital assets, such as the removal and disposal of wind turbines in wind farms, and the dismantling and removal of sewage treatment plants. Other obligations to retire certain capital assets may arise from contracts or court judgments.

Under this proposed Statement, a government that has legal obligations to perform future asset retirement activities related to its tangible capital assets would be required to recognize a liability and a corresponding deferred outflow of resources. The proposal identifies the circumstances that determine if and when to recognize these transactions.

The objective of this proposed Statement is to enhance the comparability of financial statements by establishing uniform criteria for governments to recognize and measure these asset retirement obligations, including obligations that previously may not have been reported. This proposed Statement also would enhance the usefulness of the information provided to financial statement users by requiring disclosures related to these asset retirement obligations.

[SIFMA Issues 2016 Municipal Issuance Survey.](#)

New York, NY, December 21, 2016 – SIFMA today released its 2016 Municipal Issuance Survey. Compiled from responses provided by 10 large and regional municipal bond underwriters and dealers, the report forecasts what type of activity is expected in the municipal securities market in 2016.

Respondents to the 2016 SIFMA Municipal Issuance Survey expect total municipal issuance, both short- and long-term, to reach \$432 billion in 2016, in line with the \$429 billion estimated issuance in 2015.

While short-term issuance is expected to increase in 2016, with \$43 billion in short-term notes expected to be financed, compared to the estimated \$35 billion in 2015, long-term issuance is expected to decrease, with \$389 billion in long-term bonds expected, compared with the estimated \$393 billion in 2015.

“Interest rate and credit quality are clearly driving factors in our members’ forecasts,” said Michael Decker, Managing Director and Co-Head of Municipal Securities at SIFMA. “While we expect issuance to remain largely flat in 2016, investor demand for new bonds will continue to be robust, and borrowing conditions for state and local issuers will remain attractive.”

Other highlights from the survey include:

- Long-term tax-exempt municipal issuance is projected to reach \$347.5 billion in 2016, 1.4 percent

- below the estimated \$352.5 billion issued in 2015;
- Taxable municipal issuance is projected to increase in 2016 to \$30.5 billion, a 4.5 percent increase from the estimated \$29.2 billion issued in 2015;
 - Alternative minimum tax (AMT) issuance is expected to drop by 10.8 percent to \$10.5 billion in 2016, from an estimated \$11.8 billion in 2015; and
 - Variable-rate demand obligation (VRDO) issuance is expected to rise slightly to \$8.0 billion in 2016, recovering from the estimated record low of \$6.2 billion in 2015.

Interest Rate Forecast

Following the FOMC raising the federal funds target rate to 0.25-0.50 percent in mid-December, the federal funds rate is expected to rise from 0.38 percent in end-December 2015 to 0.50 percent by end-March 2016 and gradually increase to 1.00 percent by the end of 2016. Forecasts include:

- The two-year Treasury note yield is expected to rise from 1.00 percent end-December 2015 to 1.65 percent by end-December 2016.
- The 10-year Treasury note yield is also expected to climb from 2.33 percent end-December 2015 to 2.75 percent end-December 2016.

The full SIFMA 2016 Municipal Issuance Survey Report is available [here](#).

Release Date: December 21, 2016

Contact: Liz Pierce, 212-313-1173, lpierce@sifma.org

[CUSIP: New Municipal Bond Identifiers Issued at Fastest Pace Since July 2015.](#)

CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for November 2015. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity, suggests continued growth in new corporate and municipal bond issuance over the next several weeks.

[Read the report.](#)

[MSRB to Implement Core Conduct Rule for Municipal Advisors.](#)

Washington, DC – Beginning in June 2016, firms and individuals that advise state and local governments on municipal finance transactions and products will be subject to detailed regulations on their professional conduct, including rules furthering the federal fiduciary duty to their municipal entity clients established under Dodd-Frank Wall Street Reform and Consumer Protection Act.

“Congress charged the Municipal Securities Rulemaking Board (MSRB) with developing regulations to protect state and local governments from the risks – and potentially costly consequences – of relying on financial advice from unaccountable and unqualified individuals,” said MSRB Executive Director Lynnette Kelly. “The MSRB rule approved by the Securities and Exchange Commission, details standards of conduct that municipal advisors owe to their clients.” [Read the SEC approval order.](#)

New MSRB Rule G-42 addresses the specific duties of care and loyalty that are components of the federal fiduciary duty established under the Dodd-Frank Act for municipal advisors when dealing with municipal entity clients. Certain provisions of the rule apply to municipal advisors in their work with both municipal entity clients and others obligated to support payments on municipal securities. These provisions include requirements to provide written disclosure of conflicts of interest, and conduct reasonable diligence to support the suitability of recommendations, among other duties.

The rule also includes a ban on engaging in principal transactions with a municipal entity client that are directly related to the issue of securities for which the municipal advisor is providing advice. In response to public comment, this provision was recently amended to include a narrow exception that generally covers transactions in particular types of fixed income securities where the municipal advisor follows a process to make disclosure and obtain client consent.

"The final version of this rule reflects the valuable input received from the industry and the public throughout the federal rulemaking process," Kelly said. "The MSRB carefully considers the diversity of municipal advisors and their clients as we work to implement a regulatory framework that supports municipal market integrity." [Read more about the MSRB's municipal advisor rulemaking.](#) The MSRB plans to publish a regulatory notice about the new rule soon.

To facilitate compliance, the MSRB will host a free educational webinar in advance of the effective date of the rule. The webinar will be held on Thursday, April 28, 2016 from 3:00 p.m.-4:00 p.m.

[Register for the webinar.](#)

Date: December 24, 2015

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500
jgalloway@msrb.org

[MSRB Seeks SEC Approval of Pay-to-Play Regulations for Municipal Advisors.](#)

Washington, DC - The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission (SEC) new proposed federal regulations to safeguard the municipal securities market against pay-to-play practices, and the appearance of those practices, when state and local governments hire outside financial professionals. The proposed regulations, which must be approved by the SEC to become effective, would extend the MSRB's well-established municipal securities dealer pay-to-play rule to all municipal advisors, including those acting as third-party solicitors. These would be the first MSRB rule provisions specifically tailored to the activities of those that solicit business from municipal entities on behalf of third-party municipal securities dealers, municipal advisors and investment advisors.

"For more than 20 years, the MSRB's pay-to-play rule for dealers has served as a model for other regulations to address public corruption, or the appearance of corruption," said MSRB Executive Director Lynnette Kelly. "Applying this proven model to municipal advisors will ensure that all regulated municipal finance professionals are held to the same high standards of integrity."

The Dodd-Frank Wall Street Reform and Consumer Protection Act charged the MSRB with developing a comprehensive regulatory framework for municipal advisors, whose advice to state and local governments can impact municipal finance deals in the billions of dollars. The MSRB has

proposed a core slate of new or amended rules to establish standards of conduct and professional qualification for municipal advisors. [Read more about the MSRB's municipal advisor rulemaking.](#)

The proposed amendments to MSRB Rule G-37 would curb the giving of political contributions to state and local officials in exchange for the award of municipal advisory business and provide greater transparency regarding municipal advisors' political contributions. Consistent with the existing rule for dealers, the rule would generally prohibit municipal advisors from engaging in municipal advisory business with municipal entities for two years if certain political contributions have been made to officials of those entities who can influence the award of business.

Also like the existing rule for dealers, municipal advisors would be required to disclose their political contributions to municipal entity officials and bond ballot campaigns for posting on the MSRB's Electronic Municipal Market Access (EMMA®) website. Public availability of this information would facilitate enforcement of the rule and promote public scrutiny of political giving and municipal advisory business.

[View the filing.](#)

Date: December 16, 2015

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500
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Puerto Rico's Power Authority Reaches Preliminary Pact with Bond Insurers.

Some creditors have agreed to accept losses of 15% as part of a pact to swap debt

The Puerto Rico Electric Power Authority reached a preliminary agreement with bond insurers to restructure the utility's finances, a key step toward completing the first deal that would grant debt relief to the U.S. commonwealth.

Some creditors have agreed to accept losses of 15% as part of a pact to swap old debt from the authority, known as Prepa, for less risky bonds. Insurers agreed to bolster the security of the new bonds, which would make it more likely that the bonds would be rated investment grade, according to a person familiar with the situation.

The agreement hasn't been approved by the power authority's board and would only take effect after Puerto Rico's lawmakers reconvene and pass legislation to allow the deal. The agreement with bond insurers was earlier reported by Bloomberg News.

Spokespeople for Prepa and bond insurers MBIA Inc. unit National Public Finance Guarantee, Assured Guaranty Ltd. and Syncora Guarantee Inc. declined to comment on the status of the talks.

Officials have said the negotiations over Prepa, which owes about \$9 billion, could serve as a template for talks over other Puerto Rico debt. The commonwealth is seeking to strike deals with investors to restructure about \$70 billion of debt, which includes Prepa debt, without the bankruptcy protections allowed U.S. municipal entities.

Puerto Rico Gov. Alejandro Garcia Padilla and the U.S. Treasury Department have asked the U.S.

Congress to create a formal debt-restructuring process for the island. Such a framework is critical to avoiding a legal quagmire that would hurt both island residents and creditors alike, Mr. Padilla said Friday. A measure allowing the commonwealth to restructure debt didn't make the \$1.15 trillion spending bill passed Friday.

"By not acting now, Congress has opted for the U.S. commonwealth to default on its obligations and unfold into chaos," the governor said in a statement.

While some investors oppose such a move and have said the Prepa negotiations show there is no need for it, Congress this week gave the clearest sign that lawmakers will eventually take up legislation addressing the island's crisis. House Speaker Paul Ryan said Wednesday he had instructed the relevant committees to find a "responsible solution" by the end of March.

"Any solution must include both independent oversight and an orderly process to restructure the Commonwealth's debt," U.S. Treasury Secretary Jacob Lew said in a statement Thursday.

House Minority Leader Nancy Pelosi introduced a bill on Friday that would stay legal actions against the commonwealth while Congress considers restructuring legislation. Mrs. Pelosi said it was "profoundly disappointing that debt-restructuring authority for Puerto Rico was not included" in the spending bill. Puerto Rico has about \$1 billion of debt payments due on Jan. 1. Mr. Padilla this week said the island would probably default either in January or May.

The U.S. Supreme Court has also agreed to consider whether Puerto Rico should be allowed to write laws permitting public agencies such as Prepa to restructure debts.

Friday's tentative agreement is an encouraging sign that at least some Puerto Rico agencies and investors can agree to restructuring without formal bankruptcy protection, said Daniel Solender, director of municipal-bond management at Lord Abbett & Co., which oversees about \$17 billion of tax-exempt debt, including some from Puerto Rico.

"It's a positive step," he said. "Having an agreement with bond insurers is important because they're involved in so many of these different credits."

THE WALL STREET JOURNAL

By AARON KURILOFF

Dec. 18, 2015 6:55 p.m. ET

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

[St. Louisans Pay Too Much to Fund Municipalities, Research Group Says.](#)

The municipal governments in St. Louis and St. Louis County are expensive for taxpayers, according to reports issued this week by a nonprofit group advocating for consolidating some of those governments.

In 2014, St. Louis, St. Louis County, and the 90 municipal governments in St. Louis County spent \$281 million on general administration — the planning, organizing, directing, coordinating, and controlling of government operations — [according to the research group Better Together.](#)

Per capita, a resident of the St. Louis region paid \$213 solely for general administration costs in 2014, the group said. Better Together found that Louisville, Ky. — another region with dozens of municipalities — spent just \$127 per person.

Reducing the amount spent on municipal governments would save the city and county more than \$113 million a year, money which “could be put toward other issues that matter to our region’s residents, such as providing additional training and resources to police officers and increasing neighborhood safety.”

Normandy Mayor Patrick Green said the group’s findings were “probably an accurate picture but maybe not a detailed picture.”

Maybe St. Louisans get better services than people in Louisville, he noted. And maybe that’s what they want.

Better Together also compiled the municipal ordinances that govern the region and found they total more than 52,000 pages. If lined up end to end, they would stretch from Busch Stadium to the Galleria.

“When you have laws governing whether people can barbecue in their own front yard, the manner in which they walk down the street, and whether their curtains match — and when these ordinances vary from municipality to municipality — you create an environment in which minor citations can alter the lives of individuals and families,” said Dave Leipholz, the group’s director of community-based studies.

The group also pointed to a heavy reliance on municipal sales taxes in the St. Louis region. Before 1969, municipalities relied upon property and utility taxes as their two major funding streams. Today, sales tax revenue is the No. 1 funding source of 69 municipalities in St. Louis County, the group said. As a region, St. Louis brings in 36.7 percent of its revenue from sales taxes.

Better Together is a St. Louis-based nonprofit group studying a city-county merger through a series of reports that point to inefficiencies in public safety, public finance, public health and economic development. The city operates as its own separate county.

St. Louis Post-Dispatch

December 17, 2015 4:56 pm • By Jeremy Kohler

Muni Issuance Slumps at End of Strong Year.

New issuance in the U.S. municipal bond market will slow to a trickle in the remainder of the year after a refunding boom lifted issuance in 2015 to its highest in five years.

Around \$377 billion in muni bonds came to market in 2015, the strongest since 2010 when \$430.4 billion were issued, according to data compiled by Thomson Reuters.

Some analyst are predicting even higher issuance next year as debt refundings continue to dominate the market. Bank of America Merrill Lynch predict \$440 billion to \$450 billion will hit the market in 2016.

Meanwhile, issuance has all but dried up in the last few weeks of the year. Just \$77 million of notes and bonds is slated to come to market in the holiday-shortened week ahead, compared to a weekly average this year of \$7.4 billion.

U.S. financial markets will be closed on Friday for the Christmas Day holiday. The muni market will close early at 2 p.m. on the preceding Thursday.

Dawn Daggy-Mangerson, a fund manager at McDonnell investment Management in Oakbrook Terrace, Illinois, said the “severe lack of supply” would likely continue until February.

“January is typically very limited supply,” she said. “Maybe not until the end of February will we see significant pickup. We definitely have the January effect.”

Bucks County, Pennsylvania, will issue a \$38 million water and sewer revenue bond in a sale slated for Monday. Boenning & Scattergood is the lead manager for the deal.

Reuters

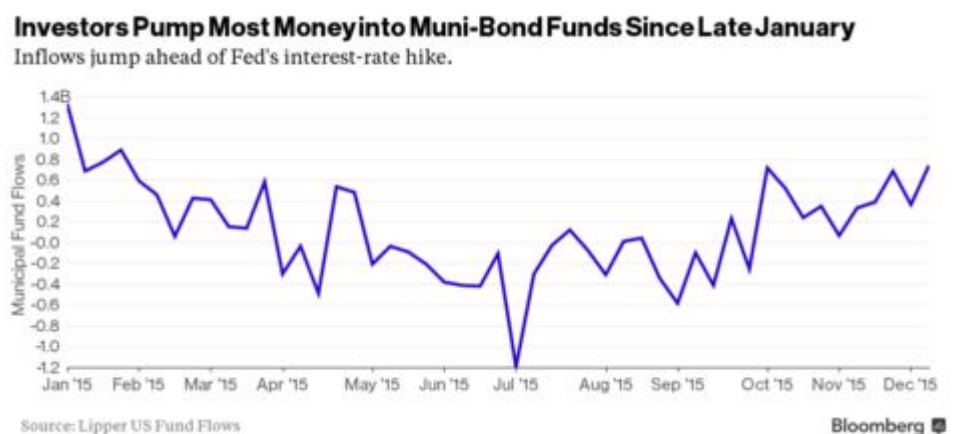
Fri Dec 18, 2015

(Reporting by Edward Krudy Additional reporting by Hilary Russ; Editing by James Dalglish)

Muni-Bond Buyers Say Forget the Fed as Market Set for Top Gains.

As municipal bonds head toward the strongest returns in the U.S. fixed-income markets this year, investors say the end of near-zero interest rates will do little to knock state and local-government debt off its stride.

Money has been pouring into muni funds at the fastest pace since January. Defaults are falling for a fifth straight year. State and cities are being aided by an influx of tax revenue, thanks to rising real estate prices and falling unemployment. And the push to lift borrowing costs comes after a years-long refinancing wave may have run its course: Most analysts predict that new bond sales will hold steady or even fall in 2016.



“Demand for munis has been tremendous,” said John Bonnell, a senior portfolio manager in San

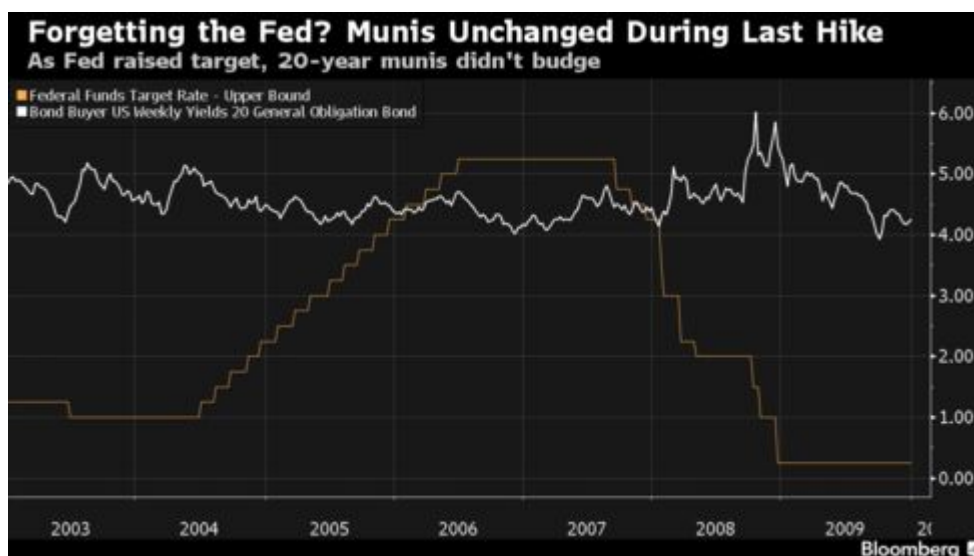
Antonio at USAA Investment Management Co., which oversees \$20 billion of local debt. “There’s just so much cash in our market looking to get invested.”

The \$3.7 trillion muni market has returned 3.1 percent this year, on track for a second straight annual gain, as the income bondholders pocketed from interest outstripped any drop in prices, according to Bank of America Merrill Lynch’s index. That’s three times the return for Treasuries and compares with a 0.6 percent loss in the corporate-bond market amid a selloff in the riskiest securities in anticipation of higher borrowing costs.

Long-Awaited Move

The Federal Open Market Committee unanimously voted to set the new target range for the federal funds rate at 0.25 percent to 0.5 percent, up from zero to 0.25 percent. The Fed signaled that the pace of subsequent increases will be “gradual” in a statement on Wednesday. The bond markets have long been preparing for Fed Chair Janet Yellen to raise interest rates from near zero, where they’ve been since the depths of the credit crisis in 2008.

A gradual tightening of monetary policy may be a boon to some segments of the market, if history is a guide. That’s because long-term rates often fall in anticipation of slower economic growth and diminished expectations for inflation, which erodes the value of fixed interest payments. From 2004 to 2006, the last time the Fed was boosting rates, munis maturing in 22 years or more saw annual returns of 6.5 percent, more than triple the gains on securities due in 3 years or less, according to Bank of America’s indexes.



U.S. Bancorp., USAA Investment Management Co., Barclays Plc and Citigroup Inc. are all projecting a so-called flattening of the municipal yield curve, or a narrowing of the gap between short- and long-term rates. When that happens, bonds with longer maturities tend to outperform.

Investors appear to be expecting just that. In the week through Dec. 9, they added \$742 million into tax-exempt funds, the most since January, according to Lipper U.S. Fund Flows data. More than \$3 billion has flooded into long-term muni funds over the past 10 weeks.

Fiscal Recovery

The influx comes as governments continue to recover from the financial toll of the recession, which

led then to pay down debt from 2011 through last year. State tax revenue rose by 6.8 percent in the second quarter from a year earlier, according to the Nelson A. Rockefeller Institute of Government in Albany. A survey by the National League of Cities released in September found that 82 percent said they were better off than a year earlier, the most since at least 1990.

Piper Jaffray Cos. and U.S. Bancorp say the pace of securities offerings will slow next year, while BlackRock Inc. predicts it will be little changed. While Citigroup Inc. projects that issuance will rise to \$413 billion from about \$397 billion this year, Vikram Rai, the bank's head of muni strategy in New York, says demand will be strong enough to keep prices in check.

"Demand is strong; issuance is low," said Peter Hayes, who oversees \$111 billion as head of munis at New York-based BlackRock, the world's biggest money manager. "Our theme for next year is really about maximizing carry, or income, in an environment where rates are fairly benign and don't rise dramatically."

This is probably the "most well-advertised rate hike" in Fed history, said Dan Heckman, senior fixed-income strategist at U.S. Bank Wealth Management, which oversees about \$130 billion. He sees two to three rate increases coming next year, including one in the first quarter.

"All in all, I think that this is still very muni-positive," Heckman said Wednesday after the Fed decision.

Bloomberg Business

by Elizabeth Campbell

December 15, 2015 — 9:01 PM PST Updated on December 16, 2015 — 11:48 AM PST

[Main Street's Muni-Market Fight With Fed Gains Force in Congress.](#)

Main Street and Wall Street are fighting the U.S. Federal Reserve over municipal bonds — and they're gaining ground.

Local-government officials and securities-industry lobbyists turned to Congress after regulators including the Fed adopted rules that would restrict or bar banks from including munis among the assets they need to hold to weather a financial shock. The effort has borne rare fruit: Overwhelming bipartisan support in Congress, where a bill forcing regulators to classify munis as liquid assets passed a key House committee by 56-1 last month. Analysts say it may win final approval next year.

"Congress seems to be energized to actually pass the legislation," said Bank of America Merrill Lynch's Philip Fischer, the head of municipal research in New York. "From the Republican side it looks like a clear overreach on the regulatory front, and from the Democratic side it appears as though it will cost the states potentially an unnecessary amount of money."

The regulations threaten to curb demand from banks in the \$3.7 trillion muni market, where they've increased their holdings by more than any other buyers since the recession ended in 2009. State and local officials said the new rules, if not changed, will saddle them with higher borrowing costs by eliminating incentives banks have to purchase their bonds.

U.S. Banks Become Major Buyers of State and Local Government Bonds

Their share of the \$3.7 trillion market has more than doubled since the recession



The regulations from the Fed, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corp. are part of the effort to avoid a repeat of the 2008 credit crisis, when banks ran short of cash and had to liquidate assets at fire-sale prices as markets seized up. They require lenders to hold enough assets deemed high-quality — such as Treasuries, well-rated corporate bonds and foreign-government debt — to endure 30 days of significant stress. Munis were left out because they trade less frequently than other securities.

Indiana Republican Representative Luke Messer, co-sponsor with New York Democrat Carolyn Maloney of the bill that cleared the House Financial Services committee on Nov. 4, said he's aiming to get the legislation to the floor for a full-vote early next year. In the Senate, New York Democrat Chuck Schumer, a member of banking committee, is among those who've endorsed allowing banks to use munis to meet the high-quality liquid asset rules, known by the acronym HQLA.

"U.S. municipal bonds are considered some of the safest investments in the world," said Messer, whose bill would treat munis the same as debt issued by government-sponsored enterprises including Fannie Mae. "By excluding all these municipal securities from HQLA eligibility, financial institutions are discouraged from holding municipal debt."

Eric Kollig, a Fed spokesman, Stephanie Collins, a spokeswoman for OCC, and Barbara Hagenbaugh, a spokeswoman for the FDIC, declined to comment.

Fed Proposal

State and local officials who lobbied the regulators following the approval of a 2014 rule that barred municipal debt from HQLA got some relief in May. In a split from the OCC and FDIC, the Fed proposed allowing certain investment-grade, uninsured general-obligation bonds to be counted toward as much as 5 percent of a bank's liquid assets. Barclays Plc estimated that no more than about \$350 billion of munis would be acceptable under that rule, less than one-tenth of the market.

While public officials and their lobbyists acknowledge that the Fed has been more responsive, they said it wasn't sufficient. For example, it left out municipal bonds backed by dedicated tax revenue, which in many cases are more secure than general obligation debt.

Moreover, the Fed only oversees just two banks with more than \$250 billion in assets that are subject to the liquidity rules, said Dustin McDonald, federal liaison for the Government Finance Officers Association.

Big Buyers

The regulations have so far done little to stop banks from buying state and local securities. Their holdings have more than doubled since June 2009 to \$488 billion by the end of September, according to Fed data. That's left them with more than 13 percent of the outstanding debt, the most since 1989.

Banks typically don't buy munis to satisfy liquidity needs, said Matt Fabian, a partner at Concord, Massachusetts-based Municipal Market Analytics. Even so, the change would allow the companies to use state and local holdings to meet the new requirements, instead of shifting money elsewhere.

"It allows their muni position to work a little harder for the bank," said Fabian.

Groups representing state treasurers, budget officers and mayors argue that munis have low default rates and limited price swings, even during times of turmoil. An average of 0.02 percent of rated munis defaulted from 1970 to 2014, compared with 1.66 percent for corporate bonds, according to Moody's Investors Service.

California Loses Out

The state and local officials also point to inconsistencies: For example, securities issued by foreign governments are deemed more liquid than those from states such as Washington and California. The Securities Industry and Financial Markets Association, which represents Wall Street firms, has also lobbied against the exclusion of munis.

"It just doesn't make any sense," said Washington Treasurer Jim McIntire, who will take over next year as president of the National Association of State Treasurers. "Some of our bonds are much more liquid than a high quality AAA corporate like Microsoft."

Muni prices usually closely track Treasuries, though the relationship can be upended during financial stress. In late 2008, following the bankruptcy of Lehman Brothers Holdings Inc., some muni prices tumbled as investors plowed into the safest federal-government debt.

McIntire, the Washington treasurer, said the legislation shouldn't be difficult to pass in an election year.

"I don't like to have to see legislators brought into the regulatory environment," McIntire said. "If they're going to issue regulations affecting us they should know something about the market."

Bloomberg Business

by Martin Z Braun

December 14, 2015 — 9:01 PM PST Updated on December 15, 2015 — 9:10 AM PST

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- **Ed. Note:** We'll be taking next week off, but will return (without any particular vengeance) on 12/29 to close out the year. May visions of sugarplums dance in your heads. (Aforementioned seasonal pleasantries not applicable in the event that "Sugarplum" is the *nom de pole* of a *danseur* working in your municipality.)
 - [Green Bond Best Practice Guide Released for Public Sector.](#)
 - [A Guide to Evaluating Pay for Success Programs and Social Impact Bonds.](#)
 - [Butler Snow: MSRB's Execution Guidance Under Rule G-18 - Forward With Flexibility.](#)

- [BDA Submits Comment Letter to FINRA and MSRB on Proposed Retail Markup Disclosure and Pricing Reference Rules.](#)
- [BDA Proposes Additional Issue Price Safe Harbors.](#)
- [GASB Issues New Pension Guidance Designed to Assist Certain Governments.](#)
- [Catalina Foothills Unified School Dist. No. 16 v. La Paloma Property Owners Ass'n, Inc.](#) - Court of Appeals holds that school district did not violate statute requiring voter approval for purchase of school sites by condemning private road owned by homeowners association to provide vehicular access into early childhood learning center, as district received approval in bond election in which voters approved proposal to authorize district to acquire property and expend funds for new preschool facility, and district had independent statutory power to acquire property by condemnation at time of bond election.
- [Duke Energy Ohio, Inc. v. Cincinnati](#) - Court of Appeals holds that city was responsible for costs incurred by utility to relocate its utilities to accommodate city-owned streetcar project, invalidating local ordinance to the contrary.
- [Storino, Ramello and Durkin v. Rackow](#) - After village abandons effort to impose special assessment on property owners, appeals court holds that the law firm representing the property owners was entitled to attorneys' fees under contingent fee agreements based, not on the total amount recovered, but on a percentage of the savings from the proposed special assessment.
- And finally, BCB's Department of Irrebuttable Presumptions this week brings you [In re Equalization Appeal of Kansas Star Casino, L.L.C.](#), in which the court concluded that a property's highest and best use was hosting a casino, and not that whole agricultural thing. Should go without saying, no?

EASEMENTS - ALASKA

[Laybourn v. City of Wasilla](#)

Supreme Court of Alaska - December 11, 2015 - P.3d - 2015 WL 8521290

After city failed to fulfill its promise to build access road across property owners' land in exchange for property owners' grant of utility easement to city, subject to obtaining permits and funding, property owners sued city, claiming that city had fraudulently induced them to sign the easement agreement, breached the agreement, and breached the covenant of good faith and fair dealing. Following a bench trial, the Superior Court ruled against property owners and they appealed.

The Supreme Court of Alaska held that:

- City's obligation to build the road was unambiguously conditioned upon available funding and permitting approval;
- Evidence supported finding that city had made no misrepresentations of material fact to property owners;
- City did not breach the agreement; and
- City did not breach covenant of good faith and fair dealing.

MUNICIPAL CORPORATIONS - ALASKA

[City & Borough of Juneau v. State](#)

Supreme Court of Alaska - December 4, 2015 - P.3d - 2015 WL 7873718

Neighboring borough petitioned for review of decision of local Boundary Commission granting city's

petition to dissolve itself and incorporate a new borough, over objection of neighboring borough, which had sought to annex some of area included in new borough. The Superior Court affirmed. Neighboring borough appealed.

The Supreme Court of Alaska held that:

- Commission was not required to conduct head-to-head analysis as between dissolving city and neighboring borough to determine whether city had superior common interests to contested area, in order to satisfy its constitutional obligation to make borough decisions from a statewide perspective prior to granting city's petition, and
- Trial court's decision to award less than 30% portion of city's requested attorney fees was not manifestly unreasonable.

Local Boundary Commission was not required to conduct head-to-head analysis as between dissolving city and neighboring borough to determine whether city seeking to dissolve itself and incorporate new borough had superior common interests to contested area sought to be incorporated by new borough, in order to satisfy its constitutional obligation to make borough decisions from a statewide perspective prior to granting city's petition. Rather, Commission was only required to determine whether proposed borough embraced an area with common interests to maximum degree possible, which presupposed thorough consideration of alternative boundaries and a decision as to what boundaries would be optimal.

Superior Court's decision to award city only \$1,500 in prevailing party attorney fees, on administrative appeal from decision granting its petition to dissolve itself and incorporate new borough, over neighboring borough's objection, as opposed to \$9,594, or 30% of fees requested, was not manifestly unreasonable. Despite arguably lengthy administrative record, complexity of arguments, and importance of issues on appeal, court had discretion whether to award such fees at all.

EMINENT DOMAIN - ARIZONA

[Catalina Foothills Unified School Dist. No. 16 v. La Paloma Property Owners Ass'n, Inc.](#)

Court of Appeals of Arizona, Division 1 - November 24, 2015 - P.3d - 2015 WL 7454106

School district brought action against homeowners association to condemn private road to allow safest vehicular access into early childhood learning center. The Superior Court granted district immediate possession of road, and later granted district's motion in limine to preclude association's expert appraisal of severance damages, entered partial judgment limiting issue at trial to be just compensation, and, after jury trial, awarded association fair market value and cost-to-cure severance damages.

Association appealed, and district cross-appealed.

The Court of Appeals held that:

- A district's power to condemn for buildings necessarily includes power to condemn to create access;
- Evidence was sufficient to conclude that condemnation was necessary;
- District obtained fee simple interest;

- Association was not deprived of opportunity to present severance damages;
- District did not violate statutes regarding voter approval of purchase or sale of school sites;
- District's complaint did not fail to name indispensable parties; and
- Prejudgment interest rate was prime-rate-plus-1%.

A school district's power to condemn property for use as buildings or grounds necessarily must include the power to condemn property to create access to school buildings and grounds.

Evidence was sufficient to support conclusion that school district's condemnation of private road owned by homeowners association was necessary to allow safe vehicular access into early childhood learning center. Even if there were other means of entry to center, district presented evidence that road provided safest access to center because there was traffic signal at intersection but not at any other location that afforded access, and association offered no persuasive argument for upsetting district's determination.

School district, after condemning private road owned by homeowners association, obtained fee simple interest, and therefore did not violate statute requiring fee simple interest in lands taken for public buildings or grounds. Even though district ultimately granted association perpetual nonexclusive easement over road, thereby allowing subdivision owners to use road to drive to and from their homes, district's complaint sought "fee title" to road, and district's conveyance back of easement did not change nature of interest district acquired by condemnation.

Homeowners association, as previous owner of private road condemned by school district, was not deprived of opportunity to present claim for severance damages to jury by superior court's exclusion of association's expert report estimating severance damages as more than \$1 million, and therefore court did not rule that association was obligated to accept easement from district to mitigate severance damages. Even though court found easement was a cure of severance damages, expert report was based on incorrect premise that district lacked power to convey easement to association, and conclusion that easement cured severance damages did not preclude association from offering other evidence of severance damages or cost of other reasonable steps to cure.

School district did not violate statute requiring voter approval for purchase of school sites by condemning private road owned by homeowners association to provide vehicular access into early childhood learning center. District received approval in bond election in which voters approved proposal to authorize district to acquire property and expend funds for new preschool facility, and district had independent statutory power to acquire property by condemnation at time of bond election.

School district did not violate statute requiring voter approval for sale of school sites by conveying easement to homeowners association on road formerly owned by association and condemned by district. Easement did not prevent district from using school property for its intended purpose, nor did easement cause district to lose any rights in use of school property.

School district's complaint for condemnation of private road owned by homeowners association was not deficient for failure to name owners of individual lots within subdivision as indispensable parties. Property taken was not owned by lot owners, declaration of covenants, conditions, and restrictions granted owners non-exclusive easement to use common areas and authorized association to represent interested persons in proceedings to condemn common areas, and association offered evidence that owners suffered injury to individual parcels at trial, which jury rejected.

Prejudgment interest rate for school district's condemnation of private road was prime-rate-plus-1%, applicable to any judgment unless specifically provided for in statute or different rate was

contracted for in writing, rather than 10%, applicable to interest owed on any loan, indebtedness, or "other obligation." Rate applicable to "other obligation" was limited to those akin to loan or indebtedness, and interest for condemnation was calculated on amount of jury's determination of just compensation, which could not have been known until verdict and final judgment.

IMMUNITY - CALIFORNIA

[Hampton v. County of San Diego](#)

Supreme Court of California - December 10, 2015 - P.3d - 2015 WL 8460616

A motorist who was involved in a collision while turning left across an oncoming lane brought an action against the motorist in the oncoming lane and the county, alleging dangerous condition of public property.

The Superior Court granted county's motion for summary judgment on grounds of design immunity, and turning motorist appealed. The Court of Appeal affirmed. Turning motorist petitioned for review. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that:

- Discretionary approval element of the design immunity defense for injuries caused by dangerous conditions of public property does not require the employee who approved the plans to have been aware of design standards or aware that the design deviated from those standards, disapproving *Levin v. State of California*, 146 Cal.App.3d 410, 194 Cal.Rptr. 223, and *Hernandez v. Department of Transportation*, 114 Cal.App.4th 376, 7 Cal.Rptr.3d 536, and
- Design of intersection received discretionary approval.

Design of intersection where automobile collision occurred received discretionary approval prior to construction, as required for county to rely on design immunity for injuries caused by any dangerous condition of the intersection, even if the plans deviated from county's visibility standards, where the intersection plans were approved before construction by a civil engineer who was in charge of the county's Design Engineering Section, "as-built" plans were approved and signed after construction by another civil engineer, and those two civil engineers had authority to approve the designs, absent evidence that the engineers lacked authority to approve designs that deviated in any respect from county standards.

HIGHWAYS - FLORIDA

[Conservation Alliance of St. Lucie County v. United States Department of Transportation](#)

United States District Court, S.D. Florida - November 5, 2015 - F.Supp.3d - 2015 WL 7351544

Environmental organizations brought action against United States Department of Transportation (USDOT) and Federal Highway Administration (FHWA), challenging approval of a bridge and highway project that would cross a river and encompass two public parks and surface water along the river. USDOT and FHWA moved for summary judgment.

The District Court held that:

- FHWA acted within the scope of its authority and reasonably concluded that alternative highway route with spliced beam construction method was not prudent alternative, and
- FHWA's conclusion that alternative highway route, which crossed river and encompassed two public parks and surface water along the river, would cause least overall harm was not arbitrary and capricious.

Federal Highway Administration (FHWA) acted within the scope of its authority and reasonably concluded that alternative highway route with spliced beam construction method was not prudent alternative to using public parkland for federal highway project. Impacts to wetlands and essential fish habitats would be 69 times greater using spliced beam bridging, alternative route would cross six residential streets, creating substantial community cohesion and local mobility impacts, and route would affect neighborhoods with higher number of minority households.

Federal Highway Administration's (FHWA) conclusion that alternative highway route, which crossed river and encompassed two public parks and surface water along the river, would cause least overall harm was not arbitrary and capricious. FHWA found that route had modest impacts in light of mitigation plan, which included four water quality improvement projects, that route would provide most balanced traffic relief for two existing bridges, and that route had least net harm to wetlands, upland habitats, essential fish habitat, and protected species.

ATTORNEYS' FEES - ILLINOIS

[Storino, Ramello and Durkin v. Rackow](#)

Appellate Court of Illinois, First District, Second Division - November 24, 2015 - N.E.3d - 2015 IL App (1st) 142961 - 2015 WL 7568673

The law firm of Storino, Ramell & Durkin (SRD) represented property owners in an action by the Village of Bensenville in which the Village sought to levy a special assessment against properties located within a business district. The Village voluntarily dismissed the underlying action with prejudice. Consequently, the property owners, avoided the special assessment altogether. SRD's contingent fee agreement stated that "at the time of recovery," SRD was entitled to "One-fourth (1/4th) of whatever savings may be realized as a result of the objections to the Petition." In an action to collect its fee, the trial court granted SRD's summary judgment motion and awarded \$109,595.76.

On appeal, the court took up the question of whether SRD was entitled to attorney fees under contingent fee agreements based, not on the total amount recovered, but on a percentage of the savings from a proposed special assessment.

The Appellate Court held that:

- Firm was entitled to 1/4 of the amount that village had sought to assess;
- Trial court did not abuse its discretion in denying motion to transfer venue; and
- Trial court did not abuse its discretion by denying clients' discovery demand for copies of attorney fee contracts between firm and other clients.

A reduction to zero through the dismissal with prejudice of proceeding in which village petitioned to impose a special assessment on clients' property constituted the ultimate decrease in the amount assessed on clients' property, and, thus, law firm that represented clients by filing objections, retaining an expert witness, conducting and responding to discovery, and engaging in settlement negotiations was entitled pursuant to contingency fee agreement to 1/4 of the amount the village

sought to assess.

Trial court did not abuse its discretion in denying motion to transfer venue to county where underlying special assessment lawsuit occurred and where clients' property was located in action by law firm against clients to recover attorney fees earned pursuant to contingency fee agreement, where the agreement was prepared and signed at the law firm's offices in Cook County, and that was where 90% of the work that law firm performed took place.

Trial court did not abuse its discretion in action against clients for attorney fees earned pursuant to contingency fee agreement by denying clients' demand for copies of attorney fee contracts between law firm and the other property owners that it represented in the same special assessment lawsuit, and answers to interrogatories that firm filed on behalf of those clients. Lawsuit was, not for the collection of fees on an hourly basis, but for a contingent fee based on the amount of savings each individual client realized, and clients knew that firm was entering into similar contingent fee agreements with other landowners and knew that the objections to the village's petition were filed on behalf of a number of clients.

DEVELOPER IMPACT FEES - NEW HAMPSHIRE

[Town of Londonderry, v. Mesiti Development, Inc.](#)

Supreme Court of New Hampshire - December 4, 2015 - A.3d - 2015 WL 7816131

Town filed bill of interpleader to determine whether surplus impact fees collected under impact fee ordinance should be refunded to developers who had paid the fees or to the current owners of properties for which the fees had been paid.

Developers filed counterclaims alleging violation of impact fee statute, negligence, and violation of fiduciary duties owed to impact fee payors. The Superior Court dismissed counterclaims. Developers appealed.

The Supreme Court of New Hampshire held that:

- Developers lacked standing to seek refund of legally assessed, but unspent or unencumbered fees;
- Town was not escrow agent to hold impact fees for benefit of payors and owed no fiduciary duties to developers; and
- Town owed no duty to developers in administering its impact fee ordinance and supervising its employees.

Real estate developers lacked standing to seek refund of legally assessed, but unspent or unencumbered impact fees from town, where they no longer owned the properties.

Statute governing unspent impact fees paid by real estate developers did not designate town as escrow agent to hold impact fees for benefit of fee payors and did not impose upon town fiduciary duties owed to developers. Statute did not require town to hold collected impact fees for benefit of original payors and return them to the payors if unspent, but could be satisfied by paying the funds to current property owners.

Town owed no duty to real estate developers in administering its impact fee ordinance and supervising its employees, and, thus, developers had no claim against town for negligently shifting disproportionate share of new capital facility costs to new development, failing to meet express requirements of rational nexus, proportionality, and special benefit to fee payer, and negligently

supervising employees, even if town violated impact fee statute. Developers established no tort or other wrongful act committed by town employees.

PUBLIC UTILITIES - OHIO

[Duke Energy Ohio, Inc. v. Cincinnati](#)

Court of Appeals of Ohio, First District, Hamilton County - November 25, 2015 - N.E.3d - 2015 WL 7573197 - 2015 -Ohio- 4844

Electric utility filed complaint for declaratory judgment seeking a declaration that city ordinance, as it related to relocation costs for city's streetcar project, was invalid and that the city was required to pay the costs associated with the relocation of underground utilities. Parties filed competing motions for summary judgment. The Court of Common Pleas granted summary judgment to utility. City appealed.

The Court of Appeals held that:

- Ordinance involved an exercise of city's police powers for purposes of Home Rule Amendment, and
- City was responsible for costs incurred by utility to relocate its utilities to accommodate the governmentally-owned streetcar system.

City ordinance, requiring gas and electric utility to bear costs of relocating its underground utilities to accommodate city's street car project, involved an exercise of the city's police powers, and did not relate solely to matters of self-government, for purposes of determining whether, under Home Rule Amendment, ordinance could be invalidated for conflicting with statute governing access to public ways. Language in preamble and ordinance itself indicated that city's purpose in enacting the ordinance was to manage city streets in order to provide for the public welfare through safe, timely, and efficient transportation of persons and goods.

Because city's order for gas and electric utility to relocate its underground utilities at its own expense to accommodate city's streetcar system was not a valid exercise of the city's local police power, city ordinance dealing with determining whether a utility company was responsible for such costs, could not, under Home Rule Amendment, serve as basis for imposing upon utility cost to relocate its own utilities. City was responsible for costs incurred by utility to relocate its utilities to accommodate the governmentally-owned streetcar system.

ZONING - SOUTH DAKOTA

[High Plains Resources, LLC v. Fall River County Bd. of Com'rs](#)

Supreme Court of South Dakota - December 9, 2015 - N.W.2d - 2015 WL 8482740 - 2015 S.D. 95

Applicant sought writ of prohibition seeking to prohibit county board of commissioners from rescinding approval of proposed petroleum-contaminated soil farm. The Circuit Court issued writ. Board appealed.

The Supreme Court of South Dakota held that:

- Board had authority to consider whether to rescind resolution, and

- Applicant could have challenged decision through direct appeal.

County board of commissioners had authority to consider whether to rescind resolution approving proposed petroleum-contaminated soil farm, even though statute prohibited rescission unless certain conditions had been met. Commission had to deliberate whether those conditions had been met in determining whether rescission was authorized and warranted.

Applicant could not use writ of prohibition to challenge decision of board of county commissioners rescinding approval of proposed petroleum-contaminated soil farm, where applicant had right to directly appeal board's decision.

IMMUNITY - TEXAS

[Texas Department of Public Safety v. Bonilla](#)

Supreme Court of Texas - December 4, 2015 - S.W.3d - 2015 WL 7786856

Motorist filed suit against Department of Public Safety (DPS), seeking recovery for injuries sustained in collision with state trooper who was pursuing speeding vehicle. The District Court denied DPS's plea to jurisdiction and motion for summary judgment, which were based on defense of official immunity. DPS appealed. The El Paso Court of Appeals affirmed. DPS petitioned for review.

The Supreme Court of Texas reversed, holding that:

- Trooper was not acting in good faith performance of discretionary duties if no reasonably prudent officer in trooper's position would have assessed need for pursuit and risk of harm to public in same manner under circumstances, and
- Trooper considered alternative course of action in assessing need to pursue speeding vehicle and risk of harm to public, for purposes of determining whether trooper performed discretionary duties in good faith.

Whether state trooper acted in good faith in performance of discretionary duties in pursuit of vehicle, for which trooper would be entitled to official immunity from suit brought by motorist for injuries sustained in collision with trooper, did not depend on whether reasonably prudent officer could have decided on different course of action after balancing need to stop speeding vehicle against risk of harm to public. Rather, trooper was not acting in good faith performance of discretionary duties if no reasonably prudent officer in trooper's position would have assessed need for pursuit and risk of harm to public in same manner under circumstances.

A law enforcement officer can obtain summary judgment on the basis of official immunity from suit arising from a pursuit or emergency response by proving that a reasonably prudent officer, under the same or similar circumstances, could have believed the need for the officer's actions outweighed a clear risk of harm to the public from those actions, and in this context, "need" refers to the urgency of the circumstances requiring police intervention, while "risk" refers to the countervailing public safety concerns.

An officer's good faith performance of discretionary duties for which the officer is entitled to official immunity from suit does not require proof that all reasonably prudent officers would have resolved the need/risk analysis in the same manner under similar circumstance. Correspondingly, evidence of good faith is not controverted merely because a reasonably prudent officer could have made a different decision, but rather, when the summary-judgment record bears competent evidence of good faith, that element of the official-immunity defense is established unless the plaintiff shows that

no reasonable person in the officer's position could have thought the facts justified the officer's actions.

BDA Proposes Additional Issue Price Safe Harbors.

On December 9, 2015, the Bond Dealers of America (BDA) submitted an additional comment letter to the IRS and U.S. Treasury Department as a follow up to their testimony at the IRS issue price public hearing on October 28, 2015. In the letter, BDA recommends that the IRS and U.S. Treasury Department create an issue price safe harbor for competitive deals, so that the issue price is established if 25 percent of the total issue of bonds is sold at the initial offering price. In negotiated transactions, BDA proposes that the issue price would be established if 50 percent of the bonds underwritten were sold at the initial offering price. BDA withdrew its earlier suggestion that a safe harbor for competitive bids be established for a minimum number of bids received.

A copy of the BDA comment letter is available [here](#).

NABL: Tribal Economic Development Bonds, New CREBs.

On December 4, 2015, the IRS published Notice 2015-83 on Tribal Economic Development (TED) Bonds issued under a draw-down loan structure. Notice 2015-83 adds a new Section 10 to Notice 2012-48. Notice 2012-48 provided that any allocated bond volume unused after 180 days from the date of the allocation letter would be forfeit. Under Notice 2015-83, if a tribal government received a TED bond allocation and issues at least 10 percent of the allocation within 180 days, then the tribal government will have two years, or in some cases three years, to issue the remaining amount. The application for the allocation of volume cap must include a commitment letter from a financial institution stating that the institution reasonably expects to advance the total principal amount of the draw-down bonds no later than three years after the date of the allocation letter.

Notice 2015-83 also requests comments on whether similar rules should be provided for New CREBs.

The rule is effective for applications for TED bond volume cap submitted on or after December 4, 2015.

Allocations that did not expire before December 4, 2015 may also be able to rely on Notice 2015-83.

To read Notice 2015-83, please [click here](#).

Notice 2012-48 is available [here](#).

Muni Bonds Backed by Junk Companies Feel Pain of High-Yield Rout.

The corporate junk-bond rout has mostly left few ripples in the \$3.7 trillion municipal market, with one exception: Tax-exempt debt issued by the high-yield companies.

Local-government bonds sold on behalf of U.S. Steel Corp., the nation's second-largest producer, traded Monday at an average of about 67 cents on the dollar, the lowest price since they were issued in November 2009 and down from 113 cents to start the year, data compiled by Bloomberg show. They have a B2 rating from Moody's Investors Service, five steps below investment grade. Trading in tax-free debt backed by Marathon Oil Corp. jumped to a two-month high on Dec. 11, with prices touching the lowest in nine days even though it has an investment-grade rating.

Fortunately for high-yield muni buyers, corporate-backed credits make up only a sliver of the tax-exempt market. There's about \$7 billion of fixed-rate, non-investment-grade and tax-free industrial-development bonds, Bloomberg data show. By comparison, Puerto Rico has \$70 billion of debt outstanding, while states and localities have sold \$23 billion of junk-rated tobacco securities, the data show.

"The drop in commodity prices and the plunge in oil has certainly had an impact on several of the corporate credits" in the municipal market, said Jim Colby, who runs the \$1.7 billion Market Vectors High Yield Municipal Index exchange-traded fund, the largest of its kind.

Apart from corporate borrowers, "there's healthy appetite for municipal high-yield," he said. His fund has returned 3.9 percent this year, compared with a 6.8 percent loss for the largest ETF that invests in junk-rated companies. "There's still plenty of cash for investment going into the end of this year."

Individuals have poured money into high-yield muni mutual funds for 10 straight weeks, adding \$1.8 billion over the period, Lipper US Fund Flows data show. By contrast, funds focused on junk-rated corporate borrowers saw \$3.5 billion of withdrawals in the week through Dec. 9, the most since August 2014, the data show.

Bloomberg Business

by Brian Chappatta

December 14, 2015 — 9:51 AM PST

[Puerto Rico Teaches OppenheimerFunds Perils of Hunting for Yield.](#)

Puerto Rico had a strategy over the past decade to paper over its deficits: Issue billions of dollars worth of tax-free municipal bonds.

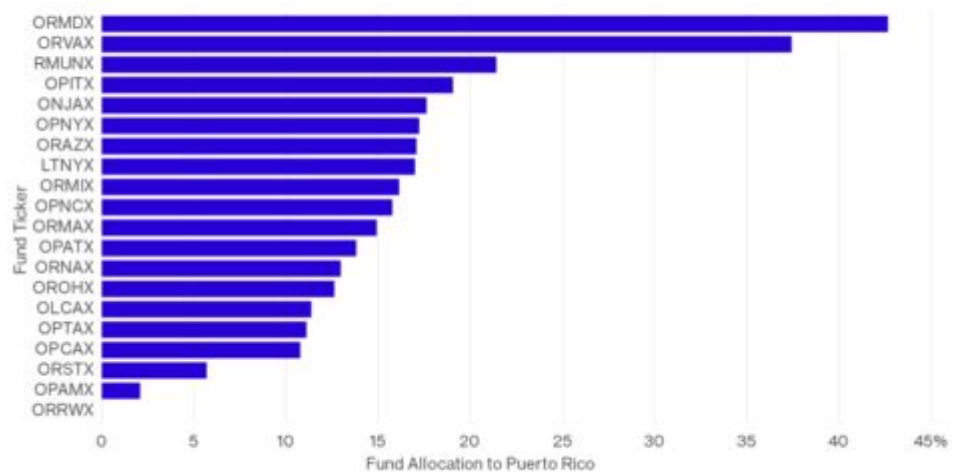
OppenheimerFunds Inc. had a strategy over the same period to deliver outsized returns to its muni mutual-fund shareholders: Buy billions of dollars worth of the commonwealth's high-yielding debt.

For both the Caribbean island and the New York-based investment firm, 2015 marked an abrupt change in course. Puerto Rico is locked out of the public markets after its governor said it couldn't pay all its debts. OppenheimerFunds is starting to see cracks in its long-held strategy of buying bonds that offer high yields. Ten of its 20 muni funds have at least a 15 percent stake in junk-rated Puerto Rico. Nine of those rank in the bottom 10 percent of their peer group this year, according to data compiled by Bloomberg through Dec. 10.

Puerto Rico Remains Core Holding for OppenheimerFunds

Half of the firm's muni funds have 15% or more exposure to the island as restructuring looms.

■ % Stake in Puerto Rico Bonds



Source: Morningstar Inc. (as of Dec. 7)

Bloomberg

In a year when high-yield muni funds earned the top returns, OppenheimerFunds's underperformance shows the disconnect between the market for Puerto Rico bonds and the \$3.6 trillion of other state and local government securities. The island's \$70 billion of debt offers interest that's exempt from federal, state and local income taxes, which attracted managers that have funds focused on a single state.

Starkest Examples

The OppenheimerFunds Maryland portfolio is the firm's starkest example of following that strategy, with a 43 percent allocation to Puerto Rico securities, according to Morningstar Inc. data. It has trailed 94 percent of peers this year, Bloomberg data show. The firm's Virginia fund is the next-most-concentrated, with a 37 percent stake in commonwealth debt. It has lost 2.65 percent in 2015, the worst of any muni mutual fund, even though it pays the second-highest dividend yield.

The only fund with a greater exposure to Puerto Rico than those two is the Franklin Double Tax-Free Income Fund, which buys territory debt, according to Morningstar. It has declined 2.1 percent this year.

"In bond funds, the total return is mostly driven by yield," said Beth Foos, an analyst at Morningstar in Chicago. "But investors really have to pay attention to the portfolio and the makeup of the funds, because when you're getting a higher yield for a particular security, there's a reason why."

Taking Risks

Meredith Richard, a spokeswoman in New York for OppenheimerFunds, said the company had no comment on its performance this year.

OppenheimerFunds has a "Puerto Rico Roundup" section of its website that provides the firm's latest thoughts on the island's fiscal crisis. The last post came on Dec. 11. It discussed a bill proposed last week by Senators Chuck Grassley, Orrin Hatch and Lisa Murkowski that would assist the commonwealth, as well as the Supreme Court's decision to rule on the constitutionality of the island's Recovery Act.

"We have seen the Puerto Rico securities held by our funds deliver highly competitive levels of tax-

free income and what we believe to be high value relative to the risk they incur,” the website says. “We hope our shareholders have seen this, too.”

Speculative Investments

Out of 602 open-end muni mutual funds tracked by Bloomberg, OppenheimerFunds has seven of the 10 highest-yielding offerings. That’s because over the years, in addition to taking on Puerto Rico securities, the firm’s money managers have invested in airline-backed debt, small private colleges, tobacco bonds and real-estate development deals, all of which feature speculative qualities.

The strategy has often paid off because their funds pay out more interest than their competitors, padding returns. The \$2.1 billion Oppenheimer Rochester AMT-Free Municipals Fund, with a yield that’s over 1 percentage point higher than any other peer, has ranked in the top 10 percent returns among peers over a one-, three- and five-year period, Bloomberg data show.

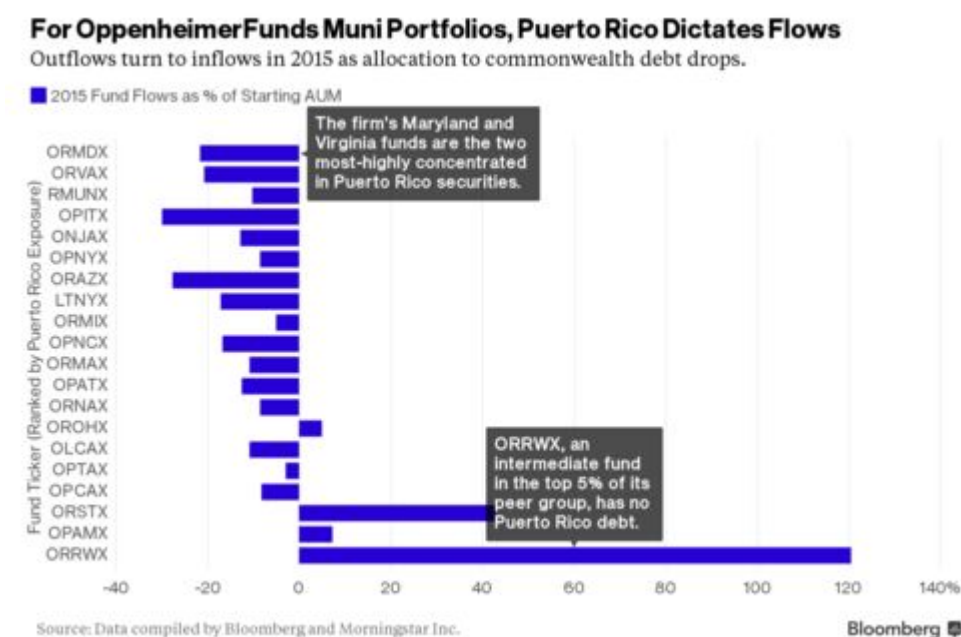
That used to be the norm across its suite of funds. Yet the \$5.6 billion Oppenheimer Rochester Fund Municipals portfolio, with the third-highest dividend of any open-end muni offering, returned in the bottom 10 percent of comparable funds in the past one- and three-year stretches, the data show.

Only Segment

The difference between the two funds? The former has an 11 percent allocation to Puerto Rico, according to Morningstar. The latter has a 21.4 percent stake.

Puerto Rico bonds have plunged 7.3 percent this year, the only segment of the municipal market to lose money in 2015, according to Standard & Poor’s Dow Jones Indices data. And it might not get immediately better for investors in the coming months as the island veers closer to a restructuring of its debt.

“It’s hard to assume much in the way of positive price surprises in the near-term for any Puerto Rico securities,” Matt Fabian and Lisa Washburn at Concord, Massachusetts-based research firm Municipal Market Analytics wrote in a Dec. 7 report.



Puerto Rico bonds may have room to rally as the island's path to restructuring becomes clearer. Some securities have been trading at dollar prices lower than the recovery rates assumed by Moody's Investors Service. Any gain would be a boon to investors currently putting money into OppenheimerFunds's muni offerings.

Puerto Rico Electric Power Authority securities reached the highest price since June 2014 after some investors agreed to take losses of 15 percent. Tax-exempt debt due in July 2017, which fell to 49.7 cents in July, climbed to 68.5 cents in November. OppenheimerFunds is the largest holder of the bonds, Bloomberg data show.

January Payments

Shareholders don't appear to be waiting for a rebound. They've yanked almost \$3 billion from the company's 20 muni funds in 2015 through Nov. 30, according to Bloomberg data, which analyzes the change of assets net of performance. That outflow represents 11.4 percent of the \$26.2 billion they had to start the year. Muni mutual funds as a whole have added \$10.6 billion in 2015, Lipper US Fund Flows data show.

The firm's three muni funds with the least exposure to Puerto Rico, however, saw net inflows through the first 11 months of the year, Bloomberg data show.

The commonwealth faces \$958 million of bond payments in January that it may fail to make, even after the unprecedented step of clawing back revenue from some debt to pay general obligations. Add to that squabbling among lawmakers in San Juan and Washington about the best path to resolve the crisis, and it follows that fund flows show individuals are leery about investing in Puerto Rico.

"Holders not prepared for strange doings, confusion, and political interference should not still be holding Puerto Rico securities," MMA's Fabian and Washburn wrote.

Bloomberg Business

by Brian Chappatta

December 13, 2015 — 9:00 PM PST Updated on December 14, 2015 — 11:51 AM PST

[Butler Snow: MSRB's Execution Guidance Under Rule G-18 - Forward With Flexibility.](#)

The Municipal Securities Rulemaking Board ("MSRB") recently released its best execution guidance under MSRB Rule G-18 (the "Rule" or "Rule G-18"). The Rule will be effective as of March 21, 2016. The Rule provides: "The best-execution rule requires brokers, dealers and municipal securities dealers to use reasonable diligence to ascertain the best market for the subject security and buy or sell in that market so that the resultant price to the customer is as favorable as possible under prevailing market conditions." You can find the full text of Rule G-18 [here](#) and MSRB's guidance on implementation [here](#). This post provides a summary of the rule and offers a few observations about its impact going forward.

Who Does Rule G-18 Apply To?

The MSRB said it best: "Rule G-18 applies to any transaction in a municipal security for or with a

customer or a customer of another dealer, without any exception for orders that are routed to another dealer.” Rule G-18 applies to transactions both when the dealer acts as an agent and when the dealer acts as the principal.

Paragraph .08 of the Supplementary Material to the Rule also states that “[a] dealer that routes its customers’ transactions to another dealer that has agreed to handle those transactions as agent or riskless principal for the customer (e.g., a clearing firm or other executing dealer) may rely on that other dealer’s periodic reviews as long as the results and rationale of the review are fully disclosed to the dealer and the dealer periodically reviews how the other dealer’s review is conducted and the results of the review.”

Rule G-18 does not apply to transactions in municipal fund securities, nor does it apply to “inter-dealer” trades between broker-dealers. Further, amendments to Rules G-48 and D-15 exempt sophisticated municipal market professionals (defined in Rule D-15) from the requirements of Rule G-18.

Rule D-15’s definition of sophisticated municipal market professionals includes banks, savings and loan associations, insurance companies, registered investment companies, investment advisers registered with the Securities and Exchange Commission under Section 203 of the Investment Advisers Act of 1940 (or like state securities commission), or another entity with over \$50 million in total assets that the broker, dealer, or municipal securities dealer has a reasonable basis to believe can evaluate investment risks and market values independently.

One more note on whom Rule G-18 applies to: Dealers also cannot interject a third party between themselves and the best market for a security if the third party would subvert compliance with Rule G-18.

Reasonable Diligence

Under Rule G-18, “a dealer must use reasonable diligence to ascertain the best market for the subject security and buy or sell in that market so that the resultant price to the customer is as favorable as possible under prevailing market conditions.”

What does that mean exactly? In a nutshell, the dealer does not have to find the best possible price for a security, but is instead allowed some reasonable level of judgment in determining the best price that it expects that the particular security can fetch on the bond market, so long as (a) the dealer reaches that conclusion under after satisfying the “reasonable diligence” test factors under the Rule; (b) the dealer documents its reasonable diligence via adopted policies and procedures; and (c) the dealer records and retains evidence of adhering to those policies and procedures.

The “reasonable diligence” standard is not defined explicitly within the Rule, but the MSRB has structured the Rule to include a list of factors to guide the inquiry concerning whether a dealer has acted with reasonable diligence. The listed factors are as follows:

1. the character of the market for the security (e.g., price, volatility, and relative liquidity);
2. the size and type of transaction;
3. the number of markets checked;
4. the information reviewed to determine the current market for the subject security or similar securities;
5. the accessibility of quotations; and
6. the terms and conditions of the customer’s inquiry or order, including any bids or offers, that result in the transaction, as communicated to the dealer.

No one factor is determinative in the inquiry and the aim of the list is to set a group of six factors in a “reasonable inquiry” test that allows dealers the flexibility to operate in the marketplace, but provides guidelines on how to document their compliance with Rule G-18 with examples of what information should be reviewed to determine the market for subject or similar securities.

Accordingly, determining whether a dealer acted with “reasonable diligence” is a “facts and circumstances” analysis. That’s good and bad news for dealers, as the standard has some flexibility, but also does not provide a hardline rule for compliance.

While the fact and factor-based inquiry does create some ambiguity, the MSRB again provides some useful guidelines to help dealers know whether they’re on the right track. Paragraph .08 of the Supplementary Materials is particularly instructive. Paragraph .08 states that dealers must “at a minimum, conduct annual reviews of its policies and procedures for determining the best available market for the executions of its customers’ transactions.”

The MSRB’s implementation guidance further suggests that those reviews should consider the quality of the dealer’s recent transactions, new market entrants, available data, implementing new technologies to assist in best execution, and developing procedures to implement changes identified by the dealer’s review. Dealers are also instructed to document their compliance with their best execution procedures.

One more point worth noting from the implementation guidance is that provision should be made for “extreme market conditions” in adopted policies and procedures to ensure that the best execution obligations are complied with, though recognizing that the dealers have a need to limit exposure due to market risk.

Conclusion

As the title of this post states, Rule G-18 represents a step forward in terms of defining steps dealers should take to be reasonably diligent in facilitating transactions for their clients. However, Rule G-18 keeps a level of flexibility that accounts for marketplace uncertainty and allows dealers to design policies and procedures that fit their areas of business.

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.

Last Updated: December 7 2015

Article by Adam C. Parker and Dee P. Wisor

Butler Snow LLP

[Kramer Levin: Florida Open for Clean Energy Financing After Court Removes Barrier to PACE Programs.](#)

In an Oct. 15 opinion, the Florida Supreme Court rejected a challenge to property-assessed clean energy (“PACE”) programs, which provide upfront financing to residential and commercial property owners that allows them to use green energy technology to improve their properties. The decision continues the trend of an increasingly friendly environment for clean energy producers and providers — as well as the investment funds that back them.

The decision is a victory for both the renewable energy industry and municipalities in Florida, as it should help expand the use of such programs across the state. Residential PACE programs — which surpassed their commercial counterparts in 2014 — represent a tremendous growth opportunity for financing activity. The ruling confirms Florida as the 30th state in the U.S. to authorize PACE programs, and the state could become the second-largest residential PACE market in the country, behind California. While some areas, including Miami-Dade County, already allowed PACE programs, Broward County and other jurisdictions had suspended implementation of local programs due to the uncertainty caused by the court challenge. In conjunction with the current political and regulatory focus on increasing the use of renewable energy, opportunities in this area are likely to increase now that the court has removed a barrier.

California has led the way on PACE projects to this point. Program administrators retained by counties and other municipal entities have successfully placed a series of rated securitizations of PACE assets. Leading the way has been the HERO program of Renovate America, which has issued five deals in its program. In July, Ygrene Energy Fund also announced a \$150 million private securitization transaction to help fund 6,210 energy and water conservation projects in partnership with local municipalities.

In its decision, the Florida Supreme Court ruled against the Florida Bankers Association, saying the group did not have standing to fight the program. The bankers' group — echoing concerns expressed by federal housing regulators — had argued that PACE loans could negatively affect mortgages should they be paid back before mortgages.

The Florida decision was significant for the future of residential PACE programs in Florida, where they have previously been used only on a limited basis. Combined with the Obama administration's Clean Power Plan Rule, announced in August, these decisions further contribute to market conditions that are increasingly hospitable to investments in renewable energy projects

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.

Last Updated: December 4 2015

Article by Laurence Pettit

Kramer Levin Naftalis & Frankel LLP

[Regulators to Hold Compliance Outreach Program for Municipal Advisors.](#)

Alexandria, VA - The Securities and Exchange Commission (SEC), the Municipal Securities Rulemaking Board (MSRB) and the Financial Industry Regulatory Authority (FINRA) today announced they will hold a [compliance outreach program for municipal advisors](#) on February 3, 2016 at the Federal Reserve Bank in Philadelphia, PA. The event also will be webcast live on the SEC website.

The program for municipal advisors is the second outreach event that is a partnership between the MSRB, the SEC's Office of Compliance Inspections and Examinations, the SEC's Office of Municipal Securities and FINRA. The February event will provide municipal advisor professionals a forum to discuss recent exam findings, regulatory issues and compliance practices with regulators.

"This year's outreach program is designed to promote compliance with municipal advisor rules by providing municipal advisor professionals with the opportunity to interact with all three regulators and to discuss regulatory and compliance issues with their industry peers," said Jessica Kane, Director of the SEC's Office of Municipal Securities.

There is no cost to attend the program, which will be held on February 3, 2016 from 9:00 a.m. to 4:15 p.m. at the Federal Reserve Bank of Philadelphia, 10 Independence Mall, Philadelphia, PA 19106. Registration is open to all municipal advisor professionals with limited seating available and preference given to employees of registered municipal advisors on a first-come, first-served basis. [Register for the event.](#)

"This program is consistent with the MSRB's goal of providing resources to municipal advisors to help them understand their regulatory obligations," said MSRB Executive Director Lynnette Kelly. The MSRB recently published its first Compliance Advisory for Municipal Advisors to help them understand and implement the regulatory framework created by the MSRB as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act. "Municipal advisors attending the compliance event will benefit from hearing first-hand from our staff."

Kevin Goodman, national Associate Director of the SEC's broker-dealer and municipal advisor examination programs, said, "The municipal advisor outreach will be extremely informative and educational for new municipal advisors as they build their compliance programs. This outreach, following the first ever in 2014, illustrates our continued commitment to foster an open dialogue among municipal advisors and regulators regarding regulatory obligations and expectations."

Mike Rufino, FINRA's head of member regulation-sales practice, said, "The discussions covering exam trends, general findings and the application of exemptions and exclusions from the municipal advisor registration rules will be valuable to municipal advisors. Any firm that is uncertain as to the full application of municipal advisor rules and regulations to its business may benefit from attending the conference."

Information on accessing the webcast will be posted on the SEC website the day of the event.

Date: December 1, 2015

Contact: Jennifer A. Galloway, Chief Communications Officer
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TAX - KANSAS

[In re Equalization Appeal of Kansas Star Casino, L.L.C.](#)

Court of Appeals of Kansas - November 20, 2015 - P.3d - 2015 WL 7375845

Kansas Star Casino, L.L.C. appealed from the ruling by the Kansas Court of Tax Appeals (COTA) that the appraised value of its property, a 195.5 acre tract of land located in the northeast corner of Sumner County and used for casino operations, was \$80,510,000 for the tax year 2012. In reaching its conclusion, COTA determined that the value for Kansas Star's land was \$16,931,250. This amount was based on the actual price Kansas Star's parent company paid for the land.

On appeal, Kansas Star argued that COTA erroneously inflated the value of its land and that the land should have been valued based on sales of agricultural property in the surrounding area. The County

cross-appealed, arguing COTA erred in declining to include various additional costs as part of its valuation.

The Court of Appeals affirmed, holding that:

- Highest and best use of land was for casino operations, and, thus, appraisal complied with the law;
- Value added to land due to taxpayer's selection as gaming facility manager was not exempt from taxation;
- Option acquisition payment was properly included in property value;
- Taxpayer did not purchase land under undue compulsion; and
- County did not meet its burden to prove that taxpayer's marquee sign was personal property.

In appraising property for purposes of ad valorem taxation, highest and best use of tract of land was for operation of casino, where taxpayer was hired by state pursuant to Expanded Lottery Act as gaming facility manager via management contract to construct and own casino improvements and infrastructure and manage gaming operations, and no other entity was permitted to build a casino in south central gaming zone.

Value that was added to taxpayer's tract of land by Kansas Expanded Lottery Act (KELA) and management contract that allowed taxpayer to construct and own casino improvements and infrastructure and manage gaming operations on tract did not represent value that was separate from tract's property value so as to be exempt from ad valorem taxation.

In assessing ad valorem taxes, option acquisition payment was required to be included as part of value of real property, on which taxpayer was entitled under management contract with state to construct and own casino improvements and infrastructure and manage gaming operations on property. Without buying option, there would have been encumbrance on the tract, and taxpayer would not have possessed a fee simple interest.

Taxpayer's purchase of real property, on which taxpayer would operate casino pursuant to management contract with state, was not result of undue compulsion, and thus use of purchase price to determine fair market value property for purposes of ad valorem taxation was warranted, where taxpayer entered into options for property voluntarily in open and competitive market, and taxpayer was neither forced to pay a certain price nor to exercise its options after it was awarded contract.

County did not meet its burden to prove that taxpayer's marquee sign was personal property for purposes of valuing property for ad valorem taxation, where county pointed only to testimony that was largely conclusory.

Costs associated with trailer rentals for Racing and Gaming Commission (RGC) was not a "soft cost" subject to ad valorem taxation regarding real property used for casino operations by taxpayer, which was hired by the State pursuant to the Expanded Lottery Act as gaming facility manager via a management contract to construct and own the casino improvements and infrastructure and manage the gaming operations, although presence of RGC employees was necessary for licensing and approval of vendors. Requirement that RGC employees be present related to the management contract, not the construction of the casino itself.

Costs in organizational, administrative, and legal expenses were not "soft costs" subject to ad valorem taxation of property used for casino operations by taxpayer, which was hired by the State pursuant to the Expanded Lottery Act as gaming facility manager via a management contract to construct and own the casino improvements and infrastructure and manage the gaming operations, where the costs were for business start-up and preopening expenses, such as regulatory fees,

preopening payroll, preopening marketing, preopening training and uniforms.

County did not meet its burden to prove that financing costs were soft costs subject to ad valorem taxation of property used for casino operations by taxpayer, which was hired by the State pursuant to the Expanded Lottery Act as gaming facility manager via a management contract to construct and own the casino improvements and infrastructure and manage the gaming operations, where appraiser's projected financing costs were called into question because they were based on 12 months, rather than the actual nine-month production cycle.

IRS Amends TED Bond Volume Cap Rules To Accommodate Draw-Down Loans: Holland & Knight

HIGHLIGHTS:

- The Internal Revenue Service (IRS) has issued Notice 2015-83, which will make it easier for Indian tribal governments to use tribal economic development (TED) volume cap for "draw-down" loan structures in which the lender advances funds for the loan on different dates.
- Draw-down loans are often a preferred means for tribal governments to borrow money for new construction projects because construction funds are borrowed in stages as needed, thereby reducing the "negative carry" associated with notes or bonds in which the full construction costs are borrowed and interest begins to accrue upon the sale of the securities.
- In addition, since draw-down loans are not considered securities subject to registration with the U.S. Securities and Exchange Commission (SEC), tribes can utilize them to borrow funds without incurring such increased costs.

The Internal Revenue Service (IRS) issued Notice 2015-83 on Dec. 4, 2015, a change that will make it easier for Indian tribal governments to use tribal economic development (TED) volume cap for "draw-down" loan structures in which the lender advances funds for the loan on different dates. Under a legislative provision enacted in 2009 as part of the American Recovery and Reinvestment Act, tribal governments may apply for TED volume cap in order to finance on-reservation, non-gaming economic development projects with tax-exempt debt. However, relatively few tribal governments have taken advantage of TED bonds or loans since they first became available in 2010.

Draw-down loans are often a preferred means for tribal governments to borrow money for new construction projects because construction funds are borrowed in stages as needed, thereby reducing the "negative carry" associated with notes or bonds in which the full construction costs are borrowed and interest begins to accrue upon the sale of the securities. Further, securities – such as bonds or notes – issued by a tribal governments are not exempt from registration requirements of the U.S. Securities and Exchange Commission (SEC) under the federal securities laws, often resulting in higher rates of interest and closing costs. Since draw-down loans are not considered securities subject to registration with the SEC, tribes can utilize them to borrow funds without incurring such increased costs.

In 2012, the IRS issued Notice 2012-48, under which a tribal government would have to issue debt obligations utilizing its allocated TED volume cap within 180 days of receiving the allocation. It was not clear how the IRS' 180-day rule, which was put in place administratively to encourage tribal governments use allocation awards promptly, would apply to draw-down loans. Arguably, draw-down loans were at odds with the IRS timing requirements because typically the loan proceeds would be drawn down over a longer period of time, sometimes two or three years.

Overview of Notice 2015-83 Requirements

Under Notice 2015-83, the IRS established new rules that accommodate the use of TED volume cap in the draw-down loan context. If a tribal government receives a TED allocation for a tax-exempt draw-down loan and spends at least 10 percent of the borrowed money within 180 days, it will have up to three years from the date of the allocation to spend the remaining volume cap amount. To have a full three years from the original allocation date, the tribal government must not only meet the 10 percent requirement above, it must also spend at least 50 percent of the proceeds of the draw-down loan within the first two years.

Notice 2015-83 also requires tribal governments to meet certain information reporting requirements to demonstrate readiness and compliance. First, a tribal government applying for a TED allocation must submit a commitment letter from a financial institution stating that the institution reasonably expects to advance the total principal amount of the draw-down loan no later than three years after the date of the allocation letter. Second, a tribal government awarded a TED allocation must submit notices of issuance to the IRS not later than 15 days after:

- the 180-day period
- the 2-year period
- the 3-year period

Each of the notices must indicate the amounts drawn and the remaining unused allocation (if any) for each period.

Notice 2015-83 states that the new rules are effective for applications for TED bond volume cap submitted on or after December 4, 2015. It also applies to applicants that have received TED volume cap that has not expired before December 4, 2015.

Considerations for Tribal Governments

In summary, Notice 2015-83 offers useful guidance for tribal governments that would like to participate in the advantages associated with tax-exempt financing without having to issue bonds that may have disadvantages when compared with draw-down loans.

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.

Last Updated: December 8 2015

Article by Kathleen M. Nilles and Randolph A. DelFranco

Holland & Knight

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[Municipal Bond Funds See Inflows for 10 Straight Weeks.](#)

Municipal bond funds reported inflows for the 10th straight week, according to Lipper data released on Thursday.

Weekly reporting funds experienced \$741.968 million of inflows in the week ended Dec. 9, after inflows of \$364.051 million in the previous week.

The latest inflow brings to 29 out of 50 weeks this year that the funds have seen cash flowing in. Flows for the year to date remain positive, totaling over \$4.5 billion.

The four-week moving average remained positive at \$543.721 million after being in the green at \$440.603 million in the previous week. A moving average is an analytical tool used to smooth out price changes by filtering out fluctuations.

Long-term muni bond funds also experienced inflows, gaining \$249.348 million in the latest week, on top of inflows of \$111.303 million in the previous week. Intermediate-term funds had inflows of \$357.572 million after inflows of \$290.874 million in the prior week.

National funds had inflows of \$734.578 million on top of inflows of \$373.795 million in the prior week. High-yield muni funds reported inflows of \$203.227 million in the latest reporting week, after an inflow of \$122.236 million the previous week.

Exchange traded funds saw inflows of \$121.669 million, after inflows of \$33.226 million in the previous week.

THE BOND BUYER

BY CHIP BARNETT

DEC 10, 2015 5:42pm ET

[Muni Inflows Are Highest Since January as Buyers Ignore Fed.](#)

Investors added the most money to municipal-bond mutual funds since January in the past week, a sign that they're not fretting about the Federal Reserve raising interest rates for the first time in almost a decade.

Individuals poured \$742 million into tax-exempt funds in the week through Wednesday, Lipper US Fund Flows data show, marking the 10th straight week of inflows. Those investing in long-term and intermediate-term securities received cash, as did high-yield funds.



Benchmark 30-year munis yield 3 percent, the lowest level since April, data compiled by Bloomberg show. Investors are betting that if the Fed tightens monetary policy at its Dec. 15-16 meeting, the longest-maturing tax-exempt debt will fare the best.

Munis have returned 3.2 percent this year, compared with 1 percent for Treasuries and no gain for investment-grade corporate securities, Bank of America Merrill Lynch data show.

Bloomberg Business

by Brian Chappatta

December 10, 2015 — 3:00 PM PST Updated on December 11, 2015 — 6:17 AM PST

[U.S. State Treasurers to Seek Banks' Help on Muni Bond Liquidity Rules.](#)

U.S. state treasurers will ask banks and private equity firms to help lobby federal policymakers in their push to categorize municipal bonds as high quality liquid assets under new banking rules, Washington State Treasurer James McIntire said on Thursday.

Federal rules approved in September 2014 aim to ensure that big banks will be able to access enough cash during a financial crisis. But the rules excluded muni bonds from the types of securities that count as high quality liquid assets, or HQLAs.

States, cities and investors fear that the exclusion would deter banks from buying muni debt, hurting municipalities' ability to fund everything from schools and bridges to water treatment plants and hospitals.

The National Association of State Treasurers (NAST) and several other organizations have been pushing for inclusion of munis. The rule, due to take effect in January 2017, requires that large banks hold high-quality assets that can be quickly and easily converted into cash within 30 days of a financial stress period.

NAST plans to ask for help from its corporate partners, including financial institutions, in its ongoing effort to secure muni bonds a place at the table, said McIntire, the group's incoming president.

"They might bring a little bit more firepower to the table," McIntire said of the banks in an interview.

The decision by the regulators has been "very challenging," McIntire said. "It's been hard to get their attention."

Congressional action has begun to help, McIntire said. Last month the House Committee on Financial Services passed a bill that would qualify muni bonds as HQLA.

Some studies have shown munis, especially general obligation bonds issued by states, to be at least as liquid as their corporate counterparts.

Cumberland Advisors wrote in a commentary last month that yields on muni bonds rose 20 percent in the second half of 2008, while investment-grade corporate yields shot up by 50 percent.

A study last year by Washington State compared its own general obligation bonds to senior unsecured bonds from Microsoft Corp, one of the state's most well known companies.

During the bond market selloff in mid-2013, more than \$3.2 billion of Washington State's bonds traded, compared to about \$2.14 billion of Microsoft's bonds, the study said.

Reuters

Fri Dec 11, 2015

NEW YORK | BY HILARY RUSS

[Vanguard's New Venture: Indexing Muni Bonds.](#)

Stable market conditions and client demand signal the right time for the firm to launch the first tax-exempt index open-end mutual fund.

In August 2015, Vanguard launched the market's first tax-exempt index open-end mutual fund, Vanguard Tax-Exempt Bond Index (VTEAX), which also features an exchange-traded fund share class, Vanguard Tax-Exempt Bond (VTEB).

Muni indexing isn't a new concept for the firm. Vanguard had filed to launch three new muni index funds several years ago, and representatives argue that it had the mechanics in place to successfully track the indexes at that point. However, Vanguard withdrew the request with the Securities and Exchange Commission in January 2011 amid market turbulence and outflows. Volatile market conditions and a surge of outflows didn't augur well for a successful muni index fund launch. More recently, however, muni market conditions have stabilized, with investors having returned anew to muni funds in 2014 and early 2015 amid improving issuer fundamentals and receding headline risk. This should allow a newly launched index fund to build assets more quickly and therefore better track its index.

Vanguard Tax-Exempt Bond Index Fund			
Share Class	Ticker	Estimated Expense Ratio	Minimum Investment
ETF	VTEB	0.12%	none
Investor	VTEBX	0.20%	\$3,000
Admiral	VTEAX	0.12%	\$10,000

Source: Vanguard.

While relatively stable market conditions go a long way toward answering the question of "Why now?", client demand was also an important factor. Ultimately, Vanguard notes that the launch of Vanguard Tax-Exempt Bond Index was a response to a growing number of requests from clients looking for passive exposure to the muni market. Also, the ETF share class opens up a wider distribution network for investors interested in the strategy.

Run by muni portfolio manager Adam Ferguson, the fund tracks the S&P National AMT-Free Municipal Bond Index, a broad, market-value-weighted index designed to mirror the performance of the investment-grade muni market in the United States. By design, this benchmark focuses on the

muni market's most liquid issuers by requiring a minimum credit rating of BBB- for bonds included in the index and a minimum par amount outstanding, among other factors.

Given the benchmark's emphasis on larger, more-liquid, high-grade issues and a duration that's currently running longer than the category norm, Vanguard's fund will likely be more interest-rate-sensitive than the typical intermediate-term muni fund. Over time, it's expected that the fund's duration, a measure of overall interest-rate sensitivity, will land between five and eight years.

Weighing the Options: Muni ETFs

Until the launch of Vanguard's fund, passive investment options for muni investors consisted exclusively of ETFs with a municipal focus. As of November 2015, 34 muni ETFs appeared in Morningstar's database. Of these 34 ETFs, 29 were passively managed, while the remaining five were actively managed. Only a handful of these funds offer broad-based coverage of the muni market and have garnered more than \$1 billion in assets to date.

The largest of these is iShares National AMT-Free Muni Bond (MUB). Launched in September 2007, this ETF has gathered more than \$5.5 billion in assets. Like Vanguard's muni index offering, MUB tracks the S&P National AMT-Free Municipal Bond Index, providing national exposure to the investment-grade muni space and with an expense ratio of 25 basis points. Although that's roughly double the fee of VTEB, both are relatively low when compared with most actively managed muni funds. For example, the median expense ratio for no-load shares in the muni-national intermediate Morningstar Category was 57 basis points in 2014.

Since its Sept. 7, 2007, inception, MUB's average total return of 4.4% per year (through October 2015) carries a modest average annual tracking error of 12 basis points, indicating that the fund is performing as expected. Those results are also competitive when compared with active muni funds: Its since-inception annualized return has topped more than two thirds of actively managed muni funds in the category.

While the Vanguard and iShares funds are broadly similar, there are some initial differences to note. For one, MUB is a much larger fund, with more than \$5.5 billion in assets versus VTEB's roughly \$73 million (as of Oct. 31, 2015). In the realm of ETFs, size tends to beget liquidity, as measured by trading volume in an ETF's shares. Indeed, the iShares ETF is far more liquid than the Vanguard ETF at this point. Also, size also lends itself to broader sampling and thus (in theory) more-efficient tracking. However, it should be noted that VTEB has shown very modest tracking error to date despite its much smaller asset base.

Active or Passive: Things to Consider

Those looking for broad, high-quality exposure to the national investment-grade muni market would be well-served in considering a muni index fund. As with other high-quality index-based strategies, the passive nature of the structure significantly reduces manager risk. At the same time, rock-bottom fees on these strategies can burnish long-term results, especially in the current low-yield environment.

With that, the index's longer duration and only limited exposure to the more risky segments of the market mean that it will have a different performance profile than funds in the muni-national intermediate category. It will likely be more rate-sensitive than the category and will lag more-aggressive peers, at least on a gross-returns basis, when muni markets are healthy and credit risk is rewarded.

Investors looking for a specific interest-rate risk profile, either shorter or longer than the average muni index, should consider an actively managed strategy tailored to that segment. Active managers typically stick to a defined interest-rate band but can add value by favoring different parts of the yield curve or by identifying mispricings in call risk.

Reasonably priced actively managed strategies are also a good option for those looking for more yield and total return from mid- to low-quality fare and a more credit-intensive approach. That's particularly true post-credit crisis given the collapse of a number of muni-bond insurers and the shrinking of the AAA segment of the muni market. The combination of thousands of unique debt obligors, ambiguous legal pledges to repay debt, and the lack of timely and consistent disclosure on the part of municipal borrowers can create opportunities for active managers to add value through detailed research and analysis when investing in lower-quality securities. This is particularly true for below-investment-grade muni bonds, as this segment represents just a small portion of the overall municipal market but often offers higher yields for those willing to take on the risk.

Morningstar

By Elizabeth Foos | 12-10-15

About the Author Beth Foos is a senior analyst covering fixed-income strategies on Morningstar's manager research team.

[Baker Administration Introduces 'Modernization' Bill for Municipalities.](#)

NORTH ADAMS, Mass. — Gov. Charlie Baker unveiled a raft of legislative amendments on Monday designed to remove outdated obstacles to efficient local government.

Baker and Lt. Gov. Karen Polito introduced ["An Act to Modernize Municipal Finance and Government"](#) after months of meetings with municipal officials across the state. The measure is supported by, among others, the Massachusetts Municipal Association and the Massachusetts Mayors Association.

"As two former local officials, the lieutenant governor and I promised to make partnership with cities and towns a focus and priority of our administration," said Baker. "We were proud to establish a Community Compact Cabinet and keep our commitment to increase local aid by 75 percent of revenue growth in our first budget, the largest such boost in nearly a decade, and look forward to implementing greater independence and flexibility that empowers our local municipal officials to best serve their communities."

Surrounded by state and local officials on the Grand Staircase at the State House on Monday afternoon, the state's elected leaders said the amendments were the result of feedback solicited from hundreds of elected officials and municipal administrators. The Division of Local Services received more than 550 individual responses and more than 1,300 suggestions from over 215 municipalities and 20 regional school districts.

[The MMA posted a summary of the legislation here.](#)

Polito had also been querying officials about better ways to partners during her "Building Stronger

Communities," visiting more than 130 municipalities since taking office last year.

"Over the past 11 months, I have traveled across the commonwealth meeting with and listening to local officials as chair of the Community Compact Cabinet," said Polito. "Signing over 70 commitments to promote best practices at the local level has afforded me the tremendous opportunity to connect with local officials and hear many great ideas that are reflected in this bill, including streamlining state oversight and eliminating obsolete laws."

According to the administration, four foundational themes for the proposed municipal modernization bill are: eliminating or updating obsolete laws; promoting local independence; streamlining state oversight; and providing municipalities with greater flexibility. It noted some of the laws have not been modified since the early 1900s.

Among the many changes being proposed by the Baker-Polito administration are lifting caps and other limits on the use of municipal funds in procurement and transfers; permit more flexibility in revolving and stabilization funds; allow the use of online postings for contracts; allow local advertising to fall under Open Meeting Law rules rather than bylaws or attorney general approval; allow selectmen, with the approval of a finance committee, to make certain end-of-year transfers rather than calling town meetings to meet the July 15 deadline; let municipalities impose liens for delinquent utility ratepayers in other districts; to combine tax collector and treasurer posts without having to go through a special act; allow the use of 10-year bond anticipation notes; and allow a chief administrator to approve deficit spending for snow and ice accounts.

The bill would also repeal a retiree health cost sharing measure passed in 2010 that allowed municipalities to seek reimbursement from other towns in which its employees had worked. While supported by municipalities, a summary posted by the Massachusetts Municipal Association described the bill "as unworkable in practice."

It would also change the three-year property evaluation process to five years and reduce state-owned land evaluations from four years to two.

MMA President David Dunford, an Orleans selectman, said the bill "will remove unnecessary and obsolete barriers to efficient government and effective service delivery."

"These proposals will allow our communities to modernize their management systems, streamline their operations, and move faster than ever to grow our local economies."

North Adams City Council President Lisa Blackmer, MMA vice president, agreed.

"Taken together, these proposals will allow our communities to modernize their management systems, streamline their operations, and move faster than ever to grow our local economies," she said. "All of this will make our taxpayers happier, and our state stronger and more competitive than ever."

"I applaud Governor Baker and Lieutenant Governor Polito for building a powerful partnership with cities and towns, and for standing with us to make Massachusetts a model for the rest of the nation."

iBerkshires

Staff Reports

10:51PM / Monday, December 07, 2015

Student Housing P3s Under Development.

Universities in three states are moving ahead with plans to use public-private partnerships to add to or replace their student housing stock.

The Regents of the University of California approved the UC Merced 2020 project, in mid-November, reported yourcentralvalley.com. The university can now issue a request for proposals to three teams that were shortlisted in January.

UC Merced 2020 will be the university system's largest design-build-finance-operate-maintain (DBFOM) P3 and the first U.S. educational DBFOM that includes availability payments, reported Infrastructure Investor (paywall).

The developer will build academic, administrative, research, recreational, student residence and service buildings on a 219-acre, university-owned site and 136 undeveloped acres to allow the university to meet its goal of increasing enrollment from 6,600 to 10,000 students by 2020.

The university expects to receive proposals in 2016 and have construction begin in 2018.

Louisiana State University has shortlisted two teams to develop two new residence halls and related amenities on a 28-acre site on its main campus in Baton Rouge, the university announced Dec. 2.

American Campus Communities is competing with RISE Real Estate for the project, which attracted 10 bidders. The Nicholson Gateway Development Project will provide 1,670 beds, lounge spaces, study areas, community gathering areas, retail food service and up to 50,000 square feet of retail space on a former stadium site. The university expects to select the developer in spring 2016.

Eastern Kentucky University has selected a development team consisting of Grand Campus Properties and F2 Companies, a construction firm to build two residence halls on its Richmond campus. This will be the university's first P3, reported KyForward.

The \$75 million, 1,100-bed dorms will open in fall 2017, if the state General Assembly, which must approve all projects that cost more than \$600,000, authorizes it, reported the Lexington Herald-Leader on Dec. 2.

By NCPPP

December 10, 2015

S&P's Public Finance Podcast (Rating Activity For the Week Slows as 2015 Winds Down)

In this week's segment of Extra Credit, Senior Director Dave Hitchcock explains our recent outlook revision on Massachusetts, and Directors Helen Samuelson and Nick Waugh discuss our rating changes affecting the City of Chicago Sales Tax Revenue Bonds and Boston University, respectively.

[Listen to the podcast.](#)

Dec. 4, 2015

Fifteen Groups Urge House to Vote on Pending HQLA Bill.

WASHINGTON – Fifteen muni market groups are urging House members to vote on a bill that would treat investment grade and actively-traded municipal securities as high quality liquid assets under a bank liquidity rule adopted by bank regulators in September 2014.

The organizations, including Government Finance Officers Association and National Association of State Treasurers, each signed on to identical letters sent to every member of the House, as well as a similar one that went to Speaker Paul Ryan, R-Wis., asking for action on the bill before Congress adjourns this month.

The current bank liquidity rule, which banks will have to comply with by Jan. 1, 2017, requires banks with at least \$250 billion of total assets or consolidated on-balance sheet foreign exposures of at least \$10 billion to have a high enough liquidity coverage ratio – the amount of HQLA to total net cash outflows – to deal with periods of financial stress. Assets are considered HQLA if they can easily be converted into cash with no loss of value during a period of liquidity stress.

When the Federal Reserve Board, Office of the Comptroller of the Currency, and Federal Deposit Insurance Corp. first adopted the rule, they did not include munis as HQLA because of concerns they are not liquid or easily marketable.

The Fed proposed amendments to the rule in May that would allow a limited number of munis to be treated as HQLA as long as they are, at a minimum, uninsured investment grade general obligation bonds. Munis would be considered Level 2B, the same as corporate bonds that are liquid and readily marketable, but could only make up 5% of a bank's HQLA.

Muni dealer groups welcomed the Fed's changes, but said they were narrow and that without agreement from the FDIC and OCC, which regulate a majority of larger institutions, they would not help.

Rep. Luke Messer, R-Ind., proposed a bill that same month that would apply to all bank regulators and treat munis that are investment grade and actively-traded in the secondary market as Level 2A assets, the same level as some sovereign debt and debt of U.S. government entities like Fannie Mae and Freddie Mac. Munis could also make up 40% of a bank's HQLA under Messer's bill.

The bill passed the House Financial Services Committee by a vote of 56 to 1 on Nov. 4 and now the groups are asking that Paul Ryan bring it to a vote in the full House and that House members urge him to take action.

"Not classifying municipal securities as HQLA will increase borrowing costs for state and local governments to finance public infrastructure projects, as banks will likely demand higher interest rates on yields on the purchase of municipal bonds during times of national economic stress, or even forgo the purchase of municipal securities," the groups said. "With the American Society of Civil Engineers estimating a \$3.6 trillion cost to state and local governments over the next five years to meet our nation's infrastructure needs, the ability of states and localities to finance infrastructure at the lowest possible cost is critical."

The groups that signed the letter include: GFOA; NAST; International City/County Management Association; National League of Cities; National Governors Association; National Association of State Auditors, Comptrollers and Treasurers; National Association of Counties; U.S. Conference of Mayors; American Public Power Association; Council of Infrastructure Financing Authorities;

National Association of Health and Higher Education Facilities Authorities; National Council of State Housing Agencies; American Public Gas Association; Large Public Power Council; and National Association of Local Housing Finance Agencies.

THE BOND BUYER

BY JACK CASEY

DEC 7, 2015 3:31pm ET

[IRS Helps Tribes Use TED Bond Volume Cap for Draw-Down Loans.](#)

WASHINGTON - The Internal Revenue Service issued a notice Friday that will make it easier for Indian tribal governments to use tribal economic development bond volume cap for draw-down loans.

Notice 2015-83 "is very important" for financing new construction projects, said Townsend Hyatt, a partner at Orrick, Herrington & Sutcliffe in Portland, Ore.

"It's really designed to deal with the borrowing reality, which is that in most cases tribes borrow through loans rather than through bonds," he said.

Because tribal economic development bonds are not exempt from registration requirements under the federal securities laws, most tribal governments borrow from banks, according to Hyatt.

For new construction projects, tribal governments would typically draw down the loan money over time as needed to cover costs.

But draw-down loans were at odds with IRS requirements set forth in a previous notice published in 2012 (Notice 2012-48), under which a tribal government would have to use all of its allocated TED bond volume cap within 180 days of receiving it.

This requirement made it very difficult to obtain TED bond volume cap allocation for the total cost and the total amount of a tax-exempt draw-down loan needed for a project because typically the money would be drawn down over a period of time, sometimes two or three years.

Under the notice issued Friday, if a tribal government receives a TED bond allocation for a tax-exempt loan and spends at least 10% of the borrowed money within 180 days, it will have the rest of two-year period from the date of the allocation to spend the remaining amount.

If the tribal government spends at least 50% of the proceeds of the loan within two years, it will have the remaining amount of time in the three-year period since the allocation to spend the rest of the money.

The IRS, however, requires tribal governments to file several notices with it. The tribal government applying for an allocation of TED bond cap for a draw-down loan must file one or more notices with the IRS that includes: its name and taxpayer identification number; the issue price of any bonds issued, the issue date of the bonds, a description of the project being financed; and any amount of the allocation that is being forfeited.

The applicant also must submit a notice of issuance not later than 15 days after the final draw for

the draw-down loan. Other notices are required as well.

“There are numerous notice requirements but the basic substance of the rule is good,” Hyatt said.

The notice said the rule is effective for applications for TED bond volume cap submitted on or after Dec. 4, 2015. It also applies to applicants that have received TED bond cap that did not expire before Dec. 4, the IRS said.

The published volume cap for the period that began Dec. 1 is almost \$1.365 billion and the maximum amount of cap that any single borrower can apply for is \$272.90 million, according to the IRS.

The IRS and Treasury Department, in the notice, also asked for public comments on whether they should provide special volume cap allocation rules for New Clean Renewable Energy Bonds issued as draw-down bonds or loans.

THE BOND BUYER

By Lynn Hume

DEC 4, 2015 4:00pm ET

Green Bond Best Practice Guide Released for Public Sector.

New guide from the Climate Bonds Initiative and UNEP to help governments boost private sector climate finance

A [best-practice guide on green bond policy](#) has been launched in a bid to inform the public sector about how best to scale up funding for green markets.

The report, launched by the Climate Bonds Initiative and the United Nations Environment Programme (UNEP) Inquiry into the Design of a Sustainable Financial System, includes action plans and best-practice examples from around the world.

An annex from the World Bank Group is also provided to help policy makers in emerging economies develop foundational bond markets.

“This guide can help the public sector in translating aspects of their national INDC [climate action] objectives into climate finance outcomes,” said Sean Kidney, chief executive of the Climate Bonds Initiative, in a statement. “Adding green bonds into the climate finance mix can help the shift of capital to low-carbon projects, infrastructure and climate-resilient development.”

The scale of finance needed to meet various national climate pledges made at the Paris Summit – which are already set to raise the global temperature well above the 2°C UN benchmark to 2.7°C by the end of the century – is enormous, with India’s INDC alone needing \$2.5tr in investment before 2030. Green bonds are seen by some as one of the best ways to finance low-carbon and climate-resilient infrastructure projects while also allowing countries to develop their capital markets.

Nick Robins, co-director of the UNEP Inquiry, said the green bond market has caught the attention of policy makers at the climate summit in Paris.

“At COP21 many discussions have centred around climate finance and the level of investment

needed to bring about low-carbon outcomes,” he said in a statement. “Green bond market development is seen as a real option.”

The report sets out a three-point action plan where governments are advised to establish a green infrastructure planning agency, develop a three to five-year green investment pipeline to excite investors, and kick-start domestic markets using demonstration green bonds and investment.

“There are increasingly examples of governments moving from interest to action,” said Robins, pointing to the range of policy proposals for green bonds published by China’s central bank and the recent issuing of green bond guidelines by India’s capital markets regulator SEBI.

Around \$40bn of green bonds have been issued so far in 2015, making it the largest ever year of issuance.

By Jocelyn Timperley | 10 Dec 2015

S&P: Fixing America's Surface Transportation Act's Passage Does Not Affect Grant Anticipation Vehicle Revenue Debt Ratings.

NEW YORK (Standard & Poor’s) Dec. 8, 2015–Standard & Poor’s Ratings Services today said that its ratings on 25 issuers in the grant anticipation revenue vehicle (GARVEE) sector are unaffected by the enactment of Fixing America’s Surface Transportation (FAST) Act, which President Barack Obama signed into law Dec. 4, hours before previous funding was set to expire. However, we believe FAST generally supports the sector’s credit quality, due to a longer period of funding certainty and the increased funding levels that the Act provides. Funded mainly by gasoline and diesel fuel taxes deposited in the Highway Trust Fund (HTF) and \$70 billion from various sources within the general fund, the five-year, \$305 billion dollar transportation reauthorization act marks the first long-term solution for highway and transit funding since 2005.

FAST replaces the Moving Ahead for Progress in the 21st Century, which was enacted in 2012 but provided funding for just slightly more than two years, and was extended several times for a few months, or even weeks at a time, as Congress debated various bill components. The Act covers funding through fiscal 2020 (year ended Sept. 30), which we view as preferable compared with what had become commonplace: eleventh-hour short-term extensions. Furthermore, FAST provides a 5.1% increase in highway fund distributions to states for fiscal 2016, and growth rates of 2.1% to 2.4% thereafter. Previous funding growth rates were lower, and until the FAST Act, Standard & Poor’s had cited federal budget deficits as a concern affecting highway funding levels. Overall, the FAST Act authorizes \$230 billion for highways, \$60 billion for public transportation, \$10 billion for passenger rail, and \$5 billion for highway safety programs. This is an approximately 11% increase from current funding levels over five years.

Standard & Poor’s ratings in the GARVEE sector range from ‘A’ to ‘AA’ for transactions where only federal funding is pledged, and as high as ‘AAA’ where state agencies blend the federal funding with an additional pledge of state funding. We base the relatively strong ratings in the sector on the issuers’ pledge of HTF grants from the federal government.

Overall, we believe, the FAST Act’s signing confirms Standard & Poor’s views of ongoing and widespread Congressional support for preserving and expanding the national highway system. States and local transportation agencies that receive distributions from the HTF can confidently

move forward with complex multiyear transportation projects because the questions surrounding federal funding no longer loom. We will continue to monitor the sector to evaluate how each individual state issuer might adjust its debt or capital spending plans, given the new law.

Separate from the impact on GARVEE debt, other provisions of the FAST Act includes 70% in cuts to the Transportation Infrastructure Finance and Innovation Act (TIFIA) program, from \$1 billion per year in 2015 and \$750 million in 2014 to \$275 million-\$300 million per year during fiscal years 2016-2020, although the scope of eligible TIFIA projects has been expanded. Furthermore, FAST provides \$6.2 billion for a new national freight program, and increases funding for public transportation to \$12.6 billion in 2020 from \$10.7 billion in 2015.

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

Standard & Poor's Ratings Services, part of McGraw Hill Financial (NYSE: MHFI), is the world's leading provider of independent credit risk research and benchmarks. We publish more than a million credit ratings on debt issued by sovereign, municipal, corporate and financial sector entities. With over 1,400 credit analysts in 26 countries, and more than 150 years' experience of assessing credit risk, we offer a unique combination of global coverage and local insight. Our research and opinions about relative credit risk provide market participants with information and independent benchmarks that help to support the growth of transparent, liquid debt markets worldwide.

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[A Guide to Evaluating Pay for Success Programs and Social Impact Bonds.](#)

Pay for success programs (PFS) are attractive to governments because they get private investors to finance preventative public programs. The government only has to pay back investors if the desired results are achieved. But, notes a [new report](#), "the theory of PFS looks better on paper than in reality." The report, released Dec. 4 by a nonprofit called In the Public Interest (ITPI), outlines several concerns governments should address before entering into a PFS contract. It also lists questions officials should ask at every major stage of development from designing a program to measuring outcomes.

The report warned that the need to measure outcomes limits how PFS projects can be useful. For example, a now-closed PFS program at Rikers Island Prison in New York City funded a therapy program designed to reduce recidivism. While other actions like enacting policies to decrease the number of questionable misdemeanor arrests or make it easier for people to access bail have potentially larger impacts on recidivism, they are too hard to measure so are not good candidates for

PFS programs, the report said.

Another problem is the measuring process itself. “Establishing cause and effect for a PFS can be subject to dispute,” the report noted. Recently, a Salt Lake County, Utah, PFS program drew criticism when it produced overwhelmingly successful results using preschool to reduce the number of children placed in special education by kindergarten. Some said that the program overestimated the number of kids who were at risk in the first place. The report quotes Ellen S. Peisner-Feinsberg, a senior scientist at the Frank Porter Graham Child Development Institute saying, “You have to be sure you have very rigorous ways to measuring the impact to make sure that it’s legitimate in terms of the outcome you get. That didn’t happen here.”

GOVERNING.COM

BY LIZ FARMER | DECEMBER 11, 2015

[Pension Funds: Diversity Rocks.](#)

Two pension funds this week announced they were diversifying — albeit in quite different ways. The Oregon Investment Council this week announced it is taking steps to [reduce the reliance of the state’s biggest pension fund on the stock market](#). It will invest \$900 million in so-called alternative investments including timber and infrastructure, which are industries that are somewhat detached from the nation’s economic swings. More than half of the money is going into a private equity fund called KKR Americas Fund XII L.P. The Oregon Public Employees Retirement Fund has invested in funds managed by Kohlberg Kravis Roberts & Co. since 1981 and over that time they have generated average annual profits of 18 percent for Oregon.

Meanwhile in Texas, the \$3 billion Dallas Employees’ Retirement Fund announced it wants more ethnic and gender diversity among its fund managers because such diversity typically drives up returns on investments. According to Asset International, nearly 90 percent of senior money managers in the U.S. are white and most of them are men, however. Meanwhile, small or new investment firms tend to include more minorities and women. The Dalles fund said this week it will now allocate 10 percent of its portfolio to new investment managers with strong performance records. It is already on its way to achieving that goal and the fund is now launching its [Next Generation Manager program](#) to generate interest more among women and minorities who may not have considered such careers and who otherwise wouldn’t get access to major investment opportunities.

Dallas isn’t the only pension fund seeking a tryout period with smaller fund managers in an effort to increase diversity — [CalPERS also has an emerging managers program](#) where it seeks out well-performing managers from small firms to handle a small — \$20 million, for example — initial investment. If the manager performs well, the pension fund is likely to extend the relationship.

GOVERNING.COM

BY LIZ FARMER | DECEMBER 11, 2015

Is 'Fair Value' Accounting Actually Fair?

The practice is loved by government accountants and scorned by bankers and investors.

On Oct. 8, 2008, investors were desperate to understand why stocks were cratering and banks had quit lending. It was the height of the financial crisis. That day William Isaac, a former chair of the Federal Deposit Insurance Corporation, went on television and blamed an unlikely culprit: bankers' accountants. "The Securities and Exchange Commission has destroyed \$500 billion of bank capital by its senseless marking to market of these assets for which there is no marking to market," he said. "That has destroyed \$5 trillion of bank lending." In other words, accounting rules enforced by the federal government were at the heart of the then-unfolding financial catastrophe. Many bankers and investors shared Isaac's view.

By contrast, government accountants, led by the Governmental Accounting Standards Board (GASB), have embraced these same rules — known as "fair value" accounting — with the same enthusiasm that bankers' and investors' accountants have scorned them. In fact, during the past three years the people who write accounting standards for states and localities have made fair value a key factor in how governments manage their pensions, investments and retiree health care. Strange as it might sound, that's a good thing.

How could fair value be deemed unfair by some and fair by others? It's all in the eye of the beholder. If you ask an accountant what something is worth, you'll get one of two answers. The usual one is "whatever you paid for it." If a local government purchased a piece of land 10 years ago for \$1 million, the fair value of that land is \$1 million. Accountants call this "historical cost."

But what if a developer really wants that land and is willing to pay three times the original purchase price? Is that a fair market value? The accountant's answer would be no. Until someone actually pays that price, it's just a guess. That's why accountants are credible. They deal in real numbers.

Of course, sometimes the real and the hypothetical converge. For instance, the prices of stocks offered on the New York Stock Exchange are updated every second. Those prices are technically estimates, but they're based on millions of real transactions. That's why accountants are comfortable equating a stock's offered price to its fair value. The same applies to other types of investments that can be "marked to market" because they're bought and sold in an active market.

Banks and other financial institutions mark their investments to market constantly. That's great when market prices are up. If markets run dry, however, as they did during the financial crisis, the damage is obvious and immediate. That can shake investor confidence. That's also why in the throes of the crisis, the finance industry put enormous pressure on the Securities and Exchange Commission to suspend mark to market accounting. The better approach, they argued, was to report fair market values averaged over time to better reflect "normal" market conditions. Regulators almost capitulated then — but didn't. Now they're reconsidering.

GASB, by contrast, has upped its own fair value ante. In its new standards on pension liabilities, it restricted governments' ability to "smooth" the fair value of their investments. That is, to report the average value of pension investments over time, rather than a specific point in time. With interest rates low and the stock market volatile, those investments have not performed well, and that could mean higher pension funding costs and less certainty when budgeting for those costs. GASB's new standards on other post-employment benefits like retiree health care could have the same effect. The accounting group also broadened its own fair value framework for governments.

Many of GASB's most important stakeholders have disagreed with its interpretation of fair value.

That said, there's no question that they've applied that definition clearly and consistently. Put differently, they have resisted the temptation to politicize this arcane but crucial corner of accounting. That's bringing some badly needed fairness to fair value.

GOVERNING.COM

BY JUSTIN MARLOWE | DECEMBER 2015

Public Pensions Challenge Private Equity Fees.

Late last month, California disclosed for the first time how much its pension system paid private equity managers in performance fees: \$3.4 billion over the past 25 years. The fees, which are in addition to typical managerial fees, have come under scrutiny in recent years — and not without reason.

The California Public Employees Retirement System (CalPERS) said the fees were based on \$24.2 billion in profits earned from investments in private equity funds. Performance fees, which are unique to so-called alternative investments, have been poorly reported — if at all — by pension plans. But as calls for financial transparency in all areas of government intensifies, that's starting to change.

Unlike stock market investments, pensions enter into a separate contract with each private equity fund manager. There is no standardization of those contracts or the fees charged. What's more, it's time consuming for a pension plan to flesh out how much they're paying in so-called profit sharing payments, which are essentially a cut of the earnings private equity managers take off the return on investment.

Now, CalPERS and a handful of other plans are calling for private equity managers to conform to proposed industry-wide disclosure standards. It could give investors more of a bargaining chip with private equity managers. As it stands, pension plans are unable to easily compare how expensive their managers are. "Public plans need to be able to very plainly disclose this information at a plan level for their beneficiaries, stakeholders and policymakers," said Lorelei Graye, founder of the consulting firm Leodoran Financial. "Eliminating the opaqueness eliminates the controversy and fear of unknown or hidden costs."

CalPERS, the South Carolina Retirement System Investment Commission and the Washington State Investment Board, among other private equity investors, are backing a proposed fee-reporting template. Notably, the template would require managers to make clear the performance fees they are taking off the top of investment returns. Designed by the Institutional Limited Partners Association (ILPA), the final template will likely be released in January.

A big reason fees have remained largely undisclosed is that private equity funds as an asset class are secretive about how they generate their returns and charge for their work. Pension plans invest as one of many limited partners in a fund, and the fund manager buys, builds up and sells entities — like companies — at their own discretion. Typical managerial fees for private equity managers are 2 percent of the total investment; profit-sharing fees are typically 20 percent of the earnings. By comparison, most other asset classes have managerial fees under 2 percent and no additional profit-sharing agreements.

Pension systems like private equity funds because, unlike public funds that are tied to the stock

market, the success of private equity funds are detached from economic booms and busts. Instead, success hinges on the manager. In other words, it's up to pension plan investment officers to judge the manager's performance and whether their strategy fits into their broader portfolio. In their view, the higher fees for managers are justified because private equity funds have generated higher returns.

Critics, however, point out that private equity performance is only a little better than stock market performance. That's been the case in Kentucky where the system's private equity investments have performed about a half-percent better than the S&P average over the past five years, according to David Peden, the system's chief investment officer. Over the past decade, the plan's private equity has performed slightly under the stock market. Peden, who said Kentucky is "very excited to adopt whatever standards are developed" by ILPA, said the past few years of an outperforming stock market has skewed the picture. "At whatever point that spread narrows and it doesn't make sense anymore, then we won't invest in it," he said.

Another problem, according to critics, is that pension systems aren't exactly sure how much they've paid in total private equity fees. CalPERS isn't the first plan to start sniffing around: Kentucky and South Carolina's plans have hired outside consultants in recent years to investigate the performance of the investments and the performance fees.

While the consultants' reports have revealed more about the market for pensions, it's also led to increased criticism. Pressure has also been building at the federal level ever since the Securities and Exchange Commission released a report last year finding that half of the 400 private equity funds they analyzed charged investors bogus fees.

More than supporting ILPA's proposal, CalPERS has already adopted it, requiring its managers to conform to the template. That could ding CalPERS in the short term, said Graye, as private equity managers may simply choose not to work with the fund. That's why, she added, it is important to watch who adopts the final ILPA standards next year. "It's a bigger deal than some people realize," she said of CalPERS' early move. "But that's leadership and if enough limited partners [investors] push for these disclosures, the managers will come back. Collectively, the limited partners are going to shape this industry."

GOVERNING.COM

BY LIZ FARMER | DECEMBER 10, 2015

[Free Bluegrass Plays On as Kentucky Town Angles for Bankruptcy.](#)

In Hillview, Kentucky, residents enjoy free once-a-month use of a trash dumpster and a free bluegrass music program every Thursday night. They're still buzzing about last month's free winter festival and exotic animal show, which was interrupted when a 70-pound porcupine darted into the ladies' room.

Such small luxuries ease life in the Louisville suburb, which in August sought bankruptcy protection rather than pay a \$15 million legal judgment. As the first U.S. city to file since Detroit's \$18 billion insolvency in 2013, Hillview, a growing community of 8,000 people, is trying to plow new ground. It isn't claiming an inability to pay the debt, which is about five times its annual budget, but an unwillingness.

"I don't think they can shut us down as a city, and I don't think they can put this burden on the taxpayers," Mayor Jim Eadens said in an interview at city hall, where three inflated snowmen outside wave to visitors.

For cities under stress, Detroit's record case changed municipal bankruptcy from a stigma to a potential solution, and the mere threat of court oversight has proven an effective tactic for settling with creditors.

Mammoth Lakes, California, and Boise County, Idaho, filed for Chapter 9 under similar circumstances as Hillview, though they settled out of court. Officials in Puerto Rico, the cash-strapped Caribbean commonwealth, have pleaded with Congress to let it turn to court to slash its \$70 billion of debt.

Hillview's filing is "more evidence that municipalities increasingly consider Chapter 9 as a way to cure balance-sheet problems," said analyst Nathan Phelps at Moody's Investors Service. The U.S. Bankruptcy Court in Louisville this week will hear arguments on the filing.

The judgment that began the affair stems from a 10-year-old dispute with a trucking company over 40 acres in the middle-class city of modest homes. A 2012 jury verdict awarded Truck America Training LLC \$11.4 million for business the company said it lost when Hillview took control of the land and evicted it.

Negotiations mediated by retired bankruptcy judge Steven Rhodes, who oversaw the Detroit case, produced no settlement. In the meantime, interest costs on the award grew almost \$3,800 a day. The city's filing Aug. 20 froze the growth.

Discount Biscuits

"It's just frustration by this town in continuing to lose," said Howard Cure, head of municipal research in New York at Evercore Wealth Management, which oversees \$5.9 billion of assets. "It sounds like this is their way of negotiating to get the settlement somehow diminished. Cities oftentimes run up against hard negotiators."

Tammy Baker, Hillview's city attorney, said it was "financially irresponsible" not to file bankruptcy because of mounting interest costs.

Since then, Eadens said, there has been no talk of tax increases, service cuts or dismissals in the city's 24-person workforce to pay the obligation. The free chipping of fallen limbs continues, as does a \$3 sausage, biscuit and gravy breakfast with the mayor on Wednesdays. At last week's bluegrass event, a crowd of about 100 ate fish sandwiches and cole slaw while listening to a seven-piece band belt out gospel standards like "I Shall Not Be Moved."

"You don't hear much talk about bankruptcy now, because services haven't been cut," said Terry Bohannon, the city's recreation director.

Nor is there talk of bond defaults. Debt obligations will be met, the city said. Not, however, the payment to the trucking company.

"This is a unique situation," said Jonathan Steiner, executive director and chief executive officer of the Kentucky League of Cities. "It's not a city that spent itself into this situation or saw the collapse of an industry."

Unlike Detroit, which for decades endured an industrial collapse and a population exodus, Hillview's

population has grown more than 5 percent since 2010. The median household income, \$48,000, exceeds the Kentucky average, and the percentage of people in poverty is less than half the state rate of 19 percent, according to U.S. Census data.

An Aug. 31 analysis by Moody's Phelps said the city can issue bonds to pay the debt and has "considerable ability to increase its two largest sources of operating revenue, occupational license taxes and property taxes."

The trucking company agrees.

"They've made no attempt to do anything other than to throw their hands in the air and say, 'We can't do this, so let's file bankruptcy,'" said Debby Mobley, Truck America Training's chief financial officer.

Sparing Citizens

Baker said higher taxes might have serious consequences.

"They think we can just go and raise taxes through the roof, and it won't drive away business and it won't hurt the citizens of Hillview," Baker said.

"It would be possible to raise the occupational tax and the insurance premium tax to high amounts," Baker said. "That would be a heavy burden on our industry and a heavy burden on our citizens."

Hillview is the first Kentucky city to file a bankruptcy petition. Kentucky is among 16 states that allow such filings under certain conditions. Twenty-two states don't provide access to Chapter 9, while 12, including California, provide a blanket authorization.

The city will face a tall legal hurdle to prove its eligibility, said Richard Ravitch, a former New York lieutenant governor who was a court-appointed expert in the Detroit case.

"You have to prove you're totally broke and can't pay your debts," Ravitch said.

Detroit emerged from bankruptcy last December, 17 months after filing. Yet financial pressure is mounting on cities, big and small. Chicago, with \$20 billion in unfunded pension liabilities, faces the prospect of insolvency. The budget director of East St. Louis, Illinois, said last month the city should consider bankruptcy, and a year ago, the council president in East Cleveland, Ohio, said the same thing.

After the Hillview filing, Standard & Poors lowered the city's rating on its general obligation debt five levels, to B-minus from BB-plus, and signaled that more downgrades may follow.

The pressure on Hillview to settle out of court could be great because of bankruptcy's costs and unpredictability, said James Spiotto, a lawyer at Chapman Strategic Advisors in Chicago.

"It's going to be expensive, and that's just the beginning," Spiotto said. "This will sound heretical, but there are better things to do than spending your money on lawyers."

Bloomberg Business

by Tim Jones

December 7, 2015 — 2:00 AM PST

Muni Buyers Plow Into Long Bonds to Win Once Fed Increases Rates.

Municipal-bond investors are snapping up the longest-maturing tax-exempt debt as the Federal Reserve prepares to raise interest rates, even though yields signal it's the worst time to do so in almost three years.

That's because if history is any guide, the securities will be the best performers in the \$3.7 trillion market when the Fed tightens monetary policy, a move it may take next week after seven years of holding borrowing costs near zero.

The buying spree pushed the extra yield buyers pick up for holding 10-year debt instead of two-year securities to as little as 1.34 percentage points on Monday, near the lowest since January 2013, according to data compiled by Bloomberg. The shift shows how investors are positioning to gain from higher interest rates, which are typically a drag on returns in the fixed-income market.



The suppressed interest rates on the longest-maturing bonds are also a boon to states and cities because they usually finance infrastructure projects with debt that doesn't come due for decades. They sell short-term securities mostly for cash-flow needs, which have declined as their finances recovered from the recession.

When the Fed last boosted interest rates from 2004 through 2006, munis maturing in 22 years or more delivered annual returns of 6.5 percent, more than triple the gains on securities due in 3 years or less, according to Bank of America Merrill Lynch indexes.

The market is primed for a repeat, according to John Dillon, managing director at Morgan Stanley Wealth Management in Purchase, New York. Analysts at Janney Montgomery Scott and RBC Capital Markets are predicting the same.

"My expectation is that you do see out-performance on the mid-part of the curve to the back-end of the curve," Dillon said in a telephone interview. "You could get a lot more flattening of the muni curve as we go forward."

Investors agree. They've poured \$3.1 billion into long-term muni mutual funds over the course of nine weeks, the longest stretch of inflows in at least a year, Lipper US Fund Flows data show.

Muni buyers have been projecting that longer-dated bonds would fare well once the Fed starts raising short-term rates, with the securities seen as the best positioned to remain stable or gain because of subdued inflation expectations over the next year. There's a 78 percent chance the Fed will raise its benchmark at its Dec. 15-16 meeting, according to futures data compiled by Bloomberg.

Risk and Reward

Investors usually demand greater yields to own bonds that mature far in the future because of the risk that inflation will erode the value of fixed interest payments. When buyers are confident that inflation won't pick up, they can capture more yield by extending the maturity of their holdings.

Prices are expected to hold relatively stable: the Fed expects inflation of 1.7 percent next year, according to forecasts released in September, less than the 2 percent rate that it targets.

"The risk-reward calculation when you extend duration at this point indicates that people are getting paid for moving out on the curve," said Chris Mauro, head of muni strategy at RBC in New York. "There doesn't seem to be a lot of pressure on the longer end of the curve right now given the economic backdrop."

Benchmark 30-year muni yields touched 3.02 percent last week, the lowest since April and down 0.23 percentage points over a two-week span, Bloomberg data show. By contrast, two-year yields have jumped to the highest since June 2013. That has narrowed the difference between the two to 2.3 percentage points, a 10-month low.

Over the past four weeks, investors have added \$1.8 billion to muni mutual funds as the central bank assures markets that the pace of increases will be gradual, the Lipper data show. That suggests investors are less concerned about the impact of a rate increase than they were in September, when they yanked \$1.4 billion from the funds in the four weeks leading up to the Fed's decision.

"Investors should feel comfortable moving out on the yield curve: Long-term rates aren't going to go shooting up just because the Fed is hiking short-term rates," said Alan Schankel, a managing director at Janney Montgomery Scott in Philadelphia. "That's based on a lethargic economic growth scenario and a lack of inflationary concerns."

Bloomberg Business

by Brian Chappatta

December 7, 2015 — 9:01 PM PST Updated on December 8, 2015 — 7:51 AM PST

[Alabama's Jefferson County Rated Investment Grade by Moody's.](#)

Jefferson County, Alabama, which emerged from the second-biggest U.S. bankruptcy in 2013, had its credit rating raised to investment grade by Moody's Investors Service, boosted by a "well-performing" economy and government cost cuts.

The ratings on Jefferson County's \$83.4 million in general-obligation bonds and \$623.3 million in limited-obligation school warrants were raised three levels to Baa3 from Ba3, New-York based Moody's said in a statement.

Jefferson County became what was then the biggest U.S. municipal bankruptcy in 2011, when it couldn't pay what it owed on more than \$3 billion in bonds sold to finance sewer work. Creditors, including JPMorgan Chase & Co., agreed to forgive more than \$1 billion of the debt. Although the county's sewer debt burden was halved, it remains a risk, Moody's said.

"The county sewer system is still highly leveraged, however, and its dependence upon annual rate increases to fund debt service payments remains a risk and could place additional financial stress on the county's revenue structure in the future," Moody's said.

Sewer Project

The rating company said it expects the county, home to Birmingham, will reinforce its financial position through conservative budgeting, maintaining reserves and on-going sewer rate increases. The county's school bonds are secured by a 1 percent education sales and use tax.

Jefferson County's bankruptcy was triggered by a sewer project that was dogged by mismanagement and corruption. When the price tag more than doubled to over \$3 billion, officials refinanced debt with floating-rate bonds and derivatives, like homeowners who used exotic loans to buy houses they couldn't afford. The tactic backfired during the 2008 credit-market crisis, leaving the county on the hook for hundreds of millions in fees and demands to pay off the debt early.

Senior lien warrants maturing in October 2053 yielded 3.98 percent on average Tuesday, according to pricing data compiled by Bloomberg. That's down from an average yield of 4.05 percent the prior day.

Bloomberg Business

by Martin Z Braun

December 8, 2015 — 3:02 PM PST Updated on December 9, 2015 — 5:15 AM PST

Hedge Funds Leave U.S. Pensions With Little to Show for the Fees.

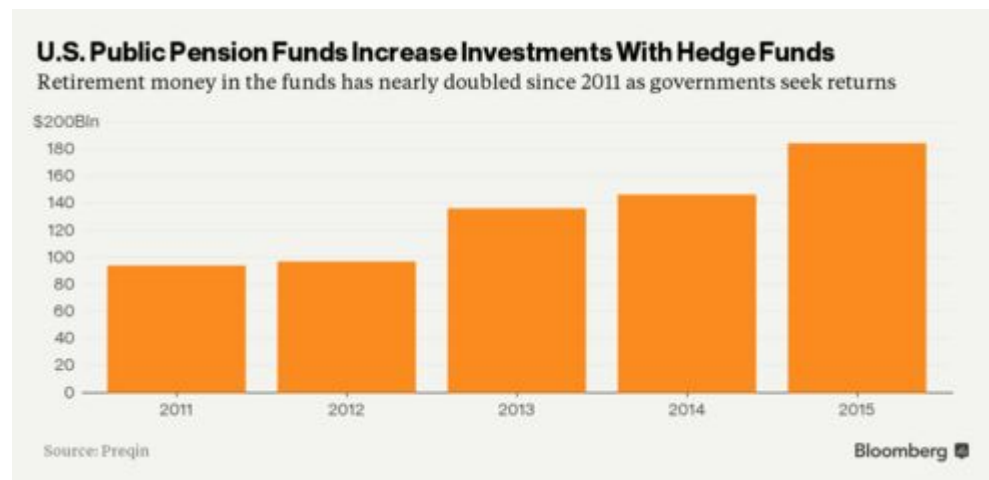
Here's what U.S. state and city pension funds are getting this year for the hundreds of millions of dollars in fees they're forking over to hedge funds: almost nothing.

The investment pools gained 0.4 percent through November, putting them on pace for the worst year since 2011, according to data compiled by Bloomberg. The industry's struggle was underscored over the past two months as BlackRock Inc., Fortress Investment Group and Bain Capital closed hedge funds after running up losses.

The low returns are dealing a setback to governments that boosted exposure to hedge funds, seeking windfalls to help close a \$1.4 trillion shortfall that's facing public-employee retirement systems nationwide. The investment funds have underperformed stocks since 2008 as share prices rallied and volatility whipsawed global financial markets.

"The bull market of the last six years allowed public pension plans to become poor consumers," said South Carolina Treasurer Curtis Loftis, who has criticized the fees his state has paid firms including hedge funds. "The plans viewed hedge funds as an 'elite investment' and therefore neglected to perform strenuous and ongoing due diligence."

Public pensions count on investment returns of more than 7 percent a year, so anything less puts pressure on governments to set aside more to ensure they can cover all the benefits promised to employees. The retirement systems boosted their stakes in hedge funds to \$184 billion this year from \$94 billion in 2011, according to Preqin, which tracks the industry.



With their investments faltering, funds with more than \$16 billion of assets have announced plans to shut down this year, including those run by some of Wall Street's most well-known firms, according to data compiled by Bloomberg. BlackRock decided to close its Global Ascent hedge fund following losses that triggered withdrawals by investors including the Arizona Public Safety Personnel Retirement System, Fort Worth Employees' Retirement Fund and the Maryland State Retirement and Pension System.

The Arizona fund doesn't discuss investment decisions, said Christian Palmer, its spokesman. Michael Golden, a spokesman for the Maryland system, and Mary Kay Glass, a spokeswoman for the Fort Worth system, declined to comment.

Averting Bigger Losses

The hedge fund investments have sheltered some retirement plans from steeper losses during the swings in stock and bond prices this year.

New York City's civil employees pension, with \$52 billion of assets, saw its hedge funds lose 0.7 percent through September, which was less than the 2.26 percent loss for its entire portfolio. For New Jersey, hedge funds posted a 1.7 percent gain during the first nine months of the year, limiting the pension's losses, though they've posted about half the returns of its equity investments over the past five years.

"Over the long term, which is what we invest for, hedge funds have significantly outperformed stocks and bonds," Christopher Santarelli, spokesman for the New Jersey Treasury Department, said in an e-mail.

Not all pensions think it's worth it. The California Public Employees' Retirement System, the U.S.'s largest public pension, said last year it would liquidate its \$4 billion hedge-fund portfolio because of the cost and complexity. Sam Won, managing director of Global Risk Management Advisors, said some pensions have used the lackluster returns to push for lower fees and more information about investment strategies.

"It continues to give investors more leverage," said Won.

The Cost

The firms typically charge investment fees of 2 percent and keep 20 percent of the gains. They're free to pursue strategies aimed at profiting even when stock or bond prices drop, allowing them to deliver gains to investors or protect them from losses elsewhere. In 2008, during the worst of the credit-market crisis, when the Standard & Poor's 500 Index tumbled 38 percent, hedge funds lost about half as much.

Since then, the investments have left some pension money lagging the broader markets as stock prices rallied, according to Jeff Hooke, a managing director with Focus Investment Banking in Washington. His study of five state pensions over five years found that the median return on hedge-fund investments was 7.3 percent, more than 6 percentage points less than the benchmark Vanguard Balanced Index Fund.

"Hedge funds have cost the states tens of billions in opportunity costs the last five years," said Hooke.

U.S. public pensions, after years of chronic under funding, by 2014 had 74 percent of the assets needed to pay retirees, according to the Center for Retirement Research at Boston College. Illinois and the state's largest city, Chicago, are both contending soaring bills to retirement systems after years of failing to make sufficient contributions. Such pressure helped push Detroit into the biggest municipal bankruptcy in U.S. history in 2013.

"Public pension funds are trying to achieve very high returns in an environment that makes this difficult," said Donald Boyd, senior fellow at the Nelson A. Rockefeller Institute of Government, a public policy research arm of the State University of New York. "If they're not successful, taxpayers and those who count on government services and investments will pay the price."

Bloomberg Business

by Darrell Preston

December 8, 2015 — 9:01 PM PST Updated on December 9, 2015 — 6:03 AM PST

[Return to Friendly Skies Keeping Buyers Bullish on Airport Bonds.](#)

Bondholders such as Nuveen Asset Management are some of the biggest beneficiaries of the resurgence in air travel among U.S. consumers, and they don't see an end in sight.

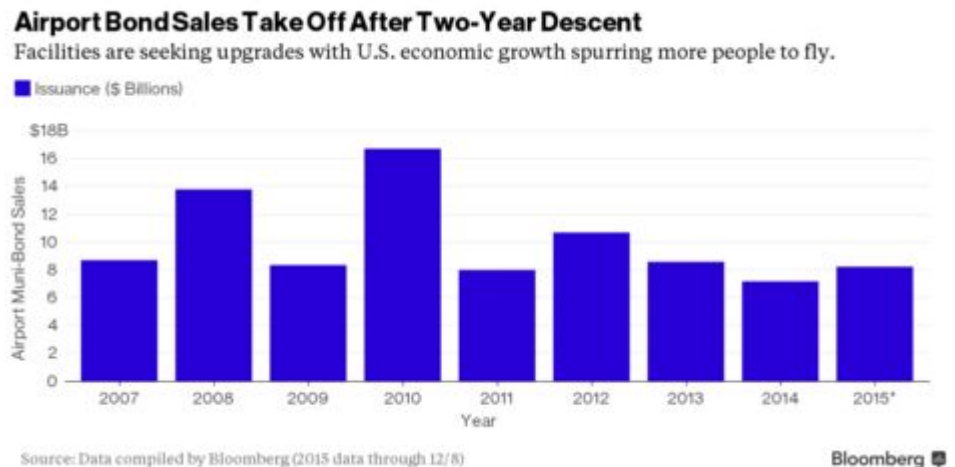
Debt issued to fund airport improvements are outperforming the broader \$3.7 trillion municipal-bond market for an unprecedented fifth consecutive year. That's likely to continue because the bonds have dedicated revenue streams and they still offer higher returns than top-ranked municipals, said John Miller, Nuveen's co-head of fixed income in Chicago. He said he's looking to buy more.

With the U.S. economy growing by about 2.5 percent in 2016, airlines will see enplanements, or the number of passengers arriving or departing at airports, rise by 4 percent, according to Moody's Investors Service. The credit-rating company expects airports to exceed their budgeted growth and a few to win positive changes to their ratings or outlooks this year, said Earl Heffintrayer, a Moody's

analyst in New York.

“There is still a need in the marketplace to have that additional spread and that additional yield without an enormous amount of credit risk,” said Miller, whose company oversees about \$100 billion in munis.

Securities in the Standard & Poor’s Municipal Bond Airport index are yielding 2.33 percent, compared with 1.98 percent for bonds in the national investment-grade index, according to J.R. Rieger, vice president of fixed-income indexes at S&P in New York. In October, the gap in the yield between the two indexes was 0.26 percentage point.



This year has been a good one for airports already: enplanements have increased by almost 5 percent, which was more than the 4 percent expected by Moody’s. Enplanements are key since they drive a range of cash-generating avenues from parking fees to beer sales at the terminal bars.

It’s been a good year for bondholders too. Airport debt has gained 3.5 percent through Dec. 8, beating the market’s 3 percent advance, Bank of America Merrill Lynch data show. A fifth straight year of outperformance would be the longest streak since the firm began tracking the data in 1993.

Issuance has been “subdued” and should remain so in 2016 apart from projects such as the replacement of the terminal at New York’s LaGuardia Airport, Miller said. Airports this year have issued \$8.2 billion in securities, up from last year’s \$7.2 billion, but are unlikely to reach the tally of \$10.7 billion seen in 2012, data compiled by Bloomberg show.

Moody’s median rating for airport bonds is A2, four steps lower than the median Aa1 grade for U.S. states. Airports with higher grades serve a vital purpose in large markets, while lower-ranked ones face more competition, Heffintrayer said.

Jet Fuel

Fuel costs comprise “an important component” for airport bonds to outperform the overall market next year, said Alan Schankel, a Janney managing director in Philadelphia. The price of jet fuel declining by 44 percent since 2011 has helped support the airlines’ profitability, and consumers saving on gas for their cars have more money to spend on travel, he said.

Lower fuel costs prompted airlines to add more seats this year, and airports in Fort Lauderdale and San Diego were among the fastest growing as tourists passed through them, Heffintrayer said.

"We should continue to see strong performance across the board and especially in those regions that are more tourism dependent," he said.

Although travelers from overseas may decline due to weakening economies in China, Latin America and Europe, U.S. passengers should compensate for that, Moody's said.

Nashville Sale

An example of a medium-sized U.S. airport that has seen a "tremendous amount of growth" partly due to tourism is Tennessee's Nashville International Airport, Heffintrayer said.

Investors have noticed. Tax-free 10-year revenue bonds sold Tuesday by the authority running the airport were priced to yield 2.31 percent, 0.29 percentage point over top-ranked munis. That's lower than the 2.55 percent for similarly rated revenue debt. Moody's and S&P gave the securities the fifth-highest rank, A1 and A+ respectively.

Metropolitan Nashville Airport Authority received \$1.1 billion in orders for \$200 million in bonds, said Lauren Lowe, director at the agency's financial adviser PFM Group.

The airport expects enplanements in 2016 to rise by 5 percent from the previous year, following an annual growth of 4.4 percent over the past five years, according to bond documents.

The bond deal "showed a lot of investor confidence in this market and in what we're doing here at the airport and in our future growth," said Robert Wigington, president and chief executive officer of the authority.

Bloomberg Business

by Romy Varghese

December 9, 2015 — 9:02 PM PST Updated on December 10, 2015 — 4:54 AM PST

[Congress Unlikely to Agree on Puerto Rico Rescue by Year's End.](#)

Less than 10 days before they plan to adjourn for the Christmas holiday, lawmakers in Congress remain divided over how to help Puerto Rico as the island rapidly runs out cash and inches closer toward the first major default on its bonds.

Top Senate Republicans are moving to extend as much as \$3 billion in aid to the territory as long as it cedes some financial powers to a federal board, while declining to give Puerto Rico the ability to file for bankruptcy to cut its debt. Democrats, who are in the minority, may try to attach a bankruptcy measure to the spending bill that Congress needs to pass to keep the U.S. government running, seeing it as the best chance to push through one of Puerto Rico's key priorities.

"We don't see how there is a resolution in the week or so that remains before this Congress leaves for the holidays, and once it returns this fight could drag on for many months," Guggenheim Securities analysts led by Jaret Seiberg said in a note to clients Thursday. "It is hard to see how political leaders find a compromise in front of the election. The atmosphere is just too charged."

The last-minute push comes as Puerto Rico is running out of time to address a crisis that's been building for years because of \$70 billion of debt, a legacy of borrowing to paper over budget

shortfalls. The commonwealth this month narrowly averted a default on government-guaranteed bonds for the first time and may be unable to cover \$957 million of interest due Jan. 1.

Governor Alejandro Garcia Padilla said on Wednesday that the island is “out of cash” and has been pushing for Congress to give it the legal tools to restructure debt in court, just as U.S. cities can. Without that, the government is dependent on negotiations with creditors, a potentially lengthy process that could get bogged down in litigation. The Puerto Rico Electric Power Authority has yet to reach a final deal to reduce its debt despite more than a year of talks with bondholders and insurers.

Garcia Padilla’s office welcomed the Republican lawmakers’ initial push to help the island while stopping short of endorsing it.

“The presentation of the project in the U.S. Senate demonstrates the urgency and the seriousness of Puerto Rico’s situation,” Jesus Manuel Ortiz, spokesman in San Juan for Garcia Padilla, said in a statement. “We will continue conversations and we are confident that the final language will be positive for the country and will deal with the depth of the problem.”

Puerto Rico’s crisis has dragged down the prices of its bonds, which have been little changed since the Republican proposal was announced Wednesday. General obligations maturing July 2035, which were first sold for 93 cents on the dollar in March 2014, traded Thursday for an average of 74.8 cents, compared with 74.6 cents a day earlier.

Some bondholders and analysts were skeptical that Congress will be able to come to an agreement.

“I don’t see anybody gaining any strength with a solution yet,” said Matt Dalton, chief executive officer of Rye Brook, New York-based Belle Haven Investments, which oversees \$3.4 billion of municipal bonds, including Puerto Rico securities. “I’m not running in one direction or trying to bet on whether I should or I shouldn’t buy Puerto Rico based on these bills.”

The Republican plan wasn’t fully embraced in Puerto Rico. Senate President Eduardo Bhatia called it “shameful” and “unworthy.”

“No Puerto Rican should have to accept a fiscal control board with as much powers over Puerto Rico as that which Senator Orrin Hatch’s bill confers,” Bhatia said in a statement Thursday.

That bill, introduced by Senators Hatch, Chuck Grassley and Lisa Murkowski, would set up a new authority to help craft and oversee the budget. It would also have the power to borrow on Puerto Rico’s behalf, a mechanism that could help the island restructure its debt.

Grassley, the chairman of the Judiciary Committee, has expressed skepticism about allowing Puerto Rico to file for bankruptcy, which bondholders oppose. Representative Sean Duffy, a Republican who sits on the House Financial Services committee, introduced such a bill Wednesday, despite the objections of others in his party.

Senator Charles Schumer, a New York Democrat, told reporters in Washington Thursday that he is seeking to include language in the spending bill that would allow Puerto Rican agencies to file for Chapter 9 proceedings. He shrugged off the measure offered by his Republican colleagues.

“They need to come to an agreement that both sides support — like in most other things,” he said.

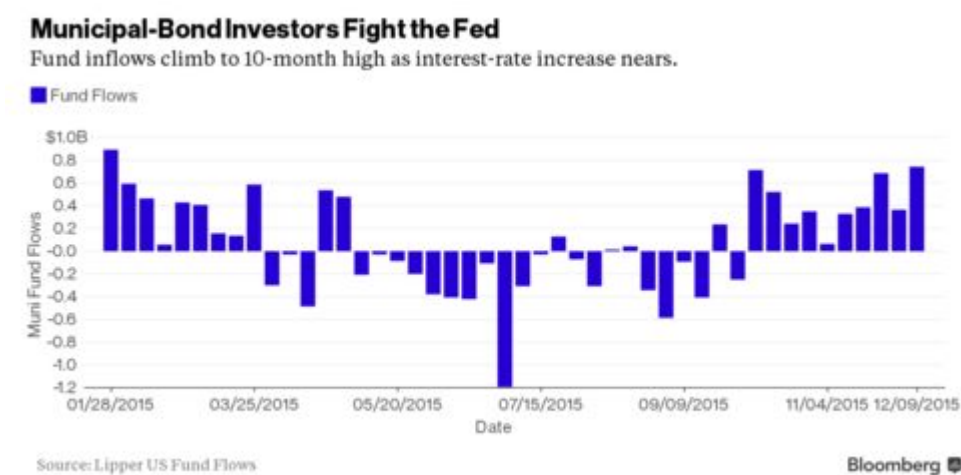
Bloomberg Business

by Kasia Klimasinska, Michelle Kaske & Kathleen Miller

Muni Inflows Are Highest Since January as Buyers Ignore Fed.

Investors added the most money to municipal-bond mutual funds since January in the past week, a sign that they're not fretting about the Federal Reserve raising interest rates for the first time in almost a decade.

Individuals poured \$742 million into tax-exempt funds in the week through Wednesday, Lipper US Fund Flows data show, marking the 10th straight week of inflows. Those investing in long-term and intermediate-term securities received cash, as did high-yield funds.



Benchmark 30-year munis yield 3 percent, the lowest level since April, data compiled by Bloomberg show. Investors are betting that if the Fed tightens monetary policy at its Dec. 15-16 meeting, the longest-maturing tax-exempt debt will fare the best.

Munis have returned 3.2 percent this year, compared with 1 percent for Treasuries and no gain for investment-grade corporate securities, Bank of America Merrill Lynch data show.

Bloomberg Business

by Brian Chappatta

December 10, 2015 — 3:00 PM PST Updated on December 11, 2015 — 6:17 AM PST

Bloomberg Brief Weekly Video - 12/10

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

[Watch the video.](#)

December 10, 2015

Fitch: U.S. Airport Credits Remain Strong; Traffic to Expand.

Fitch Ratings-New York-09 December 2015: U.S. airports ratings remain largely in the 'A' category with passenger traffic volume growth supporting stable financial profiles for most U.S. airports despite the ongoing capital program needs in the sector, according to a new Fitch Ratings report.

'Approximately 90% of airport sector ratings currently have Stable Outlooks, demonstrating the relatively low credit risk and the resilience of airport cash flows,' said Seth Lehman, Senior Director in Fitch's Global Infrastructure Group.

Fitch upgraded the rating on two airports during the past 12 months (San Jose to 'A-' and Commonwealth of Northern Mariana Islands to 'B+') as well as revised the Rating Outlook on six airports to Positive (including large-hubs Chicago O'Hare Airport and Hillsborough County Airport Authority/Tampa Airport).

Highest rated airports are typically those with a strong underlying market or franchise driving demand, overall stability of cash flows through contractual agreements with airlines and other commercial users and healthy financial metrics. Conversely, weakest rated airports include those serving small markets or secondary airports subject to competition for passengers, or thinner financial metrics and elevated leverage.

The report 'Peer Review of U.S. Airports' is available at 'www.fitchratings.com'.

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Fitch: WIFIA Tax Exempt Ruling Is Positive for US Water Credits.

Fitch Ratings-New York-10 December 2015: Recent legislation lifting a ban on the use of tax-exempt bonds in conjunction with federal loans provided by the Water Infrastructure Finance and Innovation

Act (WIFIA) pilot program will result in lower borrowing costs for US water utilities, Fitch Ratings says.

Utilities are facing significant costs to replace, rehabilitate, and improve their aging infrastructure. The American Water Works Association estimated the cost of maintenance of existing systems and expansion at \$1 trillion over the next 25 years. Utilities will benefit from an overall lower cost of financing to the extent they are able to use low-cost loans from the five-year WIFIA pilot program in combination with tax-exempt bond proceeds. The legislation could also temper the need of some issuers to obtain rate increases related to capital.

WIFIA allows utilities to borrow up to 49% of the project cost at Treasury rates with 35-year amortization periods. However, the original legislation prohibited issuers from using tax-exempt financing for the remaining 51% of the cost. This recent legislation lifts that ban.

WIFIA was modeled after the more established Transportation Infrastructure Finance and Innovation Act program and was enacted in 2014 to provide \$350 million in loans over five years for water, wastewater, storm water and water reuse projects, allowing for leverage of at least \$3.5 billion. The WIFIA loans, authorized by the Water Resources Reform and Development Act, are the first new federal water finance tool established since the 1996 Drinking Water State Revolving Fund.

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[BDA Submits Comment Letter to MSRB Regarding Proposed Amendments to Shorten the Settlement Cycle.](#)

The BDA submitted a comment letter to the MSRB in response to its request for comment on proposed amendments to MSRB Rules to facilitate the shortening of the municipal securities settlement cycle.

The BDA's comment letter focused on concerns regarding the potential impact a T+2 settlement cycle would have on middle market securities dealers.

Specifically, we address the following:

- BDA believes the proposed rule will make clearing and settling transactions more efficient, reducing risk in the marketplace, but concerns remain with regard to the implementation aspect of the Proposed Amendments
- Transactions occurring in the secondary market for municipal securities should follow the proposed T+2 settlement cycle as opposed to a “blanket” requirement for all transactions, including those for new issue markets
- We caution that the impact of shortening the settlement cycle will filter through other regulations tied to the settlement date of a municipal security, potentially resulting in new regulatory burdens for dealers You can find our final letter [here](#).

12-10-2015

[BDA Submits Comment Letter to FINRA and MSRB on Proposed Retail Markup Disclosure and Pricing Reference Rules.](#)

Today, BDA submitted a [comment letter](#) in response to the MSRB/FINRA proposed retail confirmation disclosure rules. BDA will continue to advocate for a simpler, less confusing, and less costly solution on this high-priority issue, including scheduling in-person meetings with all the relevant regulators in the near future. We will keep BDA membership informed on next steps on this issue.

The letter is structured in the following way based on the feedback we have received in conversations with BDA membership:

- BDA urges regulators to harmonize the rules
- We emphasize the complexity and costs associated with the proposals:
 - Operational and technology cost concerns with proposed FINRA rule
 - Issues with ambiguous MSRB rule, but MSRB rule is step in right direction
- Suggestions for alternative solutions in order of preference include:
 - Suggest a purely “riskless principal” rule
 - BDA requests that MSRB and FINRA leveraging TRACE/EMMA data to compute average daily inter-dealer cost and for the use of data display as the differential to retail trade on the confirm
 - BDA favors the MSRB’s approach contingent on guidance around inter-dealer cost

FINRA’s proposal can be read [here](#).

MSRB’s proposal can be read [here](#).

12-11-15

[From the Makers of Catastrophe Bonds, a New ‘Resilience Bond’.](#)

Some of the people who brought you “catastrophe bonds” now want to bring you “resilience bonds.”

“Cat bonds” are securities that help insurers or an entity such as a municipal transportation authority pay for claims after a hurricane or other catastrophe. Amid protracted low interest rates, many U.S. and Canadian pension funds have been scooping up these securities because they yield more than conventional bonds while also offering diversification—though a massive catastrophe could wipe out their principal.

Now, some of the brains behind cat bonds, which have been around since the late 1990s, are pioneering a variation of this security. Among developers of this new resilience bond are big European reinsurance powerhouse Swiss Re SSREY -1.10% and RMS, a leading catastrophe risk-management and modeling firm. They are well-known names in the cat-bond world.

The idea is that resilience bonds would appeal to, say, flood-prone cities, public utilities and other entities that need to build infrastructure like seawalls and flood barriers, RMS said in an announcement this morning. RMS is working with Swiss Re, the Rockefeller Foundation and design firm re:focus partners on the new framework.

Multiyear resilience bonds could provide money for property-damage claims should a big disaster strike while the infrastructure project is under construction. In that way, resilience bonds would serve as insurance as cat bonds do—and might reduce dependence on disaster aid.

But unlike ordinary cat bonds, they could provide “resilience” rebates. While many details remain to be determined, the rebates would reflect the reduction in risk that occurs as seawalls or flood barriers begin to provide protection.

About \$22 billion of cat bonds were outstanding as of mid-year, according to Marsh & McLennan Cos.MMC -2.00%’ Guy Carpenter reinsurance unit.

Cat bonds, which typically are in place for three to five years, originally were developed to provide insurance companies with an alternative to traditional reinsurance, but have increasingly been used by public or quasi-public entities to augment traditional insurance or reinsurance, according to RMS and its partners in the resilience-bond effort.

Among those with cat-bond programs are railroad Amtrak, New York Metropolitan Transportation Authority, the California Earthquake Authority, and state-run insurance pools in Florida, Louisiana, Massachusetts and Texas.

Aon Securities said cat-bond issuance reached \$7 billion in the 12 months to June 30, a decrease of the prior-year record of \$9.4 billion, “yet still the third highest annual issuance in the sector’s history.” Mostly, the bonds relate to possible catastrophes in the U.S., though some expose buyers to risks in Japan and Europe.

THE WALL STREET JOURNAL

By LESLIE SCISM

Dec 9, 2015

[Bond Insurers Balk at Puerto Rico Power Authority Deal.](#)

The bond insurers, which include MBIA and Assured Guaranty, are worried about the implications

for other commonwealth debt.

Talks between Puerto Rico's power authority and bond insurers that back its debt have stalled, highlighting the difficulties the U.S. commonwealth is facing as it negotiates with creditors.

Three months ago, bondholders and lenders agreed to accept losses of 15% as part of an agreement to swap old Puerto Rico Electric Power Authority debt for new bonds with more protections. The insurers are worried about the implications for other Puerto Rico debt and haven't signed on.

These talks between Prepa, as the power authority is known, and bond insurers including MBIA Inc. and Assured Guaranty Ltd. are at an impasse, according to people familiar with the situation. At least one of the insurers has expressed a reluctance to insure some of the new debt, according to one of the people.

The U.S. Supreme Court has agreed to consider whether Puerto Rico should be allowed to have laws permitting public agencies such as Prepa to restructure debts. That move has given Puerto Rico more leverage over its creditors, who must decide whether it makes more sense to strike debt-relief deals now or after the court decision, analysts and investors say. Neither Puerto Rico nor any of the island's local-government agencies have access to bankruptcy protections.

MBIA and Assured declined to comment on the status of the talks. The Government Development Bank for Puerto Rico said in a statement last week that negotiations "have been delayed by the unyielding attitude" of some creditors, highlighting the need for a legal bankruptcy framework.

Prepa, which has about \$8 billion of debt outstanding, said Tuesday it had amended its agreement with bondholders to extend the deadline for the authority to reach a deal with bond insurers to Dec. 17. Prepa's bond trustee said in a filing this week it had \$24 million to pay investors, who are owed almost \$200 million at the beginning of January.

Bond insurers potentially have more to lose from a debt restructuring than mutual funds or hedge funds. Funds often have the opportunity to scoop up debt below face value and then in some cases can make a profit even in a default. Bond insurers can't sell their risk and don't want to set a precedent in which a utility, which could raise rates to pay debt, restructures instead.

Puerto Rico lawmakers in 2014 passed bankruptcy legislation, which was aimed at public agencies including the power, water and highway authorities. Those entities have around \$20 billion in debt outstanding, including Prepa's \$8 billion. Bondholders sued and lower courts blocked the law, sending Prepa and its creditors into negotiations without it.

A deal with insurers would mark one of the final steps toward completing the Prepa restructuring, by itself one of the largest in the history of the \$3.7 trillion municipal-bond market. Puerto Rico officials have held up the Prepa talks as a potential model for other restructuring.

Yet after more than a year of talks, significant hurdles to a final agreement remain. Puerto Rico must pass separate legislation allowing the deal, requiring lawmakers to hold a special session. Also, the deal requires the new bonds to receive an investment-grade credit rating at a time when Puerto Rico's credit is junk.

"Prepa may indeed represent an unfortunate model for what is to come with other public corporation debts," wrote Matt Fabian, a partner at research firm Municipal Market Analytics, in a Monday report.

Sergio Marxuach, public policy director at the Center for a New Economy in San Juan, said the

lengthy talks between Prepa and its creditors demonstrate the difficulty of reaching terms with investors without a legal process. Gov. Alejandro Garcia Padilla on Wednesday repeated his call for the U.S. Congress to grant Puerto Rico access to such a legal framework at a news conference in Washington.

Bankruptcy protections wouldn't be a panacea to Prepa talks, said Howard Cure, director of municipal research at Evercore Wealth Management. A negotiated agreement would help Prepa maintain access to borrowing, which it needs to convert antiquated facilities to natural gas in order to lower energy prices and stimulate the island's economy.

THE WALL STREET JOURNAL

By AARON KURILOFF

Updated Dec. 9, 2015 7:01 p.m. ET

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

[South Carolina Port Authority Eyes Pension Funds to Finance Expansion.](#)

South Carolina's Port Authority is courting pension funds and other institutional investors to help pay for billions of dollars in infrastructure improvements as traditional sources of financing dry up.

The authority has announced plans to spend \$1 billion over the next four years on expansions and improvements to ports throughout the state, and is embarking on a \$5 billion joint venture with the Georgia Ports Authority to build a terminal along the Savannah River.

Past projects were financed by issuing municipal bonds, including a \$290 million sale in November. But the port has effectively maxed out its ability to borrow, requiring new sources of funding, said Jim Newsome, the port authority's chief executive. The port has hired BMO Capital Markets as advisors and has met with pension funds in several states as well as Canada.

"There's just not enough public sector debt available to fund all the infrastructure and terminal improvements we need," Mr. Newsome said in an interview.

South Carolina's ports need to grow to handle growing volumes of containers and other cargo, and to accommodate larger ships from Asia expected to arrive after the Panama Canal completes an expansion next year. Ports along the East Coast are competing for the same business, stretching their finances to dredge deeper harbors, raise bridges and build new terminals.

"A lot of these issuers have good balance sheets, but not enough cash on hand" for large infrastructure projects, said Emma Griffith, who heads port infrastructure research for Fitch Ratings Inc. "People are looking for more flexible forms of capital."

The South Carolina Port Authority's charter prevents it from selling stakes in its terminals, a common way for private port operators to win outside investment. Instead, the authority is offering to pay an annual return at a fixed rate, plus a dividend tied to any increase in cargo volumes, Mr. Newsome said.

Such an arrangement has been used to fund infrastructure projects in Europe and Australia, as well

as toll roads in the U.S. Ports can be an attractive investment because they produce stable revenues. The challenge will be to get the rate of return high enough for pension fund and investors specializing in infrastructure, who typically require an annual return of 10% or more, said David Ambler, an infrastructure analyst with AllianceBernstein LP.

For the current fiscal year, South Carolina's ports project a return of 4.5% last year on its \$1.1 billion in assets, meaning the port authority expects to earn a profit of about \$45 million.

Mr. Newsome said the authority hopes to boost returns by attracting larger ships, increasing the revenue from fees that the port collects on each container and each car that passes through the port. The authority is also investing in technology to increase efficiency and keeping the port open longer hours.

"We are aware that we need to attain a certain return on capital to get investors interested," Mr. Newsome said. "People look at ports as a utility that should just sort of be there, and that doesn't work ... Ports have got to be run more like a business."

In recent years, pension funds and private investment firms have invested in or purchased terminals at several U.S. ports. In 2014, Alinda Capital Partners, a Connecticut private equity fund, and a British pension fund bought a marine terminal at the Port of Virginia. The largest terminal at the Port of Newark, on New York harbor, is owned by a fund controlled by German bank DeutscheBank AG.

But such investments are rare when the port authority operates its own terminals. South Carolina's situation is different because its ports are owned and operated by the port authority, which is run by a state-appointed board.

THE WALL STREET JOURNAL

By ROBBIE WHELAN

Dec. 11, 2015 1:54 p.m. ET

Write to Robbie Whelan at robbie.whelan@wsj.com

[House Democrats Try to Help Puerto Rico in Spending Bill.](#)

WASHINGTON — Democrats said on Tuesday they are making a push to help Puerto Rico reorganize its hefty debt load as part of a large spending bill now being negotiated in Congress.

Puerto Rico is struggling with \$72 billion in debt while 45 percent of its citizens live in poverty. The governor of the U.S. territory has warned that it is running out of cash.

Democrats said the U.S. territory's bankruptcy crisis is now part of negotiations with Republicans over the spending bill, which needs to be passed by Friday to keep the U.S. federal government operating.

Democratic Representative Joe Crowley of New York said lawmakers want the territory to have the ability to reorganize its own debt.

"I think 3.5 million (people) who live in Puerto Rico are looking for the same relief that every state

and municipality has," Crowley told reporters.

The island does not have access to Chapter 9 of the U.S. bankruptcy code, which governs municipal insolvencies and allows public entities including cities, towns and municipal agencies to file for bankruptcy restructuring.

An existing bill to extend bankruptcy protections to Puerto Rico has made little headway in Congress so far; neither has a proposal to improve the island's federal healthcare funding.

The Obama administration has urged lawmakers to help Puerto Rico, but influential Republicans in Congress, which the party controls, have opposed the idea.

Senate Finance Committee Chairman Orrin Hatch is among Republicans who have said there can be no help for Puerto Rico without better financial disclosure.

House Democratic Leader Steny Hoyer said Democrats wanted the Puerto Rico issue included in the spending bill to fund U.S. government agencies and the military through fiscal 2016, or in a bill to deal with a number of expired business tax breaks.

As talks over the \$1 trillion U.S. spending bill dragged on, Republican leaders in the House of Representatives said on Tuesday they would seek to pass a stop-gap spending bill to avoid a government shutdown early on Saturday. [L1N13X198]

By REUTERS

DEC. 8, 2015, 2:30 P.M. E.S.T.

(Reporting by Susan Cornwell; Editing by Andrew Hay)

[Congressman Duffy to Introduce Puerto Rico Bill Wednesday.](#)

NEW YORK — A bill to be introduced in the U.S. House of Representatives on Wednesday will give Puerto Rico's government the choice to restructure its municipal debt in conjunction with enhanced financial oversight, according to a copy of the bill and a spokeswoman for the bill's sponsor, Representative Sean Duffy.

Puerto Rico, wrestling with \$72 billion of debt and a faltering economy, defaulted on part of its debt in August and is trying to restructure its borrowings.

Democrats in Congress have pushed for Puerto Rico to be allowed access to U.S. bankruptcy laws to solve its fiscal crisis, however, Republicans have been skeptical and have argued for oversight.

Duffy, a Republican from Wisconsin and chairman of a House Financial Services subcommittee, said in August that he was working on broad ideas for a draft proposal to address solutions for Puerto Rico.

His bill says Puerto Rico would have access to the same Chapter 9 bankruptcy process that U.S. states do if it also agrees to an independent Financial Stability Council to oversee its path toward balanced budgets and a return to financial stability, according to briefing notes from Duffy's office.

It comes as Democratic Senator Charles Schumer tried on Wednesday to bring to a vote a bill to

extend to Puerto Rico a law that allows U.S. states to put struggling municipal entities into bankruptcy. Utah Republican Orrin Hatch blocked Schumer, saying he was preparing to introduce his own version of the bill later in the day.

By REUTERS

DEC. 9, 2015, 2:42 P.M. E.S.T.

(Reporting by Megan Davies; Editing by Bernard Orr and Frances Kerry)

U.S. Legislators Push Puerto Rico Fixes as Governor Visits Capital.

SAN JUAN/NEW YORK — Puerto Rico's financial fate was entwined with Washington politics on Wednesday with legislators from both parties pushing competing plans to address its fiscal crisis.

An island of 3.5 million grappling with a 45 percent poverty rate and \$72 billion in debt, Puerto Rico narrowly avoided default last week, but faces \$332 million of constitutionally guaranteed debt due on Jan. 1.

Governor Alejandro Garcia Padilla, who was in Washington, D.C., meeting with lawmakers on Wednesday, has said the commonwealth is nearing a humanitarian crisis, and that to keep providing essential services and pay certain debt, Puerto Rico must default on other bonds.

On Wednesday, Senator Charles Schumer tried to bring to a vote a bill to extend to Puerto Rico a law that allows U.S. states to put struggling municipal entities into bankruptcy. "It won't cost the taxpayer one plugged nickel," the New York Democrat said on the Senate floor.

But Utah Republican Orrin Hatch, who chairs the Senate committee with oversight of Puerto Rico legislation, blocked the vote, later introducing his own bill.

Hatch's bill, co-sponsored by fellow Republicans Chuck Grassley and Lisa Murkowski, would cut Puerto Rican workers' share of the payroll tax by 50 percent, and create a federal financial oversight authority that could spend as much as \$3 billion to help Puerto Rico regain fiscal stability. The bill does not include bankruptcy provisions.

"The commonwealth's problems will not be solved overnight," Hatch said in a statement, adding that he hopes Puerto Rico will "work with Congress to provide more transparency."

In the House of Representatives, Wisconsin Republican Sean Duffy unveiled a bill to let Puerto Rico restructure debts, but only in conjunction with enhanced financial oversight.

U.S. Treasury Secretary counselor Antonio Weiss, meanwhile, made a speech in Washington, D.C., saying Puerto Rico is in crisis and needs access to a restructuring law.

The events pointed to increasing prospects for thus-far elusive federal intervention, yet little agreement on what it should look like.

Republicans have pushed federal oversight as a condition to any legislative action, while Treasury has supported the broadest measure of all, giving Puerto Rico itself - not just its municipal entities - the right to file bankruptcy.

At a news conference on Wednesday in Washington, D.C., Governor Garcia Padilla said he would support federal oversight “if it respects Puerto Rico’s autonomy,” adding that Puerto Rican officials would “need to be part of ... drafting that bill.”

Puerto Rico’s representative in Congress, Pedro Pierluisi, generally supported all three proposals in a statement on Wednesday, but voiced concern over the Hatch bill’s lack of a bankruptcy mechanism.

Garcia Padilla was meeting with Congressmen on Wednesday, as well as with leaders from the U.S. Treasury. His efforts to right Puerto Rico’s ship have faced obstacles at every turn. Creditors have resisted repayment cuts, while laws prevent Puerto Rico from enforcing cuts through bankruptcy. Help from Washington has seemed unlikely in a gridlocked congress.

The island also faces \$120 million in legally-mandated December bonus payments for public workers.

By REUTERS

DEC. 9, 2015, 7:15 P.M. E.S.T.

(Reporting by Nick Brown in San Juan and Megan Davies in New York; Additional reporting by Richard Cowan in Washington; Writing by Nick Brown; Editing by Alan Crosby, Frances Kerry and Bernard Orr)

[Allowing Tax-Exempt Use with WIFIA Loans Will Lower Borrowing Costs.](#)

WASHINGTON — A provision in the new transportation funding law that lifts the ban on using tax-exempt bonds in conjunction with federal loans will result in lower borrowing costs for water utilities, Fitch Ratings said on Thursday.

The provision in the Fixing America’s Surface Transportation (FAST) Act that President Obama signed on Dec. 4 removes the ban that had been included in the Water Infrastructure Finance and Innovation Act (WIFIA). WIFIA was part of the Water Resources and Reform Development Act enacted last year.

The five-year, \$350 million WIFIA pilot program, modeled on the Transportation Infrastructure Finance and Innovation program, allows utilities to borrow up to 49% of the costs for large drinking water, wastewater, stormwater and water reuse projects. The loans can be used to leverage at least \$3.5 billion.

However, as written, the program could not be used in conjunction with tax-exempt bonds. FAST lifts that ban.

“Over the long run, this will help some utilities with capital costs and rate increases related to capital,” Shannon Groff, director of U.S. public finance for Fitch who authored the release issued by the rating agency, said in a brief interview.

“Utilities are facing significant costs to replace, rehabilitate and improve their aging infrastructure,” Groff said in the release.

Water groups also cited the importance of the FAST provision.

“By removing the ban on using tax-exempt bonds with WIFIA loans, Congress has freed WIFIA to do its important work in addressing America’s enormous water infrastructure challenge,” said David LaFrance, chief executive officer of the American Water Works Association.

The AWWA estimates the cost of maintaining and expanding existing water systems will reach \$1 trillion over the next 25 years.

Rep. Bob Gibbs, R-Ohio, chairman of the House Transportation and Infrastructure Committee’s water resources and environment subcommittee who was a key proponent for WIFIA and lifting the ban, said recently, “I am pleased to see a provision included [in FAST] that supplements the funding of public water infrastructure. Municipalities across the country are dealing with expensive and necessary improvements to public water systems. The ability to combine WIFIA funding with tax-exempt bonds gives cities and counties the ability to affordably address their public health needs.”

Another champion of the WIFIA fix was Sen. Barbara Boxer, D-Calif.

LaFrance said water groups, including the AWWA, the National Association of Clean Water Agencies, the Association of Metropolitan Water Agencies, and the Water Environment Federation fought for the ban to be lifted and are now urging Congress to provide WIFIA loans and state revolving fund programs in fiscal year 2016, which began Oct. 1.

“The sooner WIFIA is making loans for large water projects, the better,” LaFrance said.

THE BOND BUYER

BY LYNN HUME

DEC 10, 2015 1:38pm ET

[GASB Issues New Pension Guidance Designed to Assist Certain Governments.](#)

Norwalk, CT, December 11, 2015 — The Governmental Accounting Standards Board (GASB) today issued guidance designed to assist governments that participate in certain private or federally sponsored multiple-employer defined benefit pension plans (such as Taft-Hartley plans and plans with similar characteristics).

During the implementation of [GASB Statement No. 68, Accounting and Financial Reporting for Pensions](#), stakeholders raised concerns regarding the inability of a small group of governments whose employees are provided pensions through such multiple-employer pension plans to obtain measurements and other relevant data points needed to comply with the requirements of that Statement.

GASB Chairman David A. Vautt said, “This new guidance removes an impediment to complying with the GASB’s financial reporting requirements for governments participating in certain multiple-employer defined benefit pension plans. It also promotes enhanced consistency among those applying the standards.”

The new guidance in [GASB Statement No. 78, Pensions Provided through Certain Multiple-Employer](#)

Defined Benefit Pension Plans, assists these governments by focusing employer accounting and financial reporting requirements for those pension plans on obtainable information. In lieu of the existing requirements under Statement 68, the new guidance establishes separate requirements for employers that participate in these pension plans. Statement 78 establishes the criteria for identifying the applicable pension plans and addresses measurement and recognition of pension liabilities, expense, and expenditures; note disclosures of descriptive information about the plan, benefit terms, and contribution terms; and required supplementary information presenting required contribution amounts for the past 10 fiscal years.

[SIFMA Submits Comments to the MSRB on Notice 2015-22.](#)

SIFMA provides comments to the Municipal Securities Rulemaking Board (MSRB) on changes to MSRB rules to facilitate shortening the securities settlement cycle. The draft amendments are in response to a financial services industry-led initiative to shorten the regular way settlement for equities, corporate bonds, municipal bonds, and unit investment trusts from T+3 to T+2.

[Read the comments.](#)

December 10, 2015

[SIFMA Submits Comments to Congress on CRT.](#)

SIFMA provides comments to congress in strengthening the Federal Housing Finance Agency's (FHFA) efforts to implement private-sector credit risk transfer transactions (CRT) involving Fannie Mae and Freddie Mac.

SIFMA and its member firms strongly support Congress in their effort to restore significant levels of private capital participation in the extension of mortgage credit. Like many stakeholders, our industry seeks a mortgage market that balances access to credit with systemic stability and prudent underwriting.

[Read the comments.](#)

December 7, 2015

- [MSRB: New Compliance Advisory Available.](#)
- [Dealer Groups Want SEC to Disapprove MA Conduct Rule.](#)
- [Moberly, Missouri Class-Action Highlights Underwriters' Duties in Muni Offerings.](#)
- [NABL: Transportation Bill Allows Tax-Exempt Bonds for WIFIA.](#)
- [San Diegans for Open Government v. City of San Diego](#) - Court of Appeal holds that city redevelopment agency's successor agency - a joint powers authority formed by the city, the redevelopment agency, and the city housing authority - had the authority to enter into a lease-back financing plan adopted to fund public infrastructure improvements.
- And finally, we received proof this week that the plaintiff in [Not Afraid v. State](#) - Mr. Cyril Not

Afraid, Jr. – is perhaps taking his name a bit too literally. We'd advise remaining afraid of the following: climbing into cars driven by the highly intoxicated; driving 73 mph down a winding mountain road with a posted speed limit of 25 mph; letting that whole seat belt thing slip one's mind; concrete guardrails; windshields; the structural integrity of one's spinal column. In hindsight, probably should have been afraid of those.

MUNICIPAL CORPORATIONS - ARIZONA

[DBT Yuma, L.L.C. v. Yuma County Airport Authority](#)

Supreme Court of Arizona - November 24, 2015 - P.3d - 2015 WL 7444013

Sublessees of airport land brought breach of contract action against county airport authority and county.

The Superior Court granted summary judgment in favor of county. Sublessees appealed. The Court of Appeals affirmed. Review was granted.

The Supreme Court of Arizona held, as a matter of first impression, that airport authority was not county agent for purposes of imputed liability.

Statute treating nonprofit corporation that leased airport property from a county as an agency or instrumentality of the county did not establish a principal-agent relationship for imputed liability purposes between a governmental entity and its authorized airport authority, and, thus, statute did not make county airport authority an agent subjecting county to imputed liability for authority's alleged breach of sublease, particularly considering the airport authority's separate "body politic and corporate" status.

PUBLIC FINANCE - CALIFORNIA

[San Diegans for Open Government v. City of San Diego](#)

Court of Appeal, Fourth District, Division 1, California - November 20, 2015 - Cal.Rptr.3d - 2015 WL 7352188

Objector brought reverse validation action against city, city redevelopment agency's successor agency, a joint powers authority formed by the city and the redevelopment agency, and the city housing authority to challenge a lease-back financing plan adopted to fund public infrastructure improvements.

The Superior Court denied objector any relief. Objector appealed.

The Court of Appeal held that:

- Bonded debt held by joint powers authority did not trigger constitutional two-thirds vote requirement;
- Bonded debt held by joint powers authority did not require two-thirds vote under city charter; and
- Redevelopment agency's successor agency was authorized to enter into joint powers agreement.

Bonded debt held by a joint powers authority reconstituted by a city, the successor to the city's redevelopment agency, and the city's housing authority was not counted in determining whether the city violated the constitutional provision prohibiting cities from incurring any indebtedness

“exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the qualified electors,” even though the joint powers authority’s governing board was comprised exclusively of city council members, the joint powers authority had never owned tangible property, and the city’s annual financial report deemed the joint powers authority to be a “blended component unit” of the city pursuant to generally accepted accounting principles (GAAP).

A city charter provision stating that every “ordinance or resolution determining that the public interest or necessity demands” a municipal improvement authorized to be acquired, constructed, completed, or maintained by the city, “the cost of which will be too great to be paid out of the ordinary annual income and revenue,” shall require a vote of two-thirds of the voters in an election, did not require such a two-thirds vote for public infrastructure improvements funded by a joint powers authority’s bonded debt under a lease-back arrangement with the city.

City housing authority was authorized to enter into a joint powers agreement with city and city redevelopment agency’s successor agency to create a joint powers authority to finance public infrastructure improvements, even if the improvements were not housing projects.

The statutes providing that a redevelopment agency’s successor agency generally shall not “create new enforceable obligations or begin redevelopment work,” and setting forth the mandatory duties of successor agencies, did not preclude a successor agency from entering into a joint powers agreement with city and city housing authority to reconstitute a joint powers authority to finance public infrastructure improvements.

The statute providing that a redevelopment agency’s successor agency generally shall not “create new enforceable obligations or begin redevelopment work” did not prohibit the issuance of bonds by a joint powers authority reconstituted by a redevelopment agency’s successor agency, a city, and a housing authority.

LIABILITY - CALIFORNIA

[B.H. v. County of San Bernardino](#)

Supreme Court of California - November 30, 2015 - P.3d - 2015 WL 7708297

Child, through guardian ad litem, brought action against county, deputy sheriff, and others for failing to cross-report initial child abuse allegations to child welfare agency, in violation of the Child Abuse and Neglect Reporting Act (CANRA).

The Superior Court granted county’s and deputy sheriff’s motion for summary judgment based on immunity. Child appealed, and the Court of Appeal affirmed. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that:

- County sheriff’s department had a duty under CANRA to inform child welfare agency of initial 911 emergency phone call in which nonmandated reporter noted possible abuse of child, and
- Deputy sheriff investigating initial report of potential child abuse did not have a duty as a mandated reporter under CANRA to make additional reports about the same incident, disapproving *Alejo v. City of Alhambra*, 75 Cal.App.4th 1180, 89 Cal.Rptr.2d 768.

REDEVELOPMENT AGENCY - CALIFORNIA

[County of San Bernardino v. Cohen](#)

Court of Appeal, Third District, California - November 30, 2015 - Cal.Rptr.3d - 2015 WL 7717217

County petitioned for a writ of mandate to challenge the Department of Finance's rejection of repayment of county's loan to county's former redevelopment agency. The Superior Court denied petition. County appealed.

The Court of Appeal held that:

- Department of Finance's rejection of repayment of county's loan to former redevelopment agency was not a reallocation of local tax revenues in violation of the state constitution, and
- Redevelopment agency's agreement to repay county for loan was unenforceable under Dissolution Law.

Department of Finance's rejection of repayment of county's loan to county's former redevelopment agency did not constitute a reallocation of local tax revenues in violation of the state constitution, since the money loaned to the former redevelopment agency did not retain its character as tax revenue, absent evidence that the loan agreement attached contingencies to the redevelopment agency's use of the proceeds.

Under the statute providing that "enforceable obligations" of former redevelopment agencies include loans of moneys borrowed by the redevelopment agency but exclude any agreements, contracts, or arrangements with the city or county that created the redevelopment agency, the overriding provision is the one limiting the definition of "enforceable obligation," and thus a contract to borrow money from the city or county that created the redevelopment agency is not an "enforceable obligation."

Under the statute providing that "enforceable obligations" of former redevelopment agencies exclude any agreements, contracts, or arrangements with the city or county that created the redevelopment agency, a redevelopment agency's agreement to repay a loan to the county that created the agency was unenforceable, even if the ratepayers were third party beneficiaries of the agreement, since the ratepayers would have benefited only incidentally from the performance of the agreement.

UTILITIES - FLORIDA

[City of Fort Pierce v. Australian Properties, LLC](#)

District Court of Appeal of Florida, Fourth District - November 12, 2015 - So.3d - 2015 WL 7245219

Property owners brought action against city to challenge city's levy of fees for stormwater management services. The Circuit Court granted owners' motion to certify class. City appealed.

The District Court of Appeal held that action was barred by statute of limitations. Four-year limitations period for property owners to challenge city's levy of fees for stormwater management services began to run when ordinance was enacted, rather than running anew with each annual assessment. Utility fee was akin to a special assessment.

BENEFITS - GEORGIA

[Georgia Dept. of Community Health v. Neal](#)

Court of Appeals of Georgia - November 20, 2015 - S.E.2d - 2015 WL 7306180

Public school employee filed an action seeking class certification on behalf of Gold and Silver members of the State Health Benefits Plan ("SHBP") for 2014. The complaint alleged that the Georgia Department of Community Health ("the Department") breached its contract with these members when it retroactively eliminated the three tiers of coinsurance for healthcare services and instead combined them into a single schedule of co-payments, adding co-payments for pharmacy benefits and certain medical visits, and also refused to reduce premiums.

The Department moved to dismiss on the ground of sovereign immunity, but the trial court denied the motion on the ground that the Plan documents, read with relevant statutes and regulations, created a written contract that established a waiver of sovereign immunity.

The Court of Appeals reversed, holding that:

- SHBP plan documents did not create contract, and thus, claim for breach of contract did not come within waiver of sovereign immunity based on written contract entered into by State, departments, or agencies;
- Regulation authorizing Department to terminate coverage for any group that contracted with State for SHBP coverage did not create contract with State; and
- "Definitions" provision of regulations governing SHBP did not create contract.

UTILITIES - MISSOURI

[Staff of Missouri Public Service Commission v. Consolidated Public Water Supply District C-1 of Jefferson County, Missouri](#)

Missouri Court of Appeals, Western District - November 17, 2015 - S.W.3d - 2015 WL 7253149

The Public Service Commission issued a report and order concluding that the Consolidated Public Water Supply District C-1 of Jefferson County, Missouri (CPWSD) and the City of Pevely violated section 247.1721 by failing to submit to the Commission for approval a written contract addressing the provision of water services. The Commission ordered CPWSD and Pevely to submit a territorial agreement to the Commission for approval.

CPWSD appealed, arguing that section 247.172 did not apply to its agreement with Pevely, and that in any event, the Commission lacked jurisdiction and statutory authority to determine whether the agreement violated section 247.172 and to order CPWSD and Pevely to submit a territorial agreement for Commission approval.

The Court of Appeals held that:

- The Commission had no statutory authority to determine whether an agreement between a public water supply district and a municipally owned utility is unlawful; and
- The Commission had no authority to order a public water supply district and a municipally owned utility to submit an agreement regarding the provision of water services to the Commission for approval.

LIABILITY - MONTANA

[Not Afraid v. State](#)

Supreme Court of Montana - December 1, 2015 - P.3d - 2015 WL 7738299 - 2015 MT 330

Passenger, who was paralyzed after being ejected from vehicle driven by intoxicated and speeding driver on a steep, winding, narrow road, brought action against state, county, and city, alleging negligence in placement, installation, and maintenance of concrete barriers. The District Court entered summary judgment in favor of defendants. Passenger appealed.

The Supreme Court of Montana held that:

- Passenger was required to produce expert testimony to establish the standard of care by which to measure defendants' actions, and
- Passenger failed to establish degree of prudence, attention, and caution that county exercised in placing and installing the barriers.

Passenger, who was injured in single-vehicle accident and was required after summary judgment burden shifted to establish with substantial evidence that genuine issues of material fact existed regarding essential elements of passenger's negligence claims, was required to produce expert testimony to establish the standard of care by which to measure the actions of state, county, and city with regard to placement, installation, and maintenance of concrete barriers where accident occurred. Expert testimony would have assisted in determining whether defendants' placement, installation, and maintenance of the barriers kept road reasonably safe.

There was no evidence as to standard of care that applied to city's maintenance of concrete barriers along sharp curve on steep, winding, narrow road, and thus city could not be held liable for injuries that automobile passenger sustained when automobile went over barriers and down steep hillside.

PUBLIC RECORDS - OHIO

[State ex rel. DiFranco v. S. Euclid](#)

Supreme Court of Ohio - December 2, 2015 - N.E.3d - 2015 WL 7766690 - 2015 -Ohio- 4915

Public records requester sought writ of mandamus compelling city to produce records. The Court of Appeals granted summary judgment to city after it produced the records, and, after remand from the Supreme Court awarded damages. Requester filed a motion for sanctions against city and its counsel, which the Court of Appeals denied. Requester appealed.

The Supreme Court of Ohio held that:

- Deadline for bringing motion was 30 days after the Court of Appeals' final order on the merits, and
- City did not engage in frivolous conduct.

Deadline for bringing motion for sanctions in public records requester's mandamus action was 30 days after entry of final order on merits in Court of Appeals, and therefore requester's motion filed after appeal and remand from Supreme Court on issue of statutory damages and attorney's fees was untimely, where requester's appeal to Supreme Court did not involve merits.

City did not engage in "frivolous conduct," as required to support award of attorney's fees as

sanction, by asserting in mandamus action it had produced all public records responsive to request and later producing more documents when requester presented affidavit of accountant asserting that additional documents must have existed. City cooperated with accountant to determine what documents accountant considered still outstanding and produced those documents, and city did not deny accountant's conclusions or continue to claim that all documents had been produced when faced with evidence that some documents were still outstanding.

AMBULANCE FEES - WEST VIRGINIA

[Randy Waugh/Waugh's Mobile Home Park v. Morgan County Emergency Medical Services Bd., Inc.](#)

Supreme Court of Appeals of West Virginia - November 4, 2015 - S.E.2d - 2015 WL 6829826

The Circuit Court of Morgan County ruled in favor of the Morgan County Emergency Medical Services Board, Inc. in the Board's action against the owner of a mobile home park for the collection of delinquent special emergency ambulance service fees. Owner appealed.

The Supreme Court of Appeals of West Virginia held that:

- A county commission may impose and collect special emergency ambulance service fees;
- An ambulance authority created by a county commission may bring a civil action to collect special emergency ambulance service fees; and
- An emergency ambulance service fee that taxes each household regardless of the number of members \$25 a year to support ambulance services succeeds in tying the burden of the fee to the usage of the service in a sufficiently reasonable way and is valid, lawful and enforceable.

[Register for Fitch Teleconferences: U.S. Public Finance 2016 Outlooks.](#)

[Transportation 12/9, 2pm EST](#)

[Education & Nonprofits 12/10, 2pm EST](#)

[Public Power, Water & Sewer 12/11, 11am EST](#)

[Blending Capital: How Impact Investing Can Advance Economic Development Finance.](#)

Blending Capital: How Impact Investing Can Advance Economic Development Finance

December 15, 2015 @ 1:00 pm Eastern

CDFA has jointly partnered with the Initiative for Responsible Investment and Mission Investors Exchange to explore the potential for alignment between foundations and traditional economic development finance agencies. How might small investments from foundations be made in existing and proven development finance programs to leverage or advance social, community, and economic priorities? During this installment of the CDFA // BNY Mellon Development Finance Webcast Series,

learn about a new research initiative at CDFA and hear our expert panel discuss how partnerships can be developed to create guarantees, credit enhancements, or capital access programs with foundation-related impact investments through state and local development finance agencies.

Moderator

Rena Nakashima
Senior Product Manager
The Bank of New York Mellon

Speakers

Toby Rittner
President & CEO
Council of Development Finance Agencies

Robin Hacke
Senior Fellow
The Kresge Foundation

David Wood
Director
Initiative for Responsible Investment

[REGISTER.](#)

Fitch Takes Rating Actions on U.S. Availability Projects; Applies Revised Criteria.

Fitch Ratings-New York-07 December 2015: Fitch Ratings has taken rating actions on its U.S. portfolio of Availability Payment project financings following the recent publication of its revised 'Rating Criteria for Availability-Based Projects' on Oct. 14, 2015. Fitch's actions on its European Availability Payment portfolio are covered in a separate release published on Dec. 3, 2015.

The rating actions taken include four upgrades (three public and one private) and two affirmations based on Fitch's assessment of cost risk, realistic outside cost (ROC) stresses, indicative debt service coverage ratio (DSCR) thresholds, breakeven cost analysis as well as completion risk where applicable. In addition, Fitch upgraded one credit due to counterparty credit strength.

Full List of Rating Actions::

Treasurer of State (Ohio):

-Portsmouth Gateway Group, LLC (PGG) (Portsmouth Bypass project) upgraded to 'A-' from 'BBB';

Indiana Finance Authority:

-WVB East End Partners LLC (Ohio River Bridges East End Crossing project) upgraded to 'BBB+' from 'BBB';

New Jersey Economic Development Authority:

-NYNJ Link Borrower LLC (Goethals Bridge Replacement project) upgraded to 'BBB' from 'BBB-';

Regional Transportation District:

-Denver Transit Partners, LLC (Eagle project) upgraded to 'A-' from 'BBB-';

Indiana Finance Authority:

-I-69 Development Partners LLC (I-69 Section 5 project) affirmed at 'BBB';

Kentucky Economic Development Finance Authority:

-KentuckyWired Infrastructure Company, Inc. (Next Generation Kentucky Information Highway project) affirmed at 'BBB+'.

The Rating Outlook on all credits is Stable.

A brief rationale for each of the rating actions is described below. In addition, Fitch has also assigned public sector counterparty ratings for each availability payment project using its 'Rating Public Sector Obligations in PPP Transactions' criteria published on July 23, 2015, with description of the rationale for these actions also below.

Portsmouth Gateway Group, LLC (PGG) (Portsmouth Bypass Project)

Project Rating

The upgrade to 'A-' from 'BBB' reflects Fitch's Stronger assessment of the project's exposure to cost risk under Fitch's revised availability criteria with an all cost breakeven of 81%, which translates into a ROC multiple of over 16x given the low operating responsibilities of this project. The overall Stronger cost risk assessment is derived from Stronger assessments for scope risk and cost predictability and a Midrange assessment of cost volatility & structural protections. The rating further reflects the experience of the managing partner of the design-build joint venture (DBJV), Dragados USA (parent company Dragados, S.A., the construction arm of ACS Group), and the project's sizable security package that covers the worst-case replacement cost scenario. Once operational, the project will benefit from a strong revenue counterparty, the Ohio Department of Transportation (ODOT), and relatively low complexity operation, maintenance, and lifecycle requirements with the ability to withstand financial stresses.

The rating action applies to the following debt issuances:

— Treasurer of State's (Ohio) approximately \$227 million of senior private activity bonds (PABs), series 2015 on behalf of Portsmouth Gateway Group, LLC;

-Approximately \$208 million subordinate Transportation Infrastructure Finance and Innovation Act (TIFIA) loan to Portsmouth Gateway Group, LLC.

Grantor Rating

Fitch has assigned a PPP Grantor Counterparty rating of 'A+' with a Stable Outlook to the ODOT's Portsmouth Bypass project payment obligations. The credit quality of ODOT's counterparty obligation, two notches below the grantor Issuer Default Rating (IDR), reflects Midrange financial and legal attributes of the financing. ODOT receives large statutorily-determined allocations of motor fuel tax revenues and is not overly leveraged. Its capacity to make payments for this financing from its annual resources is strong.

WVB East End Partners LLC (Ohio River Bridges East End Crossing Project)

Project Rating

The upgrade to 'BBB+' from 'BBB' reflects Fitch's Midrange assessment of the project's exposure to cost risk under Fitch's revised availability criteria with an all cost breakeven of 64% which translates into a ROC multiple of over 8x. The overall Midrange cost risk assessment is derived from Midrange assessments to scope risk, cost predictability, and cost volatility & structural protections. In addition, the rating reflects the strength of the DBJV, which includes Walsh Construction and Vinci S.A. (rated by Fitch 'BBB+' / Outlook Stable), the progress to-date in construction with expected completion remaining on schedule and on budget despite slight delays on the tunnel portion of the project. The project also benefits from availability and milestone payments during construction and operation from a highly rated counterparty, the Indiana Finance Authority (IFA).

The rating action applies to the following debt issuances by the IFA on behalf of WVB:

- \$482.3 million series 2013A (long-term private activity bonds [PABs]);
- \$194.5 million series 2013B (short-term PABs).

Grantor Rating

Fitch has assigned a PPP grantor counterparty rating of 'AA' with a Stable Rating Outlook to the IFA's payment obligations for the Ohio River Bridges project. IFA's counterparty obligations are intentionally structured nearly identically to the authority's commitments for appropriation-backed debt issued on behalf of Indiana. There are parallel legal documents using similar language. Fitch views IFA and Indiana's reporting of the obligations as mixed relative to the criteria assessment, and still evolving. Availability payment PPP structures are still relatively new in the state.

NYNJ Link Borrower LLC (Goethals Bridge Replacement Project)

Project Rating

The upgrade to 'BBB' from 'BBB-' reflects Fitch's Midrange assessment of the project's exposure to cost risk under Fitch's revised availability criteria. In addition, the rating also considers the current stage of construction as well as an all cost breakeven of 62% which translates into a ROC multiple of over 8x. The overall Midrange cost risk assessment is derived from Midrange assessments of scope risk and cost volatility and a Stronger assessment of cost predictability & structural protections. The rating further reflects the project's construction progress remaining on schedule and with sufficient funding to achieve completion prior to the long-stop date. Once operational, the project will receive a stable revenue stream from a highly rated revenue off-taker in the Port Authority of New York and New Jersey.

The rating action applies to the following debt issuances:

- \$460.9 million PABs issued by the New Jersey Economic Development Authority on behalf of NYNJ Link Borrower LLC;
- \$473.6 million (excluding capitalized interest) TIFIA loan to NYNJ Link.

Grantor Rating

Fitch has assigned an 'A' rating with a Stable Outlook to the Port Authority of New York and New Jersey's (Goethals Bridge Counterparty) rating. The rating considers the various operation and maintenance (O&M), developer finance arrangement (DFA) and capital maintenance (CM) payment obligations to NYNJ Link LLC (NY) as defined under the concession agreement relating to the Goethals Bridge renewal project. This rating considers the terms of the various payment streams in their totality vis-a-vis their priority within the Port Authority's Consolidated Bond Resolution. The specification of CM and DFA payments as subordinated special obligations is a key rating factor.

Denver Transit Partners, LLC (Eagle Project)

Project Rating

The upgrade to 'A-' from 'BBB-' reflects a direct link to the rating of Fluor Corporation (rated by Fitch 'A-/Outlook Stable), the project's contractor and operator, which guarantees completion, as well as O&M and lifecycle endeavors. If Fluor was to be downgraded or the guarantee was to go away, the rating of the project would likely be downgraded. Fitch has assessed the project's exposure to cost risk as Midrange under Fitch's revised availability criteria, and this cost risk assessment was derived from Midrange assessments of scope risk, cost predictability, and cost volatility & structural protections. The project also benefits from availability payments from a highly rated counterparty, the Regional Transportation District (RTD).

The rating action applies to the following debt issuance by the Regional Transportation District (RTD) on behalf of DTP:

-\$398 million in tax exempt PABs, series 2010.

Grantor Rating

Fitch has assigned a PPP Grantor Counterparty rating of 'A-' with a Stable Outlook to RTD's payment obligations for the Denver Eagle P3 Project. Voter approved sales tax revenues provide a stable revenue stream but the TABOR portion service payment is subordinate to RTD's senior lien bonds and FasTracks bonds (rated 'AA+' and 'AA', respectively, both with Stable Outlooks) and the non-TABOR portion is on parity with RTD's appropriations for O&M and Certificates of Participation (rated 'A-/Outlook Stable').

I-69 Development Partners LLC (I-69 Section 5 Project)

Project Rating

The rating affirmation at 'BBB' reflects Fitch's Midrange assessment of the project's exposure to cost risk under Fitch's revised availability criteria with an all cost breakeven of 91%, which translates into a ROC multiple of over 12x. The overall Midrange cost risk assessment is derived from Midrange assessments of scope risk and cost volatility and a Stronger assessment of cost predictability & structural protections. The project benefits from a strong availability-based revenue profile and debt service coverage ratio (DSCR) profile that provides cushion against the risk of higher operating and lifecycle cost than forecast. Despite financial metrics that indicate the potential to be rated higher the project is currently capped at the 'BBB' level by completion risk given the credit strength of the contractor and security package. The project also benefits from availability and milestone payments during construction and operation from a highly rated counterparty, the Indiana Finance Authority (IFA).

The rating action applies to the following debt issuances by the IFA on behalf of I-69 Development Partners LLC:

-Approximately \$3.53 million PABs serial bonds, due 2017;

-Approximately \$240.32 million term PABs, due over various maturities no later than 2046.

Grantor Rating

Fitch has assigned a PPP grantor counterparty rating of 'AA' with a Stable Outlook to the Indiana Finance Authority's (IFA's) payment obligations. IFA's counterparty obligations are intentionally

structured nearly identically to the authority's commitments for appropriation-backed debt issued on behalf Indiana. There are parallel legal documents using similar language. Fitch views IFA and Indiana's reporting of the obligations as mixed relative to the criteria assessment, and still evolving. Availability payment PPP structures are still relatively new in the state.

KentuckyWired Infrastructure Company, Inc. (Next Generation Kentucky Information Highway Project)

Project Rating

The rating affirmation of 'BBB+' reflects Fitch's Stronger assessment of the project's exposure to cost risk under Fitch's revised availability criteria with a breakeven of 42%, which translates to a breakeven of over 5x. The overall Stronger cost risk assessment is derived from Stronger assessments of scope risk, cost predictability, and cost volatility & structural protections. The rating further reflects the project's adequate security package and experienced contractors completing a relatively low-risk project. A stable revenue profile is expected due to modest performance requirements and a fully indexed revenue component under the availability-based contract with a highly rated commitment from the Commonwealth of Kentucky (the Commonwealth). The project is able to withstand prolonged financial stresses during the operating phase due to the market-based repricing of the O&M contract every 10 years.

The rating action applies to the following debt issuances by the Kentucky Economic Development Finance Authority on behalf of the KentuckyWired Infrastructure Company, Inc.:

- Approximately \$232 million senior tax-exempt revenue bonds series 2015A;
- \$58 million senior taxable revenue bonds series 2015B-1 & 2015B-2.

Grantor Rating

Fitch previously assigned a PPP Grantor Counterparty rating of 'A' with a Stable Outlook to the Commonwealth of Kentucky's payment obligations under the Kentucky Wired transaction. Project Agreement terms, including termination provisions and eventual Commonwealth ownership of the asset, clearly establish the significance of Kentucky's commitment for availability and milestone payments. However, Fitch views the commitment as slightly weaker than that for general fund supported appropriation debt, supporting the one notch distinction with the rating on those bonds ('A+' / Outlook Stable). The executive and legislative branches have both demonstrated support for the specific project and the Commonwealth's use of PPP procurements through specific statutory, budgetary, and administrative actions.

RATING SENSITIVITIES

These rating actions purely reflect the update to Fitch's rating criteria, with the exception of Denver Eagle P3. As such the rating sensitivities remain unchanged from Fitch's previous publications. (For additional details, see:

- 'Fitch Rates Portsmouth Gateway Group's Sr. PABS & Sub. TIFIA Loan 'BBB'; Outlook Stable', dated April 7 2015;
- 'Fitch Affirms Indiana Finance Authority's Revs at 'BBB'; Outlook Stable', dated Feb. 27, 2015
- 'Fitch Affirms New Jersey Economic Development Authority PABs at 'BBB-', Outlook Stable', dated May 29, 2015;
- 'Fitch Affirms Regional Transportation Dist, CO's PABs at 'BBB-'; Outlook Stable', dated May 27, 2015;
- 'Fitch Assigns Indiana Finance Auth's PABs 'BBB' Rating; Outlook Stable', dated July 23, 2014;

-‘Fitch Rates KentuckyWired Infrastructure Company, Inc.’s Senior Debt’, dated Sept. 3, 2015.

The rating for the Denver Eagle P3 project is tied to the guarantee from Fluor and therefore additional sensitivities as described in the rationale above would apply.

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[Fitch Replay: USPF Nonprofit Healthcare 2016 Outlook.](#)

Fitch Ratings hosted a teleconference on Friday, December 4th to discuss the outlooks for the US Healthcare sector. Presenter Jim LeBuhn shared insights on key issues for 2016.

Key insights will include:

- Improving liquidity and leverage position cushion greater operating variability
- Impact of changing reimbursement deferred but not diminished
- Need for size and scale increasingly important

[Listen to the teleconference replay.](#)

[Updated GASB Codification and GARS Online to be Released in March 2016.](#)

Release of the latest edition of the Governmental Accounting Standards Board’s Codification and Original Pronouncements and the June 2015 update to the Governmental Accounting Research System and GARS Online has been delayed until March 2016.

This delay results from the need to extensively revise the Codification to conform to the simplified structure of the GAAP hierarchy as defined by GASB Statement 76. The new Codification will consist of two categories of authoritative GAAP, compared to four previous categories: Category A (Statements) and Category B (Technical Bulletins, Implementation Guides, and AICPA guidance cleared by the GASB). The objective of the new hierarchy is to enable state and local governments to more easily identify the appropriate standard for a given circumstance.

We appreciate your patience and hope that you will find the enhanced documents and GARS update to be valuable resources.

Dealer Groups Want SEC to Disapprove MA Conduct Rule.

WASHINGTON - Two dealer groups are urging the Securities and Exchange Commission to disapprove the Municipal Securities Rulemaking Board's proposed municipal advisor core conduct rule, despite an amendment that would provide an exception to the rule's controversial principal transaction ban.

The Securities Industry and Financial Markets Association and Bond Dealers of America told the SEC in a comment letter that the exception to Rule G-42 is unworkable and would be overly burdensome. The Government Finance Officers Association also said in a letter to the commission that it doesn't support the rule and wants more clarification.

Leslie Norwood, associate general counsel and co-head of municipal securities for SIFMA, said the MSRB's changes to the principal transaction ban show the board "has acknowledged that it must move toward a more workable construct that will protect municipal entities while not unnecessarily increasing their costs." However, she added that, even though SIFMA wants to see the Rule G-42 rulemaking process completed, the exception is not appropriately tailored to be useful for municipal advisors and would include a number of procedural and operational burdens that will not help issuers or other municipal entities.

The SEC first published Rule G-42 for comment on May 8 and asked for an extra 90 days on Aug. 6 to make a decision. The MSRB then published revisions to the rule and responded to earlier comments on Aug. 12, before ultimately filing its second set of revisions, concerning the principal transaction ban, on Nov. 9.

Under the original and pending rule, MAs would owe a fiduciary "duty of loyalty" to their municipal issuer clients and would be required "without limitation ... to deal honestly and with the upmost good faith with a municipal entity and act in the client's best interests without regard to [their] financial or other interests."

The rule also mandates a less stringent "duty of care" for all clients that requires MAs to: exercise due care in their work; be qualified to provide advisor services; make a "reasonable inquiry" into the facts relevant to a client's request before deciding whether to proceed; and undertake a "reasonable investigation" to determine their advice is not based on bad information.

The initial proposed rule would have prevented an MA from acting as a principal in a transaction with a muni issuer client that is directly related to a transaction on which the MA is providing advice.

That drew complaints from muni market groups. The MSRB then proposed an exception that would

lift the ban if an MA is a registered broker-dealer under the Securities and Exchange Act of 1934 and the account it wants to use the exception for is a brokerage account subject to that act, as well as to the rules of the self-regulatory organization of which it is a member. An MA also could only employ the exception if it uses its investment discretion on a temporary or limited basis, at its clients' discretion. The exception would further only apply to sales to, or purchases from, a municipal client of U.S. Treasury securities, agency debt securities, or corporate debt securities. The MSRB crafted the exception from procedures under which investment advisors are allowed to engage in principal transactions with clients.

If an MA meets the MSRB's basic requirements for the exception, it can then choose whether to get an issuer's written consent on a transaction-by-transaction basis or it can meet six requirements and get oral consent from the issuer for an indefinite number of transactions. If the MA chooses to obtain the exception on a transaction-by-transaction basis, then it must tell its municipal client in writing the capacity in which it is acting and get the client's informed written consent, either before executing the transaction or after execution but before settlement.

The six requirements for obtaining the exception for an indefinite number of transactions include the following. Neither the MA nor any of its affiliates can be the issuer or underwriter of a security that is the subject of the principal transaction. The MA also must get an executed written, revocable consent from its municipal client that would prospectively authorize it to directly or indirectly act as principal for its own account in selling a security to, or purchasing a security from, the client. The written consent must be obtained after the MA explains to the client in writing the circumstances under which it may engage in principal transactions, the nature and significance of conflicts with the client's interests and how it will address those conflicts.

The MA must inform its client either orally or in writing of the capacity in which it may act and get the client's consent either orally or in writing before executing each subsequent principal transaction. The MA also must send a written confirmation to the client saying that it disclosed that it may be acting in a principal capacity, the client authorized the transaction, and that the MA sold or bought the security for its own account.

Finally, MAs would be, at least annually, required to send clients a list of all executed transactions in the client's account that relied on the exception, complete with the date and price. Each written disclosure would also have to include a statement about the client's ability to revoke its consent without penalty at any time by written notice.

The market groups criticized the complexity of the exception, particularly the six requirements for blanket consent. Norwood also said the exception only addresses one of SIFMA's concerns, the ban's effect on fixed income securities, while avoiding the issue of complying with the relationship documentation and conflict disclosure requirements in the proposed rule. She added other SIFMA concerns, like those over the requirement that an MA investigate the accuracy of client representations, are still unaddressed. The Investment Company Institute has repeatedly raised concerns about the client representations portion of the rule and also filed a comment letter on the MSRB's revisions to the exception from the principal transaction ban.

Mike Nicholas, BDA's chief executive officer, said that while BDA recognizes the MSRB used the investment advisors procedures as a base, the exceptions "do not take into consideration the vast differences between brokerage operations and investment advisory operations."

Both Norwood and Nicholas took issue with the six requirements an MA would have to meet to be able to obtain blanket consent from the issuer to escape the ban for an indefinite number of transactions.

"The blanket consent alternative's requirement to obtain additional transaction-by-transaction consent totally undermines the utility of obtaining advance written consent, and presents challenging issues of documentation and recordkeeping," Norwood said.

She also said the exception should apply beyond registered broker-dealers and brokerage accounts and include MAs as well as affiliates that are either registered or acting under an exemption from registration, such as banks. SIFMA additionally is asking that the exception be available to affiliates of MAs and include the sales of money market instruments and municipal escrow investments.

Dustin McDonald, director and federal liaison for GFOA, reiterated GFOA's concern that the transaction ban could increase the costs issuers pay to their advisors.

"All of these restrictions and added costs will make it likely that even more firms will decide simply to not handle investments of bond proceeds or require their municipal entity clients to open more expensive advisory accounts," McDonald said. He also raised several questions to assess the workability of the transaction-by-transaction option the MSRB put forward as part of its exception from the ban on principal transactions.

National Association of Municipal Advisors executive director Susan Gaffney said there is a lot of due diligence on the disclosure of relationships in the rule, which in the past, "has not worked very well" with regard to MSRB Rule G-23 on financial advisor activities. For that reason, she said NAMA would like to "make sure that those standards are as robust as possible" to ensure all parties, but especially issuers, are protected.

THE BOND BUYER

BY JACK CASEY

DEC 2, 2015 3:35pm ET

Muni Pros Scold P.R. For Lack of Financial Disclosure.

Municipal investors said Puerto Rico's \$355 million Government Development Bank note payment and claw-back debt management plan did little to resolve the island's debt crisis.

Buyside experts on Wednesday said the commonwealth remains in a precarious situation, as a now-crucial \$1 billion debt service payment looms on Jan. 1. Some said Tuesday's plan merely postpones an inevitable default, while jeopardizing future payments to some bond holders by clawing back revenue from lower-tier debt to pay general obligations.

"It's robbing Peter to pay Paul," said Alexandra Lebenthal, co-chief executive officer at Lebenthal Holdings in New York City. "If I'm Peter I'm not very happy."

James T. Colby III, senior municipal strategist and portfolio manager at Van Eck Global, which owns a variety of Puerto Rico credits in two municipal high-yield exchange traded funds, said the firm viewed Gov. Alejandro Garcia-Padilla's testimony to Congress this week with "heightened sensitivity" to the potential repercussions for the debt.

"While we were encouraged by the near-term decision to make payment and meet their near-term obligations, by failing to give greater clarity on any plan for addressing their cash needs — save the

comment about a possible 'claw back' to provide some working capital — holders such as ourselves were left no better off than 24 hours earlier," Colby said on Wednesday afternoon. "We are left to wonder if this gesture was one of recognition of the GO full faith and credit pledge or just the play of a bargaining chip."

Others reiterated the need for increased financial disclosure.

Even though the commonwealth has the ability to claw-back revenue to secure the repayment of general obligation debt service, Peter Delahunt, managing director at Raymond James & Associates, said there needs to be more clarity as Puerto Rico manages its future debt responsibilities and strives to recover from its overall fiscal malaise.

"What is unclear is an actual audited accounting of the commonwealth's finances," Delahunt told The Bond Buyer, noting that the commonwealth has not produced audited financial statements for the past two fiscal years. "The lack of audited financials discredits the accuracy of the commonwealth's recent Financial Information and Operating Data Report, which was reinforced last week when the administration published an Errata Notice that disclosed this report had included erroneous data," Delahunt said.

"Claims have been made that the report overstates the commonwealth's general fund debt service burden by as much as 30% to 60%," Delahunt continued.

"The lack of audited numbers enables a good deal of ambiguity. Until the ambiguity is cleared up, a proper debate for resolution is pointless," he said.

Michael Comes, a portfolio manager and vice president of research at Cumberland Advisors, said the actions of the commonwealth reflect "one step in many of the process by which Puerto Rico will deleverage its balance sheet and shore up its liquidity in the absence of an orderly resolution process."

The firm only owns P.R. debt insured by Assured Guaranty and MBIA, Comes said. He said there is concern in the market over the Jan. 1 payments as well as other future debts.

"I don't think they're going to be able to make the payment," Comes said. "They simply do not have the money. The collective unwillingness of creditors and the issuer to achieve consensus has led to a worse outcome than if they had."

While the commonwealth is faced with limited liquidity, it also must place a high priority on providing services to its citizens, said Peter Hayes, head of the Municipal Bonds Group at BlackRock Inc., which oversees \$111 billion in municipal assets and does not own the direct debt of Puerto Rico in its municipal funds.

"This means that it will be more difficult to find sources of funds going forward, making each payment date more tenuous, particularly as markets are closed to them," he said. "Puerto Rico is clearly trying to pay debt service and avoid litigation, while buying time for consensual negotiations."

Overall, municipal experts agreed the negatives still outweigh positives for Puerto Rico investors.

"For those credits subject to the claw back, this is clearly a negative credit event - but one that is already being factored into current pricing levels," Jeffrey Lipton, managing director and head of municipal research and strategy at Oppenheimer & Co. said.

He said while the executive order comes as no surprise and is consistent with the governor's prior statements and actions, it also underscores the severity of the commonwealth's liquidity crisis.

At the same time, he said, "it is very difficult to gauge just how serious the cash erosion is given the transparency issues and systemic shuffling of monies that have been characteristic of Puerto Rico for many years."

Hayes said the commonwealth will need to suspend payments for other issuers in the future, unless there is "a quick settlement with bondholders on a restructuring that includes postponing debt service payments." He said such a solution seems unlikely.

"Time is running out and the current debt levels are unsustainable," Lipton said.

"Without broad restructuring capability or access to Chapter 9, the only course of action would be to pursue a PREPA-like restructuring, which as we know has consumed a great deal of time and expense," Lipton said. He referred to the Puerto Rico Electric Power Authority's efforts for more than a year to complete a business and debt agreement.

"Multiplying this by several more credits will likely create much greater uncertainty," Lipton added.

THE BOND BUYER

BY CHRISTINE ALBANO

DEC 2, 2015

[NABL: Gift Restrictions Coming in May 2016.](#)

The MSRB has received approval from the Securities and Exchange Commission (SEC) to amend [MSRB Rule G-20](#) to address conflicts of interest that may arise from gift-giving in connection with municipal advisory activities. Amended MSRB Rule G-20 restricts the gifts, gratuities and non-cash compensation given by municipal advisors to issuers in their professional capacities. The new regulation, which is effective on May 6, 2016, represents another important milestone in the development of a comprehensive regulatory framework for municipal advisors in accordance with the MSRB's expanded mandate under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

[View the regulatory notice.](#)

[View the new rule.](#)

[MSRB: New Compliance Advisory Available.](#)

The MSRB recently published its 2016 Compliance Advisory for Municipal Advisors as part of an ongoing effort to assist municipal advisors with understanding and implementing new regulations. The advisory highlights compliance risks and provides an overview of currently effective rules, examples of conduct violations and factors municipal advisors should consider when evaluating their compliance programs.

[Read the 2016 Compliance Advisory for Municipal Advisors.](#)

NABL: Transportation Bill Allows Tax-Exempt Bonds for WIFIA.

The House and Senate passed and sent to the President this week the Conference Report on H.R. 22, the Fixing America's Surface Transportation Act or FAST Act. Section 1445 of the Act repeals Section 5028(a)(5) of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 3907(a)(5)), which prohibits the use of tax-exempt and tax credit bonds in conjunction with the Water Infrastructure Finance and Innovation Act (WIFIA), a new program administered by EPA similar to the better-known transportation program TIFIA. The President has said he will sign the bill.

More information on WIFIA is available [here](#).

The text of the H.R. 22 is available [here](#).

Tribal Economic Development Bonds: Use of Volume Cap for Draw-down Loans.

Notice 2015-83 provides special rules regarding the process for allocation of the available amount of national volume cap for tax-exempt tribal economic development bonds under § 7871(f) of the Internal Revenue Code (TEDBs) for bonds issued under a "draw-down" loan structure in which the lender advances funds for the loan on different dates. The notice allows additional time to use allocated volume cap for issuance of TEDBs as draw-down loans if an issuer meets certain requirements.

Notice 2015-83 will be in IRB 2015-51, dated December 21, 2015.

[Read the Notice.](#)

S&P's Public Finance Podcast (Rating Activity for the Week Slows as 2015 Winds Down).

In this week's segment of Extra Credit, Senior Director Dave Hitchcock explains our recent outlook revision on Massachusetts, and Directors Helen Samuelson and Nick Waugh discuss our rating changes affecting the City of Chicago Sales Tax Revenue Bonds and Boston University, respectively.

[Listen to the Podcast.](#)

Dec. 4, 2015

Megaland GP, L.L.C. v. Franklin Cty. Bd. of Revision

Supreme Court of Ohio - December 3, 2015 - N.E.3d - 2015 WL 7766712 - 2015 -Ohio- 4918

City's board of education appealed interim order of the Board of Tax Appeals (BTA) denying board's motion to reassign case regarding valuation of landowner's property to BTA's regular docket from its small-claims docket.

The Supreme Court of Ohio held that:

- The Supreme Court had jurisdiction to consider challenge to interim order, and
- Board was not "a party that is a taxpayer" under statute requiring reassignment of certain cases upon taxpayer's request.

Supreme Court had jurisdiction to consider city board of education's claim that interim order from Board of Tax Appeals (BTA) erroneously denied board's motion to reassign case regarding valuation of landowner's property to BTA's regular docket from its small-claims docket. Board had substantial right to participate in landowner's BTA appeal by virtue of its status as countercomplainant below, and BTA's retention of case on small-claims docket effectively foreclosed any appeal from ultimate BTA decision, preventing possibility of board's position being vindicated on later appeal. (Per curiam, with three justices concurring and one justice concurring in judgment only.)

City board of education was not "a party that is a taxpayer" under statute requiring Board of Tax Appeals (BTA) to reassign certain appeals assigned to small claims docket upon request by party that is taxpayer, even though board owned taxable property in county during time period at issue in case, where board was party only by virtue of its countercomplaint, its standing to have filed countercomplaint depended on its being a board of education, and its status as property owner was completely irrelevant. (Per curiam, with three justices concurring and one justice concurring in judgment only.)

TAX - CALIFORNIA

Golden Gate Hill Development Company, Inc. v. County of Alameda

Court of Appeal, First District, Division 5, California - November 25, 2015 - Cal.Rptr.3d - 2015 WL 7690054

Taxpayer brought action against county and school district for refund of special parcel taxes imposed under two voter-approved measures, alleging that tax rates were improper because different rates were imposed on residential and nonresidential properties, as well as nonresidential properties of different sizes.

The Superior Court sustained county's and school district's demurrer without leave to amend, and taxpayer appealed.

The Court of Appeal held that taxpayer's action seeking refund of special parcel taxes imposed under voter-approved measures, although not a reverse validation action, was based on the alleged illegality of the tax scheme enacted by the measures, which imposed different rates on residential and nonresidential properties, and thus, as measures had been deemed valid by operation of validation statutes, taxpayer failed to state a claim for a refund. Refund claim did not involve a matter beyond the validity of the measures themselves, claim that measures imposed an illegal tax could have been adjudicated in validation action, and, while measures specified procedure for

refund, they did not specify a validation procedure different from that proscribed by validation statutes.

U.S. Municipal Bond Issuance Falls to \$23 Bln in November.

Dec 1 The sale of municipal bonds by states, cities, schools and other issuers fell to \$23 billion in November, a drop of 30 percent from October's \$33 billion of issuance, according to Thomson Reuters data on Tuesday.

Supply last month was also 18 percent lower than in November 2014. Still, 2015 issuance of \$357 billion as of Monday was 28 percent higher than the same period in 2014.

Refundings continued to account for a majority of the volume at \$226.2 billion versus nearly \$131 billion in new money issuance.

Reuters

(Reporting by Karen Pierog in Chicago; Editing by Lisa Shumaker)

High Yield Municipal Bonds: Understanding Where Credit Risk Lives.

Even among nonrated bonds, defaults are generally rare and focused on narrow areas.

Moody's regularly publishes a study that examines defaults in the rated universe of distressed municipal bonds, but it leaves out a sizable portion of the municipal market that is unrated. To provide clarity on the full municipal market, we conducted our own study using Bloomberg data. Here's what we found.

With over \$3.7 trillion municipal bonds currently outstanding, there are approximately \$57 billion in municipal bonds (or 1.5% of the outstanding municipal market) in Bloomberg that are coded as distressed. Distressed in this instance can mean that the issuer fully defaulted on a bond payment, partially defaulted on a bond payment, or is in violation of a covenant (i.e., the debt service coverage ratio is below the set-forth amount).

As the table below indicates, the sector with the largest number of distressed bonds is Tobacco, with \$14.2 billion or 23.5% of the total. Such bonds are funded with settlement money and categorized as distressed due to the overall decline in smoking and the fact that some large issuers have drawn on their liquidity reserve funds to pay interest. General Obligation (GO) bonds account for \$13 billion or 21.6% of the total. This should not be taken as an indication of poor credit quality in GOs overall; it's more that names that have received extensive headline coverage for fiscal concerns-Puerto Rico, Detroit and Jefferson County-all have bonds in the category. The Power sector, the third largest (\$8.2 billion or 13.6%), is largely composed of Puerto Rico Electric Power Authority (PREPA) debt, which is subject to similar pressures as other municipal issuance from the commonwealth.

Sector	Par Outstanding	Number of Distressed Credits
Tobacco Settlement	14,240,689,199	40
General Obligation	13,061,406,880	375

Power	8,199,925,000	244
Other*	8,140,559,192	894
Development	4,509,884,983	543
Water	2,324,284,636	212
Pollution	1,427,215,000	46
Facilities	1,292,044,000	191
Nursing Homes	1,192,993,593	311
Medical	1,038,405,000	232
Multifamily Housing	1,000,142,118	195
Airport	830,615,000	19
Transportation	755,055,441	64
Build America Bonds	681,670,000	6
Education	445,625,000	79
Higher Education	350,010,000	53
Utilities	341,515,000	42
Mello-Roos	292,915,000	126
Housing	237,733,785	29
Single Family Housing	62,504,423	32
School District	7,880,000	10
Bond Bank	195,000	1
Total	\$60,433,268,251	3,744

*Other refers to Special Tax District, Bonds, Tax Increment Bonds and certain Community Development District bonds.

Source: Bloomberg, Neuberger Berman, data as of November 23, 2015.

By definition, high yield municipal bonds carry greater credit risk than their investment grade municipal counterparts. But it bears noting that distressed credits are less common among high yield municipals than their corporate high yield counterparts, where 2.3% of bonds are considered to be distressed. ¹ As such, we believe that the municipal market continues to be a good place to add credit risk in exchange for additional yield, particularly among what we would characterize as quality non-investment grade issues. Of course, when investing in higher yield bonds, it is important that investors undertake careful analysis of issuer credit fundamentals as they pertain to long-term payment prospects.

¹ As defined by the Merrill Lynch U.S. High Yield Index.

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December 02, 2015, 12:00:00 AM EDT

By Sarah Gehring | Senior Research Analyst, Municipal Fixed Income, Neuberger Berman

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[Bloomberg Brief Weekly Video - 12/03](#)

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

[Watch the video.](#)

December 3, 2015

[Moberly, Missouri Class-Action Highlights Underwriters' Duties in Muni Offerings.](#)

Underwriters of municipal bonds have an obligation to perform due diligence on the issuer and any other individual or entity that may be required to make payments on the bonds as they come due. Recently, our firm was involved with *Cromeans v. Morgan Keegan, et al.*, a class-action which alleged that an underwriter and underwriter's counsel failed to perform basic due diligence to

determine whether a planned processing plant in Moberly, Missouri, supported by municipal bonds was feasible prior to the bonds issuing. The bonds were issued but the project failed before construction on the factory was completed due to financial and operational issues with the company for whose benefit the bonds were issued.

Cromeans was settled favorably for the class. The class recovered approximately 86% of its out of pocket losses—around \$5.2 million out of roughly \$6 million in bonds held by the class.

There are only a few cases which discuss in detail an underwriter's due diligence responsibilities. In 1968, the Southern District of New York stated that underwriters are ultimately "responsible for the truth of the prospectus" in the seminal case *Escott v. BarChris Construction Corp.* The SEC has referred to the underwriter's participation in an offering as "an implied recommendation about the securities it is underwriting." An underwriter may not accept the representations of the issuer at face value and present them to potential investors as true. As the Southern District of New York held during the 2004 WorldCom litigation, "in order to make the underwriters' participation in this enterprise of any value to the investors, the underwriters must make some reasonable attempt to verify the data submitted to them."

An underwriter's duties in issuing municipal bonds are governed by SEC Rule 15c2-12. This rule states that underwriters must "obtain and review" an official statement that is in functionally final form before bidding on, purchasing, offering, or selling the securities. Underwriters and broker dealers must make material financial and operating data in the official statement not only for an issuer, but also for any other "obligated person" available to the investors. Rule 15c2-12 defines obligated person as any person who is or may be generally or contractually required to support payments of the obligations on the securities. Failure to include or analyze the financial data, operational data, or other representations made by an obligated person could expose an underwriter or broker/dealer to liability under federal and state securities laws if the omission proves to be material.

Underwriters must review registration statements to ensure that there is no reasonable ground to believe that the "expertised" portions contain false statements or omit material information. Expertised information includes scientific and technical information provided by experts including audited (but not unaudited or interim) financial statements. For non-expertised portions, the underwriter must conduct an investigation sufficient to allow it to come to a reasonable belief that the statements contained in the registration document are true and omit no material facts.

To meet this standard, underwriters and bankers involved in securities offerings should verify the information provided by the issuer and other obligated persons through independent sources. Underwriters should also examine the issuer and obligated persons' key business relationships, contracts, and financial statements and projections. Underwriters should familiarize themselves with the relevant industry and examine how the issuer and obligated persons' business model fits with that industry.

In most cases the underwriter is the only bulwark standing between an unscrupulous issuer and the potential investors. The underwriter must meet its obligations of impartial scrutiny of the transactions underpinning and the issuer's representations.

Finally, underwriters should take careful notes to document their due diligence activities. Prior to 2012, the industry falsely believed that opacity was a sufficient defense and retained few notes on their due diligence activities. The SEC has since made clear that underwriters need to be able to demonstrate the steps they took to determine the creditworthiness of a municipal bond offering.

THE BOND BUYER

ANDREW P. CAMPBELL AND STEPHEN D. WADSWORTH

NOV 24, 2015 10:58am ET

Andrew D. Campbell is managing partner and Stephen D. Wadsworth is associate attorney at Campbell Guin, a specialist in securities litigation and class actions

Clinton Proposes \$275 Billion Infrastructure Plan With Bank, BABs.

DALLAS — Democratic presidential contender Hillary Clinton outlined a plan for \$275 billion of new federal infrastructure funding, including a revival of the stimulus-era Build America Bonds program, at a campaign stop on Sunday in Boston.

Clinton's proposal includes \$250 billion of direct federal funding for roads, transit systems, and ports — in addition to whatever transportation spending is contained in a compromise multiyear highway bill expected to be released on Monday night — and a \$25 billion federally funded infrastructure bank that she said would generate an additional \$225 billion of low-interest loans to spur private investments in public projects.

"This would be on top of what the Congress should finally get around to authorizing," Clinton said of the \$275 billion proposal at the Nov. 29 "Hardhats for Hillary" rally. "That is just the floor. We have to build on that. We are trillions of dollars behind. We have to add to what the Congress appropriates."

Clinton did not provide details of her infrastructure plan at the Boston rally, but a campaign spokesman said the additional funding would come from corporate tax reform.

"Our roads and bridges are potholed and crumbling," Clinton said. "Our airports are a mess, our ports need improvement, and our rail systems do as well."

Sen. Bernie Sanders, I-Vt., who also is seeking the Democratic nomination for president in 2016, in January proposed a \$25 billion national infrastructure bank as part of his \$1 trillion, five-year infrastructure program.

Sanders' Rebuild America Act proposal (S. 268) would boost expenditures from the Highway Trust Fund to \$75 billion a year from fiscal 2015 through fiscal 2022 from the current \$53 billion. His infrastructure plan would provide \$735 billion of transportation funding, including \$75 billion for passenger and freight rail infrastructure, and \$145 billion for local and state water projects.

The latest short-term extension of federal transportation funding authority, a 14-day fix signed into law the week before Thanksgiving, will expire at midnight Friday unless Congress passes either a multiyear bill or, more likely, another quick fix to give lawmakers a few more days to agree on a compromise measure being developed by a House-Senate conference committee.

Rep. Bill Shuster, R-Pa., chairman of the conference committee resolving the differences between competing House and Senate highway bills, said he expects a bipartisan conference report on a five-year highway bill will be released Monday night.

The compromise proposal would shorten the six-year bills to five years to boost annual funding levels, bringing them closer to the per-year amounts in the Senate proposal.

Shuster, who is also chairman of the House Transportation and Infrastructure Committee and chief sponsor of the House highway bill, told the Pittsburgh Tribune Review in an interview published on Sunday that he would have preferred a full six-year funding measure rather than the five-year plan that will be recommended in the compromise bill.

"It's always a battle, but you can't expect to get everything you want. None of us get that in life," Shuster said. "But you work together to get things passed because it's what is right for the country."

The Senate's DRIVE Act (H.R. 22) would allocate \$273.4 billion for highways and \$59.3 billion for transit through fiscal 2021. The House adopted an amended version of the Senate measure that authorized \$261 billion of federal highway funding and \$55 billion for public transit.

The original bills included full funding for only the first three years, with billions of dollars in general revenue offsets to support the \$40 billion per year of dedicated taxes deposited into the HTF. Expenditures from the HTF in fiscal 2015 totaled \$53.7 billion.

THE BOND BUYER

BY JIM WATTS

NOV 30, 2015 1:54pm ET

[Detroit Water and Sewer Authority Washes Off Bankruptcy Stain.](#)

The Detroit Water and Sewerage Department is washing off the taint of its city's notorious financial reputation as it refinances debt a year after emerging from the worst-municipal bankruptcy on record.

The \$324 million in tax-exempt revenue bonds sold through the Michigan Finance Authority on Wednesday were priced at a top yield of 3.71 percent for securities maturing in July 2035, according to preliminary data compiled by Bloomberg. That's about 1 percentage point more than 20-year benchmark municipal bonds.

"For an issuer with the word Detroit in it, that's a pretty attractive spread" from the issuer's perspective, said Gabe Diederich, a Menomonee Falls, Wisconsin-based money manager at Wells Fargo Asset Management, which manages about \$39 billion of municipals, including some Detroit water and sewer debt. He didn't buy Wednesday's deal. "That's the tightest we've seen in a while for that name."

The authority said the deal "far exceeded," their expectations, according to Nicolette Bateson, chief financial officer for the water and sewer department. The proceeds are going toward a refinancing, and the deal generated net-present-value savings of about \$29.3 million, according to Jon Wheatley, the department's public finance manager.

The deal "kind of speaks for itself," said Daniel Solender, who oversees about \$17 billion as head of municipal debt at Lord Abbett & Co. in Jersey City, New Jersey, including some Detroit water and sewer securities. "It's really recovered a lot from where it was during the bankruptcy."

Bloomberg Business

by Elizabeth Campbell

December 2, 2015 — 2:58 PM PST Updated on December 3, 2015 — 4:41 AM PST

[U.S. High Court Set to Act on Puerto Rico Restructuring Bid.](#)

The U.S. Supreme Court may announce as soon as Friday whether it will hear an appeal by Puerto Rico to reinstate a law that would allow some island agencies to restructure their debts.

The high court is scheduled to review Puerto Rico's appeal during a private conference Friday, when it often issues a list of new cases. The disputed law would affect \$22 billion of Puerto Rico's \$70 billion in debt. That includes \$8.2 billion owed by the Puerto Rico Electric Power Authority, known as Prepa, which is negotiating with its creditors and would gain new leverage from a ruling upholding the law.

Puerto Rico is seeking to reduce its debt load by asking bondholders to take a loss on their investments through a debt exchange. Officials have said easing the island's debt payments would help improve the commonwealth's economy, which has shrunk by about 15 percent in the past decade. As its cash dwindles, Governor Alejandro Garcia Padilla on Monday averted a default and signed an executive order to redirect revenue that backs some agency bonds to repay direct debt of the commonwealth.

The case centers on the power of the Puerto Rican government to fill what it says is a gap in federal bankruptcy law, which bars filings by the commonwealth agencies and municipalities. If the high court agrees to hear the case, it may hear arguments in March. The high court would rule by late June.

Under federal law, states can authorize bankruptcy filings by their municipalities, including public utilities, but Puerto Rico and the District of Columbia can't. Puerto Rico sought to get around that provision in 2014 by passing a local law known as the Recovery Act, which was modeled after the federal bankruptcy code.

The commonwealth appealed to the U.S. Supreme Court in August. A U.S. appeals court rejected the Recovery Act in July, upholding a ruling by a federal trial judge in San Juan.

Puerto Rico general obligations with an 8 percent coupon and maturing July 2035 traded Thursday at an average price of 75.5 cents on the dollar, up from 71.7 cents on Monday, the day before the governor signed the executive order, data compiled by Bloomberg show. The average yield was 11.1 percent.

Bloomberg Business

by Michelle Kaske and Greg Stohr

December 3, 2015 — 8:38 AM PST Updated on December 3, 2015 — 9:17 AM PST

Memo to Puerto Rico: Alabama County Shows Limits of Bankruptcy.

Four years after filing what was then the largest municipal bankruptcy in U.S. history, Jefferson County, Alabama, is learning that having debt wiped out in court doesn't solve all one's financial problems.

Alabama's largest county emerged from bankruptcy in 2013 freed from \$1.3 billion of bonds that hastened its collapse, only to still be unable to make up for deep spending cuts for police, road work and health care. It's at risk of defaulting on some debt as soon as 2017. And it's counting on returning to the bond market next year for the first time since leaving court protection, seeking to free up needed cash by refinancing debt left behind.

"They're floundering, still bogged down with remnants of their past," said Richard Ciccarone, president of Merritt Research Services in Chicago, which tracks municipal borrowers. "They still have remaining structural issues that weren't resolved by their bankruptcy."

The 661,000-person county, which is home to Birmingham, provides a lesson for Puerto Rico, the Caribbean island 1,650 miles (2,654 kilometers) away. There, with the government rapidly going broke after running up \$70 billion of debt as the economy sputtered, Governor Alejandro Garcia Padilla is pleading with U.S. lawmakers to give it the power to file for bankruptcy, just as local governments can. They've so far declined.

While such a step allows governments to escape from debts if a judge approves, it can leave behind other liabilities, delaying a fresh start, and doesn't always address the root cause.

Detroit, which was once felled by rising debt, pension bills and a shrinking population, in 2024 will have to start paying about \$194 million a year in workers retirement bills that were delayed by the bankruptcy. Jefferson County is still contending with debt that was left intact and the blow of a court verdict that struck down a tax that provided 40 percent of its revenue.

"Bankruptcy was never a panacea, but necessary to deal with an unimaginable debt load," said James Stephens, president of the Jefferson County Commission, in an e-mail.

Jefferson County's bankruptcy was triggered by a sewer project that was dogged by mismanagement and corruption. When the price tag more than doubled to over \$3 billion, officials refinanced debt with floating-rate bonds and derivatives, like homeowners who used exotic loans to buy houses they couldn't afford. The tactic backfired during the 2008 credit-market crisis, leaving the county on the hook for hundreds of millions in fees and demands to pay off the debt early.

Then, in 2011, an Alabama judge ruled that a wage tax that raised \$75 million a year was illegal. That finally pushed it to file for bankruptcy, which allowed it to cut its sewer debt to \$1.8 billion from \$3.1 billion.

Still, the county reduced its workforce by 1,200, or one-third, in response to the loss of the tax. One jail was closed, and the county has been hard-pressed to invest in new infrastructure. The budget has been cut by 46 percent since 2008, according to Fitch Ratings, which estimates that the county will need to drain \$38 million from its reserves this year.

Jefferson County is now seeking to free up money for infrastructure projects by refinancing about \$666 million of debt sold for its schools in 2004 and 2005 as soon as first quarter of 2016, said Stephens.

Default Risk Lingers

It plans to do the same with about \$69 million of obligations backed by leases on county buildings. The county has struggled to meet those bills: It initially planned to have bond insurer Ambac Financial Group Inc. cover some of the debt payments due this fiscal year, which Standard & Poor's said would be a default, until it was able to secure funds. That sparked a two-level upgrade by S&P on Dec. 1 to CCC, eight steps below investment grade.

"Because there's not a plan to make those payments after 2016, we think they're still vulnerable," said Jim Tchou, analyst at S&P.

By refinancing the school debt and pushing payments into the future, the county will be able to access about \$36 million a year of taxes that support the debt and provide \$18 million for schools, said Stephens, the county commissioner.

Jefferson County convinced state lawmakers to allow it to use some of the 1 percent sales tax that now goes to the school debt for other expenses after the refinancing. The sale still has another hurdle: The county's awaiting approval of the deal from an Alabama judge. A group of residents is also seeking to have the sales tax thrown out in court, which, if successful, would deal a fresh hit to the public purse.

"Bankruptcy provides more runway to deal with financial pressures but it doesn't resolve the systematic problems that existed before," said James Spiotto, managing director at Chapman Strategic Advisors LLC, which advises on financial restructuring.

In Puerto Rico, officials would like to give it a try. If only Congress would let them.

Bloomberg Business

by Darrell Preston

December 3, 2015 — 9:01 PM PST Updated on December 4, 2015 — 5:01 AM PST

[Illinois Judge Keeps Chicago Retiree Healthcare Case Alive.](#)

CHICAGO — A lawsuit challenging Chicago's move to save money by phasing out lifetime subsidized healthcare for its retired workers can move forward in part, an Illinois judge ruled on Thursday.

Cook County Circuit Court Judge Neil Cohen found that a portion of a constitutional claim in the lawsuit can proceed, according to Clint Krislov, an attorney for city retirees who filed the lawsuit. The ruling cited a 2014 Illinois Supreme Court decision that public sector workers' healthcare benefits are protected by the state constitution's pension clause.

The judge dismissed two contractual claims, but is allowing the city retirees who filed the lawsuit to submit amended claims, which Krislov said will be done.

"We're pleased we will be able to go forward to enforce the lifetime benefits these wonderful people earned," Krislov said.

Chicago and its four retirement systems had filed motions to dismiss the entire complaint.

"We are pleased the court dismissed most of the remaining claims against the city, but are disappointed the court did not dismiss all of the plaintiffs' claims with prejudice," said Chicago Law Department spokesman Bill McCaffrey.

The retirees are seeking refunds for rising health insurance premiums because of a phase-out of a city subsidy. Krislov has said the refunds would date back to 2013 and total about \$110 million and that Chicago Mayor Rahm Emanuel included \$31 million in retiree healthcare savings in his budget for the fiscal year that begins Jan. 1.

With its finances buckling under a \$20 billion unfunded pension liability, Chicago has been scrambling to reduce costs. The upcoming budget includes a record \$543 million phased-in property tax hike dedicated to public safety worker pensions.

Chicago is also awaiting a decision by the Illinois Supreme Court on the constitutionality of a 2014 law that boosted funding for the city's municipal and laborers' pension systems and reduced cost-of-living increases for retirees. The high court in May used the state constitution's pension clause to toss out a 2013 law that unilaterally cut benefits for state workers.

By REUTERS

DEC. 3, 2015, 7:03 P.M. E.S.T.

(Reporting by Karen Pierog; Editing by David Gregorio and Lisa Shumaker)

Moody's: U.S. State and Local Government Outlooks are Stable for 2016.

New York, December 04, 2015 — The 2016 outlook for both US states and local governments remain stable as the continuing recovery of the US economy drives moderate tax revenue growth, Moody's Investors Service says in two new annual outlook reports.

State tax revenue should rise 4%-5% in 2016. While this is slightly below last year's forecast, it is consistent with the post-recession average.

However, regional challenges will cause economic and revenue performance to vary across the country. Oil and gas producing states, particularly those with budgets heavily reliant on the sector, could be forced to reduce their budgets and lower their forward revenue assumptions.

Other pressures to state budgets include K-12 education, Medicaid, and infrastructure maintenance.

"Even with slower revenue growth and headwinds from rising spending costs, we expect most states will successfully keep their financial positions in balance with prudent budgeting," Kenneth Kurtz, a Moody's Senior Vice President, says in "US States 2016 Outlook - Moderate Revenue Growth Supports Fiscal Stability for Most States."

Property taxes, which are the primary source of most local government revenues, are expected to improve by 2%-3% amid local tax base growth. Though still below prerecession growth of 4%-5%, some local governments are limited by tax caps and slower-than-expected recoveries.

In addition, the stable outlook for local governments is supported by an increase in median fund balances. Fund balance levels indicate the financial resources a local government has available to

meet future contingencies, Moody's says, and currently median fund balances are higher now than in 2008.

Unfunded pension liabilities and other fixed costs remain a long-term challenge for some local governments, however.

"Net pension liabilities will continue to grow in 2016, particularly given weaker June 30, 2015 investment returns and because local governments' annual pension contributions are often below actuarial requirements," David Strungis, a Moody's Analyst, says in "US Local Governments 2016 Outlook - Growing Property Tax Revenue and Improving Fund Balances Underpin Stable Outlook."

Moody's outlooks reflect its expectations for the fundamental financial and economic conditions in a sector over the next 12-18 months.

The reports are part of a series of outlooks on a wide variety of sectors globally published by Moody's. For other reports in the series, go to www.moody.com/2016outlooks.

The state outlook is available to Moody's subscribers [here](#) and the local government outlook is located [here](#).

Moody's: Credit Pressure for Michigan School Districts Continues.

New York, November 30, 2015 — The ongoing loss of general funds, declining enrollment, and a lack of flexibility to raise revenue will continue to place significant stress on the credit quality of Michigan schools, Moody's Investors Service says in "K-12 Public School Districts: Michigan Schools' Widespread Credit Weakness Persists."

Moody's has downgraded 47 of the 206 Michigan (Aa1 stable) school districts it rates this year, and anticipates that number will rise over the remainder of fiscal 2016. Since 2009, Moody's has downgraded 150 Michigan school districts.

"The loss of fund balance serves as the largest driver of credit stress and downgrades. From fiscal 2005 through fiscal 2014, traditional Michigan school districts have lost 46% of their aggregate General Fund reserves," says Moody's Analyst Andrew Van Dyck Dobos.

Moody's says 41 of the 47 districts downgraded in 2015 have experienced a loss in General Fund reserves over the last five years, with a median decline of 45%.

The school districts have also endured additional difficulties, including sizable declines in their tax base, growing unfunded pension liabilities, and elevated debt ratios. Moreover, stagnant per-pupil state funding remains barely above the fiscal 2009 level.

"The current funding environment makes it extremely difficult for districts to significantly rebuild fund balances given the sector's lack of revenue-raising flexibility, decreasing enrollment, and increased fixed costs, including increases to annual pension contributions," Van Dyck Dobos says.

School district revenues have also suffered due to a statewide 12% enrollment decline during the last 10 years. Competition by charter schools and Michigan's "Schools of Choice" program allowing students to enroll in schools outside their residential district have benefitted some, while being a detriment to others. Statewide, 10% of Michigan students attend charters while 7% participate in

Schools of Choice.

Despite these challenges, some districts are effectively tackling financial difficulties. Of the 58 that ended 2014 with a deficit, 41 improved or eliminated their deficit in fiscal 2015. The financial improvement of these districts points to the moderate effectiveness of the state's Deficit Elimination Plan (DEP) process.

The report is available to Moody's subscribers [here](#).

BDA Submits Letter to SEC Regarding MSRB Amendment #2 to Proposed Rule G-42.

The BDA submitted a letter to the SEC in response to MSRB Amendment #2 in relation to proposed MSRB Rule G-42, on duties of non-solicitor municipal advisors.

Our letter retains our previously stated request that the SEC disapprove Proposed Rule G-42 as written since the amendment has not materially changed the Proposed Rule to make it workable for issuers and dealers.

Specifically, we address the following:

- We do not believe that Amendment No. 2 provides a meaningful and useful exception to the principal transaction ban because there are too many limitations for the exception to be useful
- The consent and disclosure requirements necessary to take advantage of the exemption to the transaction ban are entirely too burdensome to be useful
- We do not believe that dealers will use this exemption in any meaningful way unless the requirements are substantially reduced or unless the MSRB creates a more encompassing exemption from the principal transaction ban for brokerage services

You can find BDA's letter [here](#).

12-01-15

Washington Divided on Response to Puerto Rico Debt Woes.

Puerto Rico faces rolling defaults on its debt and cutbacks in public services, but Congress remains divided about what should be done to address the crisis.

The Obama administration and Puerto Rico want Congress to provide a pathway for the commonwealth to restructure some of its \$72 billion in debt, and Gov. Alejandro García Padilla appealed again to a Senate panel this week, saying the island has "no more cash."

Forced to choose between paying creditors and paying teachers, police and firefighters in the coming months, the governor he said he would easily choose the latter. He signed an order this week that allowed Puerto Rico to make its latest \$355 million debt payment only after it clawed back revenue used to pay debt for public corporations such as transit and tourism authorities. The government and various agencies face an additional \$950 million due Jan. 1.

Republicans reacted coolly to legislation introduced this year to allow the island's public corporations to restructure debt. Municipal entities in the 50 states have that right under Chapter 9 of the U.S. bankruptcy code, which Detroit invoked in 2013, but it isn't available to federal territories.

The White House this fall endorsed an even bolder step, calling for a new regime allowing federal territories to restructure debt issued by the central government, a power not available to states. The proposal is unpopular with the mutual-fund and hedge-fund firms that hold the island's general obligation bonds.

Some GOP lawmakers say that would set a dangerous precedent for states. "It's a ludicrous idea," said Rep. Tom Marino, (R., Pa.), who is chairman of a House panel with jurisdiction over the bankruptcy code.

Puerto Rico's financial advisers painted a bleak picture this summer when they said more spending cuts, revenue increases and economic growth could close just half of the projected cumulative deficits of \$28 billion in the next five years.

Debt forbearance and restructuring would be needed for the other half because the commonwealth has lost access to bond markets. The island's economy has been in recession since 2006, and in that time its population has fallen 7% while its debt load has grown 64%.

The White House plan would also expand Medicaid subsidies and make federal tax credits available to the island's residents. The breaks are designed to boost the island's unusually low workforce participation rates, but are controversial as Puerto Ricans don't pay federal income tax.

Aides to some GOP lawmakers acknowledge that Puerto Rico's fiscal situation is unlikely to improve on its own, potentially leading to federal intervention. But for now those lawmakers have coalesced around the need for stronger oversight of the island's finances. Some worry local officials won't follow through with cuts in government expenses or ramped-up tax collection, requiring a federal control board as part of any congressional response.

Democrats say efforts to maintain the status quo will exacerbate the economic crisis and drain urgency from talks between Puerto Rico and its creditors to complete a voluntary restructuring. Some lawmakers have pushed for Congress to attach a relief package to spending bills it must pass before adjourning this month.

Others have criticized the Obama administration for not promising to act unilaterally. "I urge Treasury to be just as creative in coming up with solutions for Puerto Rico as it was when the big banks called for help," Sen. Elizabeth Warren (D., Mass.) told a Treasury adviser at a recent hearing.

While Washington hasn't intervened in other municipal debt crises like Detroit, Puerto Rico is an anomaly because it is a U.S. territory. The commonwealth has maintained local autonomy since the 1950s, but governance of the island, whose residents are American citizens, ultimately rests with Congress and the president.

Analysts say Congress isn't likely to take action, absent signs of a much more acute humanitarian emergency.

"A crisis to D.C. politicians is Jurassic Park on the island," said Stephen Myrow, managing partner at Beacon Policy Advisors, a research firm. "Until you have that, you don't have the pressure that Congress would need to build a consensus."

Further reducing any urgency: Puerto Rico isn't viewed as a systemic threat to the U.S. economy. Europe ultimately moved to bailout Greece because the risk the crisis would spread through its banking system was high, said Mr. Myrow.

Federal Reserve officials saw "minimal" risks that Puerto Rico's debt crisis could spread through U.S. financial markets at their October meeting, according to minutes released last month.

THE WALL STREET JOURNAL

By NICK TIMIRAOS and AARON KURILOFF

Dec. 3, 2015 8:35 p.m. ET

Write to Nick Timiraos at nick.timiraos@wsj.com and Aaron Kuriloff at aaron.kuriloff@wsj.com

Supreme Court to Examine Puerto Rico Effort to Restructure Some Debts.

WASHINGTON—The Supreme Court agreed Friday to hear Puerto Rico's effort to restructure its public utilities' debts by enacting its own bankruptcy law.

As an unincorporated territory, Puerto Rico lacks the authority that U.S. states and their municipalities hold to restructure their debts under chapter 9 of the federal bankruptcy code.

To fill that gap, the territorial legislature adopted Puerto Rico Public Corporation Debt Enforcement and Recovery Act, which authorizes several public agencies and utilities to discharge most of their debts over their creditors' objection.

Bondholders, including the Franklin Funds and BlueMountain Capital Management, sued, arguing the federal bankruptcy code pre-empts the Puerto Rico statute. Lower courts agreed.

The bondholders include mutual funds holding tax-free state and municipal bonds. Because Puerto Rico bonds are exempt from all state and federal taxes, Franklin and other funds focused on a particular state's municipal bonds have filled out their portfolios with Puerto Rico bonds.

The Supreme Court will hear the appeal in early 2016, with a decision expected by June.

Puerto Rico continues to struggle over its fiscal situation. The governor this week signed an order allowing the territory to make its latest \$355 million debt payment only after it clawed back revenue used to pay debt for public corporations such as transit and tourism authorities. The government and various agencies face an additional \$950 million due Jan. 1.

THE WALL STREET JOURNAL

By JESS BRAVIN

Dec. 4, 2015 2:22 p.m. ET

—Nick Timiraos contributed to this article.

Ex-JPMorgan Bankers Settle SEC Municipal Bribery Charges.

(Reuters) - Two former JPMorgan Chase & Co bankers agreed to pay about \$326,000 to settle U.S. Securities and Exchange Commission charges that they paid millions of dollars to close friends of Jefferson County, Alabama commissioners in order to win \$5 billion of municipal bond and swap business.

Douglas MacFaddin and Charles LeCroy, who were JPMorgan managing directors, will pay a respective \$201,224 and \$125,149 to resolve the SEC civil fraud case, according to papers filed on Tuesday with the federal court in Birmingham, Alabama.

Neither defendant admitted wrongdoing. The settlement requires court approval. Lawyers for the defendants did not immediately respond on Wednesday to requests for comment.

MacFaddin and LeCroy were sued in November 2009, when New York-based JPMorgan agreed to pay more than \$722 million representing fees, a fine and assistance to residents to settle related SEC claims over its dealings with Jefferson County.

The county filed for Chapter 11 protection two years later, at the time the largest municipal bankruptcy in U.S. history.

MacFaddin and LeCroy were accused of having in 2002 and 2003 directed more than \$8.2 million of payments to friends of Jefferson County commissioners who owned or worked at local broker-dealers.

The SEC said they did this to ensure that county officials chose JPMorgan to arrange bond offerings and swap agreements, in which the broker-dealers had little or no role.

According to the SEC, the defendants knew the payments were shams by calling them "payoffs," "the price of doing business" and a means to keep commissioners "happy."

The SEC also said JPMorgan incorporated the cost of the payments into the bond and swap transactions, making them more costly for taxpayers.

The case is SEC v. LeCroy et al, U.S. District Court, Northern District of Alabama, No. 09-02238.

By REUTERS

DEC. 2, 2015, 10:19 A.M. E.S.T.

(Reporting by Jonathan Stempel and Nate Raymond in New York; Editing by Jonathan Oatis)

SIFMA Submits Comments to the SEC on Proposed New Rule G-42.

SIFMA provides comments to the Securities and Exchange Commission (SEC) on amendment #2 to its proposed changes to MSRB Rule G-42, on duties of non-solicitor municipal advisors.

[Read the comments.](#)

December 1, 2015

Regulators to Hold Compliance Outreach Program for Municipal Advisors.

Alexandria, VA - The Securities and Exchange Commission (SEC), the Municipal Securities Rulemaking Board (MSRB) and the Financial Industry Regulatory Authority (FINRA) today announced they will hold a [compliance outreach program for municipal advisors](#) on February 3, 2016 at the Federal Reserve Bank in Philadelphia, PA. The event also will be webcast live on the SEC website.

The program for municipal advisors is the second outreach event that is a partnership between the MSRB, the SEC's Office of Compliance Inspections and Examinations, the SEC's Office of Municipal Securities and FINRA. The February event will provide municipal advisor professionals a forum to discuss recent exam findings, regulatory issues and compliance practices with regulators.

"This year's outreach program is designed to promote compliance with municipal advisor rules by providing municipal advisor professionals with the opportunity to interact with all three regulators and to discuss regulatory and compliance issues with their industry peers," said Jessica Kane, Director of the SEC's Office of Municipal Securities.

There is no cost to attend the program, which will be held on February 3, 2016 from 9:00 a.m. to 4:15 p.m. at the Federal Reserve Bank of Philadelphia, 10 Independence Mall, Philadelphia, PA 19106. Registration is open to all municipal advisor professionals with limited seating available and preference given to employees of registered municipal advisors on a first-come, first-served basis. Register for the event.

"This program is consistent with the MSRB's goal of providing resources to municipal advisors to help them understand their regulatory obligations," said MSRB Executive Director Lynnette Kelly. The MSRB recently published its first Compliance Advisory for Municipal Advisors to help them understand and implement the regulatory framework created by the MSRB as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act. "Municipal advisors attending the compliance event will benefit from hearing first-hand from our staff."

Kevin Goodman, national Associate Director of the SEC's broker-dealer and municipal advisor examination programs, said, "The municipal advisor outreach will be extremely informative and educational for new municipal advisors as they build their compliance programs. This outreach, following the first ever in 2014, illustrates our continued commitment to foster an open dialogue among municipal advisors and regulators regarding regulatory obligations and expectations."

Mike Rufino, FINRA's head of member regulation-sales practice, said, "The discussions covering exam trends, general findings and the application of exemptions and exclusions from the municipal advisor registration rules will be valuable to municipal advisors. Any firm that is uncertain as to the full application of municipal advisor rules and regulations to its business may benefit from attending the conference."

Information on accessing the webcast will be posted on the SEC website the day of the event.

Date: December 1, 2015

Contact: Jennifer A. Galloway, Chief Communications Officer

- [NABL Recommends Revisions to Management Contract Safe Harbors.](#)
- [Mintz Levin: Helpful News from IRS on Student Loan Bonds.](#)
- [MSRB's Kelly Highlights Concerns For Retail Muni Investors.](#)
- [NABL: Registration For TSLI Is Open.](#)
- [Stifel, Nicolaus & Co., Inc. v. Godfrey & Kahn](#) - In dispute over bond issuance, Court of Appeals holds that tribal court lacked jurisdiction over bondholders and brokerage firm; counsel to tribal economic development corporation, who also was bond counsel to bond transaction, could rely on forum selection clauses in bond documents.
- [Coves of Highland Community Development Dist. v. SCB Diversified Mun. Portfolio](#) - District Court denies Community Development District's request for declaratory judgment that \$7.6 million of Bonds issued by the District had prescribed, citing factual question as to whether Trustee had acted as District's agent, such that the debt was acknowledged via Trustee's making of certain payments from the Debt Services Reserve Account.
- [Young's Market Company v. Superior Court](#) - Trial court's order granting school district's petition for a right of entry against the owner of an adjoining building, to assess the possibility of acquiring the property by eminent domain by boring holes in the ground and taking samples of soil and building materials, was within the scope of the Eminent Domain Law entry statutes and did not amount to a taking under the federal and state constitutions.
- And finally, I'd Like to Buy a Vowel is brought to us this week by [Coves of Highland Community Development Dist. v. SCB Diversified Mun. Portfolio](#), in which a subdivision project was abandoned after the Army Corps of Engineers popped up mid-project with the news that the property had previously been used as a practice bombing, rocket, and artillery range, so, uh, maybe keep an eye out for unexploded munitions. And therein lies the origin story of the country's first municipal ordnance enforcement unit. May they rest in pieces.

EMINENT DOMAIN - CALIFORNIA

[Young's Market Company v. Superior Court](#)

Court of Appeal, Fourth District, Division 1, California - November 19, 2015 - Cal.Rptr.3d - 2015 WL 7302204

School district petitioned for a right of entry against adjacent landowner - pursuant to the Eminent Domain Law - for the purpose of taking soil samples to assess the possibility of acquiring the property by eminent domain. The Superior Court granted petition. Landowner petitioned for writ of mandate, prohibition, or other appropriate relief.

The Court of Appeal held that:

- Order granting right of entry to take samples was within the scope of the entry statutes, and
- Order granting right of entry to take samples did not amount to a taking under the federal and state constitutions.

Trial court's order granting school district's petition for a right of entry against the owner of a building containing an indoor cart racing center, to assess the possibility of acquiring the property

by eminent domain by boring holes in the ground and taking samples of soil and building materials, was within the scope of the Eminent Domain Law entry statutes.

Trial court's order granting school district's petition for a right of entry against landowner, to assess the possibility of acquiring the property by eminent domain by boring holes in the ground and taking samples of soil and building materials, did not amount to a taking under the federal and state constitutions, since the challenged activities constituted a temporary and incidental disruption which did not affect the property's suitability for its uses as a parking lot and indoor cart racing center.

SCHOOLS - FLORIDA

[Mech v. School Bd. of Palm Beach County, Fla.](#)

United States Court of Appeals, Eleventh Circuit - November 23, 2015 - F.3d - 2015 WL 7428915

Owner of tutoring business brought action against county school board, alleging violation of his First Amendment right to Free Speech when three schools removed banners for his business from their fences. Both parties moved for summary judgment. The United States District Court granted school board's motion. Owner appealed.

The Court of Appeals held that:

- Schools endorsed banners, and
- Schools exercised substantial control over messages conveyed by banners.

Tutoring business banners hung on schools' fences bore imprimatur of schools, and thus factor regarding whether observers would reasonably have believed government had endorsed message strongly suggested that banners were government speech, as would support finding that Free Speech Clause of First Amendment was not violated when school board removed banners, where banners bore schools' initials, were printed in school colors, identified sponsor as partner, observers who saw banners for tutoring services on school property with imprimatur would reasonably conclude that school was endorsing services, purpose of banner program was to recognize partners that provided vital role in sponsorship, and schools had interest in expressing gratitude, regardless of services or quality of services provided.

Schools exercised substantial control over messages conveyed by banners hung on schools' fences, and thus government's control over message factor strongly suggested that banners were government speech, rather than private speech, as would support finding that removal of tutoring business banners did not violate Free Speech Clause of First Amendment, where schools controlled design, typeface, and color of banners, dictated information contained on banner, regulated size and location of banners, required banners to include school's initials and message "Partner in Excellence," and principals were required to approve every banner before it went on fence, and schools did not allow banners to list anything but sponsor's name, contact information, and preexisting business logo.

UTILITIES - IOWA

[Western Minnesota Mun. Power Agency v. Federal Energy Regulatory Com'n](#)

United States Court of Appeals, District of Columbia Circuit - November 20, 2015 - F.3d -

2015 WL 7423719

The Western Minnesota Municipal Power Agency (“Western Minnesota”) submitted an application pursuant to the Federal Power Act (“FPA”) for a preliminary permit for a hydroelectric project in Polk County, Iowa. A private developer, FFP Qualified Hydro 14, LLC (“FFP”), also submitted a permit application for the same project on the same day. Despite Western Minnesota’s status as a municipality, the Federal Energy Regulatory Commission concluded that the municipal preference under Section 7(a) of the FPA applies only to municipalities “located in the vicinity” of the water resources to be developed.

FFP was awarded the permit and Western Minnesota appealed.

The Court of Appeals held that Federal Power Act (FPA) unambiguously provided preference to preliminary hydroelectric permit applications by states and municipalities without any geographic restriction.

There was no statutory language qualifying or restricting which states or municipalities were to be favored, use of phrase “shall give preference” indicated a mandatory directive to Federal Energy Regulatory Commission (FERC), FPA’s notice provision did not limit the scope of the municipal preference, legislative history suggested that Congress did not intend for FERC to have discretion in picking among states and municipalities, and there was nothing patently unreasonable in favoring all municipalities over private applicants.

BONDS - LOUISIANA

Coves of Highland Community Development Dist. v. SCB Diversified Mun. Portfolio

United States District Court, E.D. Louisiana - November 10, 2015 - Slip Copy - 2015 WL 7016965

The Coves of the Highland Community Development District (“District”) was formed under Louisiana law in 2006 for the purpose of financing and managing the infrastructure of a planned residential community called The Coves of the Highland (the “Project”). MGD Partners, LLC, (MGD) purchased approximately 324 acres at the site of the Project in March 2006. Thereafter, the District entered into a development agreement with MGD. On November 16, 2006, The District authorized and issued \$7,695,000 in bonds, primarily to finance infrastructure improvements for the Project. These bonds were purchased by SCB Diversified Municipal Portfolio (SCB).

The Project was ultimately unsuccessful. After much of the infrastructure was in place, the Army Corps of Engineers issued a report dated December 12, 2008, stating that from 1942 to 1945 the United States Government leased the land upon which the Project was situated for use as a practice bombing range. Because of the gunnery, rocket, and bombing practice that had taken place on the property, the Corps discussed the potential of unexploded ordnance and munitions on the property. Because of this report, Tangipahoa Parish refused to issue further permits for the Project. Ultimately, though the streets and other infrastructure were in place, no lots were sold and Plaintiff was unable to meet its financial obligations under the bond agreements.

The District requested a declaratory judgment that \$7,695,000 worth of bonds issued by the District and purchased by SCB have prescribed due to alleged lack of payment or acknowledgement of the debt by the District for a period exceeding five years.

Under Louisiana law, municipal bonds prescribe in five years. This prescription is interrupted by acknowledgement of the debt or by the filing of suit within the relevant prescriptive period. The jurisprudence holds that partial payment by a third party constitutes acknowledgement of a debt which interrupts prescription only if such payment has been made with the authority of the debtor. Acknowledgement of a debt may be express or tacit and need not take any particular form.

The District argued that summary judgment is warranted because no revenue stream was ever established, and it made no payments on the bonds. It avers that because it has been in default for more than five years, the debt has prescribed.

SCB, however, disputed the District's assertion that the debt has not been acknowledged. They point to certain payments made by the Trustee from the Debt Services Reserve Account as an acknowledgement of the debt. These payments were made pursuant to the contractual scheme governing this transaction. They argue that the Trustee was, per the terms of the bond agreements, acting as the District's agent when making payments from the Debt Services Reserve Account. The District denied that the Trustee was its agent for the purpose of these transactions.

The District Court hold that the resolution of this matter necessarily involved factual findings regarding the Trustee's authority to acknowledge on behalf of the District. As discovery was warranted, the motion for summary judgment was denied.

ZONING - MAINE

[Desfosses v. City of Saco](#)

Supreme Judicial Court of Maine - November 24, 2015 - A.3d - 2015 WL 7444365 - 2015 ME 151

Abutting landowner sought review of decisions of city planning board and zoning board of appeals allowing construction of vehicle dealership. The Superior Court affirmed. Landowner appealed.

The Supreme Judicial Court held that:

- City ordinance provided that any party with standing, whether applicant or non-applicant, may timely appeal a city planner's decision on a site plan amendment, whether major or minor site, to the city's planning board, and
- Zoning board of appeals had jurisdiction to consider abutting landowner's appeal of issuance, by city's code enforcement officer (CEO), of a certificate of occupancy to dealership.

ZONING - MARYLAND

[Sizemore v. Town of Chesapeake Beach](#)

Court of Special Appeals of Maryland - November 25, 2015 - A.3d - 2015 WL 7573409

Property owners petitioned for judicial review of decision of Town Board of Zoning Appeals revoking permit to construct restaurant on property, after property had been rezoned to residential-village, due to owners' failure to progress satisfactorily on construction. The Circuit Court upheld Board's decision, and owners appealed. Appeal was subsequently abandoned. Owners then applied for new permit. The Town denied permit, and Board upheld denial. Owners petitioned for judicial review. The Circuit Court affirmed, and owners appealed.

The Court of Special Appeals held that:

- Owners had vested right in permit for construction of restaurant after property was rezoned from commercial high-density use to residential-village use;
- As matter of first impression, vested right to continue construction under existing permit following change in zoning ordinance could be abandoned under terms of zoning statute or if owners demonstrated intent to abandon permit;
- Owners abandoned vested right in permit;
- Res judicata barred consideration of owners' claim of vested right on appeal from denial of request for new permit; and
- Expiration of tolling bill rendered moot property owners' claim that bill applied to reinstate permit.

ENVIRONMENTAL - NEW YORK

[Sierra Club v. Village of Painted Post](#)

Court of Appeals of New York - November 19, 2015 - N.E.3d - 2015 WL 7288109 - 2015 N.Y. Slip Op. 08452

Village resident and other petitioners brought article 78 proceeding, raising State Environmental Quality Review Act (SEQRA) challenge to village resolutions authorizing sale and export of excess water from the municipal water supply and permitting construction of a water transloading facility.

The Supreme Court, Steuben County, denied village's motion to dismiss for lack of standing, and it appealed. The Supreme Court, Appellate Division, reversed, and leave to appeal was granted.

The Court of Appeals held that resident had standing to bring SEQRA challenge.

Village resident who alleged that train noise caused by increased train traffic kept him awake at night had standing to bring State Environmental Quality Review Act (SEQRA) challenge to village resolutions authorizing sale and export of excess water from the municipal water supply and permitting construction of transloading facility. Although other village residents who lived along the tracks also suffered noise impacts, petitioner was not alleging an indirect, collateral effect from increased train noise that would be experienced by public at large, but rather a particularized harm that could also be inflicted upon others in community who lived near the tracks.

BONDS - WISCONSIN

[Stifel, Nicholas & Co., Inc. v. Godfrey & Kahn](#)

United States Court of Appeals, Seventh Circuit - November 24, 2015 - F.3d - 2015 WL 7454484

Non-Indian brokerage firm and bondholders that were involved in commercial transaction with tribal economic development corporation brought action seeking declaratory judgment that tribal court lacked subject-matter jurisdiction over them and preliminary injunction preventing any further action by tribe and its economic development corporation in pending matter against them in that forum.

The United States District Court granted plaintiffs' motion for a preliminary injunction in part and denied it in part. Parties appealed.

The Court of Appeals held that:

- Tribal court exhaustion was not required;
- District court did not abuse its discretion in limiting presentation of evidence and argument concerning preliminary injunction;
- Tribal economic development corporation was not fraudulently induced into entering bond transaction;
- Resolutions operated as waivers of sovereign immunity;
- Resolutions were not void as unapproved management contracts;
- Tribal court action did not fall within exception for tribe to exercise jurisdiction over nonmembers;
- Federal court had authority to determine limits of tribal court's jurisdiction, as matter "arising under" federal law; and
- Counsel to tribal economic development corporation, who also was bond counsel to bond transaction, could rely on forum selection clauses in bond documents.

Tribal court exhaustion was not required in action brought by non-Indian brokerage firm and bondholders that were involved in commercial transaction with tribal economic development corporation seeking declaratory judgment that tribal court lacked subject-matter jurisdiction over them and preliminary injunction preventing any further action by tribe and its economic development corporation in pending matter against them in that forum, since documents governing transaction contained valid and effective waivers of tribal sovereign immunity and consent to jurisdiction of Wisconsin courts to exclusion of any tribal courts. Although tribal action was pending, principal dispute between parties concerned application of federal statute.

District court did not abuse its discretion in limiting presentation of evidence and argument concerning preliminary injunction, in action brought by non-Indian brokerage firm and bondholders that were involved in commercial transaction with tribal economic development corporation seeking declaratory judgment that tribal court lacked subject-matter jurisdiction over them and preliminary injunction preventing any further action by tribe and its economic development corporation in pending matter against them in that forum. Plaintiffs did not impede ability of corporation to obtain evidence needed to raise defense during course of preliminary injunction briefing and district court provided it with adequate time to develop its arguments.

Tribal economic development corporation was not fraudulently induced under Wisconsin law into entering bond transaction with non-Indian brokerage firm and bondholders that contained waivers of tribal sovereign immunity and consent to jurisdiction of Wisconsin courts to exclusion of any tribal courts. Corporation did not rely on alleged misstatements in approving bond transaction, and statements by representative of brokerage were not false.

Tribal and bond resolutions affirmatively approving and acknowledging actions that already had been taken, namely that tribe had "provide[d] a limited waiver of sovereign immunity from suit," operated as waivers of sovereign immunity, including as to tribal economic development corporation, in bond transaction with non-Indian brokerage firm and bondholders, where resolutions provided that "Corporation waive[d] its immunity from suit with respect to any dispute or controversy arising out of the Indenture, the Security Agreement, the Bond Placement Agreement, the Bonds, this Bond Resolution and including any amendment or supplement which may be made thereto, or to any transaction in connection therewith."

Tribal and bond resolutions that contained waivers of sovereign immunity were not void as unapproved management contracts. Although tribal resolution required bondholder approval for choice of replacements, it did not require bondholder approval to remove key management employees, and otherwise did not fundamentally alter language in governing documents.

Tribal court action seeking to void bond documents on basis that they were unapproved management contracts under IGRA, and seeking to void tribal agreement and tribal resolution because they were not approved by referendum vote of members of tribe or Secretary of the Interior as required by Tribal Constitution, did not fall within exception for tribe to exercise jurisdiction over nonmember initial purchaser of bonds, since action did not seek to regulate any of purchaser's activities on reservation. Actions of nonmembers outside of reservation did not implicate tribe's sovereignty.

Tribal court action seeking to void bond documents on basis that they were unapproved management contracts under IGRA, and seeking to void tribal agreement and tribal resolution because they were not approved by referendum vote of members of tribe or Secretary of the Interior as required by Tribal Constitution, did not fall within exception for tribe to exercise jurisdiction over nonmember initial purchaser of bonds. Action did not address any on-reservation actions, much less actions that threatened tribal self-rule, action focused only on financial consequences of adhering to freely negotiated commercial transactions, and exception was not so broad to include economic effects of its commercial agreements that affected tribe's ability to provide services to its members.

Federal court had authority to determine limits of tribal court's jurisdiction, as matter "arising under" federal law, even though adjudicative authority of Indian tribe allegedly was limited by contract and plaintiff's claims were not premised on federal law.

Counsel to tribal economic development corporation, who also was bond counsel to bond transaction, could rely on forum selection clauses in bond documents. Although counsel was not party to bond transaction, "affiliation" was not limited to entities that were only related through corporate structure, and it was intimately involved in negotiations leading to, and documents embodying, bond transaction, and would have been bound by forum selection clauses in bond documents.

SPECIAL ASSESSMENTS - WISCONSIN

[First State Bank v. Town of Omro](#)

Court of Appeals of Wisconsin - November 11, 2015 - Slip Copy - 2015 WL 6952945

The Barony subdivision, a seventy-four lot subdivision in the Town of Omro, received final plat approval in 2004. By 2009, only a few of the lots had been sold and First State Bank had acquired all sixty-five remaining lots in lieu of foreclosure. As of 2009, the roads in the subdivision had not been paved. In 2013, the Town authorized finishing the roads and specially assessed the lots within the Barony subdivision for the cost of completing the roads.

The Bank challenged the Town's authority to levy the special assessments as to all lots and specifically challenged the assessments as to lots four, five, and fifty-five, which do not abut any of the roads built by the Town.

The issue presented was whether a municipality may use its police powers to build roads and levy special assessments against the land benefitted after a developer defaults in its obligation to build the roads.

The Court of Appeal:

- Ratified the Town's special assessment against the lots that benefited from the road project; and
- Reversed that part of the trial court's decision that found that the three lots not abutting the

improved roads received special benefits, as there was a genuine factual dispute over this issue, making it inappropriate for resolution at the summary judgment stage. The court found that a reasonable jury could find that these three lots received no greater benefit from the roads than any other owner of Town property located outside of the subdivision.

Puerto Rico Avoids Default on Over \$350 Million in Bond Payments.

Prices of some Puerto Rico bonds rallied after Gov. Alejandro Garcia Padilla said the U.S. Commonwealth would begin clawing back revenue from other debt to provide for essential public services and pay obligations backed by the government's full faith and credit.

Some Puerto Rico bonds maturing in 2035 traded at about 75 cents on the dollar, up from around 71.75 cents Monday, according to the Electronic Municipal Market Access website. The rally came as Puerto Rico's Government Development Bank said it had paid principal and interest on the bank's debt due Tuesday.

The clawback would default on some debt "in an effort to attempt to repay bonds issued with the full faith and credit of the Commonwealth and secure sufficient resources to protect the life, health, safety and welfare of the people of Puerto Rico," the governor said in written testimony.

"Today's debt service payments reflect our commitment to honor our obligations notwithstanding the extreme fiscal challenges we face in an effort to facilitate a voluntary restructuring process with our creditors," said Melba Acosta, the GDB president, in a news release. "However, make no mistake, Puerto Rico's liquidity position is severely constrained at this time despite the extraordinary measures the Government has taken to improve it."

Puerto Rico is negotiating with bondholders over restructuring the commonwealth's debt, which exceeds \$70 billion, and paid only a fraction of around \$58 million due in August. While those bonds had weak legal protections for investors, a default on government-guaranteed debt could have disrupted talks and provoked lawsuits.

The more-than \$350 million due Tuesday included about \$270 million of the bank's debt guaranteed by the government, according to a report by Moody's Investors Service. Prices on government-backed debt rose as investors were reassured that the island was increasing efforts to pay its general obligation bonds while restructuring talks with investors continue, said John Miller, co-head of fixed income at Nuveen Asset Management LLC, which manages more than \$100 billion of municipal bonds. That means taking money from sources such as highway or convention center bonds, he said.

"It's a sign that, at least for now, the risk of general obligation default has been greatly reduced," said Matt Fabian, partner at the research firm Municipal Market Analytics. "Near-term payments in those bonds have become more likely, but the long term picture is less clear."

Moody's Investors Service said in a prepared statement that the governor's move to redirect money from nongeneral obligation debt "underscores the severity of the commonwealth's liquidity issues." Puerto Rico now owes \$945 million due Jan. 1, 2016, including \$363 million in general obligation debt service, and the ratings firm continues "to view default as likely" on future payments.

The governor's comments came at a Senate Judiciary Committee hearing on Puerto Rico's fiscal crisis. He also said the government was out of cash and that, after Tuesday's payment, he would

choose to fund essential public services before making payments to bondholders, triggering a default.

"If anyone put me into position of selecting to pay a creditor, or a policeman, teacher or firefighter, I will pay the policeman, the teacher and the firefighter. There is no doubt about it," he said. "And we are running out of cash. There's no more cash."

Mr. Garcia Padilla said that he would soon be forced to make that choice.

"There's no more tricks to be able to sustain the essential services to the people of Puerto Rico and pay the debt in the future. I have been saying this and inviting creditors to the table," he said. "Maybe now they will understand."

THE WALL STREET JOURNAL

By AARON KURILOFF and NICK TIMIRAOS

Updated Dec. 1, 2015 1:52 p.m. ET

Write to Aaron Kuriloff at aaron.kuriloff@wsj.com and Nick Timiraos at nick.timiraos@wsj.com

[Pension Cuts Win Federal Court Support in Chattanooga.](#)

In a big win for Chattanooga Mayor Andrew Berke's administration, a federal court judge dismissed a lawsuit filed by four retired police officers and firefighters that challenged the city's decision to reduce the cost-of-living adjustments to their pensions.

U.S. District Court Judge Curtis Collier granted the city's motion for summary judgment in a decision issued Tuesday.

Mayor Berke praised the ruling, saying it preserved his pension reform plan. "Last year, the Fire and Police Pension was reformed to ensure the longterm fiscal health of the city and meet our obligations to first responders," he said in a statement. "We are excited this solution was validated by the court today, ensuring the city will be able to continue to provide competitive benefits for our police and firefighters for years to come."

[View Full Story from the Times Free Press](#)

[Standard & Poor's U.S. Public Finance Transportation Rating Transitions and Defaults Study Spotlights Stability.](#)

Although U.S. public finance transportation sector ratings tend to be lower than in other areas of municipal finance, the sector is among the most stable regarding the level and number of ratings. The sector includes airports, ports, mass transit, parking facilities, and toll roads and bridges. In this CreditMatters TV segment, Senior Director Larry Witte highlights the report's key findings.

[Watch the video.](#)

MSRB's Kelly Highlights Concerns For Retail Muni Investors.

WASHINGTON - The Municipal Securities Rulemaking Board is helping the Securities and Exchange Commission's Investor Advocate identify products and practices in the municipal market that could hurt retail investors.

In a recent letter responding to a request from SEC Investor Advocate Rick Fleming, MSRB executive director Lynnette Kelly said the timeliness of continuing disclosures, the lack of bank loan disclosures, and trades below the minimum denomination are three main areas of concern for the board. Kelly also sent the letter to Jessica Kane and Rebecca Olsen in the SEC's office of municipal securities and Stephen Luparello in the SEC's division of trading and markets.

Fleming's office is tasked with protecting investors and works with the SEC and relevant self-regulatory organizations like the MSRB to "encourage reforms designed to benefit investors in the municipal securities markets," according to its website.

Fleming said he requested information from the MSRB as part of his research for his December report to Congress that looks back at the fiscal year and evaluates the progress of his recommendations. The letter details the most problematic products and practices for investors, based on the office's communications with officials of organizations like the MSRB, SEC, and Financial Industry Regulatory Authority. Not everyone responds with a letter like Kelly did, he said.

Kelly said an MSRB report published last May on issuers' timing of annual financial disclosures shows that for the last five years investors and the general public have had to wait an average of 200 calendar days after the end of the relevant fiscal year to see the "valuable information" in issuers' audited financial statements, submitted on EMMA. Annual financial information submissions also lagged, coming in an average of 188 days after the end of the applicable fiscal year, according to the report.

The MSRB has promoted its tools and resources to help issuers understand their disclosure obligations and to make the disclosures timelier, Kelly said. Issuers now have access to a free, automated email reminder service that helps them file periodic financial disclosures on schedule. As of Oct. 30, about 7,500 municipal entities have taken advantage of the service, she told Fleming.

The use of bank loans in the muni market has also drawn market participants' attention. The Federal Deposit Insurance Corp., in its Oct. 21 "Call and Thrift Financial Report Data" found that the issuance of bank loans to state and local governments increased to \$192.3 billion in the fourth quarter of 2014, from \$96.7 billion in the fourth quarter of 2012 for FDIC-regulated banks.

"Bank loan executions have far exceeded bank loan disclosures," Kelly said in her letter.

Municipal entities with bank loans do not currently have to disclose them under Rule 15c2-12 of the Securities and Exchange Act of 1934, which outlines disclosure obligations for issuers that want firms to underwrite their bonds. However, the MSRB has encouraged the practice and on Aug. 18 made it easier for entities to disclose their loans through EMMA. The board also sent a letter to the SEC in January encouraging the commission to re-examine issuers' obligations under 15c2-12, particularly regarding bank loans. Market groups, like the National Federation of Municipal Analysts, have also published best practices papers encouraging bank loan disclosure.

If such disclosures aren't made voluntarily, potential investors may not know about an issuer's total outstanding debt until they see another public offering from the issuer or audited annual financial statements, Kelly said. The EMMA website shows that only 130 bank loan disclosure documents have been submitted to the EMMA system since 2012, according to the letter.

"Delayed or undisclosed debt-like obligations could result in an investor's inability to assess in a timely manner the loan's impact on an issuer's credit profile and could inadvertently distort valuation of an issuer's bonds in both the primary and secondary markets," Kelly said. "The MSRB believes that the timely disclosure by municipal bond issuers of additional debt and debt-like obligations is essential to foster market transparency and to ensure a fair and efficient municipal market."

The final concern is making sure parties to a transaction are complying with the minimum denomination for muni offerings, which is listed in official statements and designed to prevent retail investors from buying unsuitable bonds. The minimum denomination is generally set at \$5,000 but can sometimes be \$100,000 or more, which is generally out of range for a retail investor. MSRB Rule G-15 in part prohibits dealers from making customer transactions below the designated denomination.

Kelly also said the MSRB is monitoring trade disclosures to see whether dealers are providing all material information about a security at the time of trade. While it is unclear whether dealers are complying with the obligation, it would "pose a significant risk to the retail investor" if they were not, "resulting in the investor possibly acting on incomplete information and executing a transaction that is unsuitable," she said.

The MSRB is pursuing initiatives to promote price transparency in the market that will benefit retail investors, the letter said. The self-regulator most recently introduced a proposal that would require dealers acting as principals to disclose markups and markdowns on transactions with retail customers. Comments on the proposal are due to be submitted by Dec. 11.

THE BOND BUYER

BY JACK CASEY

NOV 25, 2015 9:30am ET

[WilmerHale: BIA Finalizes Reforms for Obtaining Rights of Way on Indian Lands.](#)

On November 19, the Bureau of Indian Affairs (BIA) published a final rule that makes sweeping changes to the process for obtaining rights of way for proposed oil and gas pipelines, electric transmission lines, railroads, roads and other infrastructure projects on Indian lands. This is the first update of BIA's right-of-way regulations in more than 30 years. The revised rule aims to expedite and clarify the BIA right-of-way process for project developers, as well as to support the interests of Tribes and individual Indian landowners. The rule update was announced earlier this month at the 7th Annual White House Tribal Nations Conference. The rule is scheduled to go into effect on December 21, 2015.

1. Reforming the Right-of-Way Process

The new rule includes a number of reforms intended to expedite BIA review of right-of-way applications for approximately 56 million acres of land that are held in trust for Indian Tribes and individual Indians by the Department of the Interior. The most significant changes include imposing deadlines for BIA decisions on right-of-way applications: BIA will be required to issue decisions within 60 days of receiving an application for a new right of way and within 30 days of receiving a proposed amendment, assignment or mortgage of an existing right of way. The rule also aims to improve certainty for project proponents by limiting BIA's right to disapprove a right-of-way grant only when the agency has a stated compelling reason to do so, and by clarifying when BIA approval is required.

2. Supporting Tribal and Indian Interests

The final rule also includes a number of important reforms to support the interests of, and expand economic opportunities for, Tribes and individual Indian landowners. For example, the rule requires giving notice to Tribes and Indian landowners of any potential right-of-way actions on their land and provides that BIA will defer to Tribal and landowner decisions to the maximum extent possible. Importantly, the rule clarifies that Indian landowners have the right to negotiate the terms of rights of way across their land directly with applicants. This includes negotiating the amount and type of compensation for the grant of a right of way. Finally, a number of revisions in the final rule are intended to support Tribal self-determination and protect trust property, including: clarifying that the grant of a right of way has no effect on Tribal jurisdiction; establishing guidelines for "reasonable" durations of rights of way on Indian land; and requiring developers to provide a bond, insurance or other security as a condition of receiving a right of way on Indian lands.

The final rule implements the policy principles adopted in BIA's 2012 reform of its leasing regulations for wind, solar, business and residential leasing on Indian lands and extends the same principles to rights of way. The final publication concludes a much-anticipated update to BIA's outdated right-of-way regulations, which were originally promulgated in 1968 and were last updated in 1980.

A complete copy of the new rule is available [here](#).

Article by Christopher E. Babbitt, Andrew L. Spielman and Raya B. Treiser

Last Updated: November 24 2015

WilmerHale

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.

MILL LEVY - COLORADO

[Prospect 34, LLC v. Gunnison County Board of County Commissioners](#)

Colorado Court of Appeals, Div. III - November 5, 2015 - P.3d - 2015 WL 6746441 - 2015 COA 160

Reserve Metropolitan District No. 2 (RMD2) is a special district located entirely within the town of Mt. Crested Butte (Town) in Gunnison County. RMD2's service plan — a document statutorily required to organize a special district — states that RMD2's mill levy "shall not exceed 50 mills,

subject to Gallagher Adjustments,” and that any levy beyond 50 mills requires Town approval.

By 2013, the mill levy totaled 52.676 mills, including the Gallagher Adjustment of 2.676 mills. Then the RMD2 board approved certifying to the BOCC 55.676 mills, 3.000 mills in excess of the cap in the 2000 service plan. Although the maximum mill levy provision in the service plan had never been increased, the BOCC levied 55.676 mills on December 21, 2012.

The Town council protested the mill levy increase, noting that it “does not consent to any increase above 50 mills ‘gallagherized’ in the mill levy....” The Town sued in Gunnison County Court to enjoin the excess mill levy and for a declaratory judgment that the excess mill levy was void. The court denied the council’s motion for summary judgment on this issue. That action remains pending.

When RMD2 taxed Prospect Development Company, Inc., and Prospect 34, LLC (together, Prospect) at a higher rate, Prospect petitioned the Gunnison County Board of County Commissioners (BOCC) to abate the excess taxes. After the BOCC denied the petition, Prospect appealed to the Board of Assessment Appeals (BAA). The BAA did not independently examine the legality of the excess mill levy. Instead, it relied solely on the County Court’s denial of summary judgment to conclude that the 3.000 mills were levied legally. Prospect appealed.

Section 39-10-114(1)(a)(I)(A) provides, as relevant here:

[I]f taxes have been levied erroneously or illegally, whether due to erroneous valuation for assessment, irregularity in levying, clerical error, or overvaluation, the treasurer shall report the amount thereof to the board of county commissioners, which shall proceed to abate such taxes in the manner provided by law.

Thus, the court was was obligated to examine if an excess mill levy

The Court of Appeals concluded that section 39-10-114(1)(a)(I)(A) provided a statutory basis for Prospect to challenge the excess mill levy before the BAA, the BAA had authority to decide whether the excess mill levy was illegal, the BAA abused its discretion by instead relying on an order denying summary judgment as making a final determination, and the excess mill levy was illegal.

The Court reversed the BAA’s decision and remanded for the BAA to order the BOCC to grant the petition and abate the excess taxes.

[Mintz Levin: Helpful News from IRS on Student Loan Bonds.](#)

On November 13, the IRS issued Notice 2015-78, providing favorable guidance on topics of interest to providers of “supplemental” or “alternative” student loans financed with tax-exempt bonds and to underwriters of such student loan bonds. Such guidance confirms that loans financeable under such programs include (i) parent loans as well as student loans and (ii) loans that refinance or consolidate prior loans that were or could have been financed on a tax-exempt basis.

Tax-exempt bonds used to finance student loans, so-called “qualified student loan bonds,” come in two flavors under the Internal Revenue Code, those issued to finance federally-guaranteed loans made under the Federal Family Education Loan Program (“FFELP”) and those issued to finance certain loans issued under programs created by the states, generally known as “supplemental” or “alternative” loan programs. While the FFELP program, historically much larger, terminated in 2010, tax-exempt financing for new loans under state supplemental programs has continued in

approximately fifteen states.

Notice 2015-78 appears to have been prompted by recent efforts by governmental issuers to provide refinancing of student loan debt through non-federally guaranteed “consolidation loans”, which presented questions on which the IRS had not previously provided guidance. The IRS also used the notice as an opportunity to address selected other issues applicable to all tax-exempt financed supplemental loans, not just refinancing loans. The Notice clarifies the following:

Eligible Borrowers. Notwithstanding the widespread practice of making higher education loans to parents, a practice provided for by statute under FFELP through the Parent Loan to Undergraduate Students (PLUS) program, the IRS had expressed concerns in the context of ruling request discussions about whether loans to parents were bond-financeable student loans. Notice 2015-78 clarifies that the student, the parent, or both can be an eligible borrower of a bond-financed “student loan.” The Notice attempts to provide a similar rule for refinancing loans, stating, “An eligible borrower of a refinancing loan ... is the student or parent borrower of the original loan.” In the refinancing loan context the Notice’s particular wording leaves unclear whether if the sole borrower on the original loan was the parent, the sole borrower on the refinancing loan can be the proud young graduate who wishes to take on the debt through a consolidation loan. Such a fact pattern clearly satisfies the policy underlying this otherwise expansively drafted notice.

Nexus to State. The Internal Revenue Code requires the student to be a resident of the state which provides the “volume cap” allocation for the bonds or enrolled at an educational institution in that state. In the case of a refinancing or consolidation loan, there has been some question whether such “nexus” is required to be established at the time the original loan was made or at the time the refinancing loan is made. The Notice provides the broadest rule, stating that a “refinancing loan,” including a loan which allows the borrower to consolidate prior debt, complies with the statutory nexus requirement either if that requirement was satisfied at the time of the original loan or if it is satisfied at the time of the refinancing loan. If reliance is placed on nexus at the time the original loan is made, in the case of a consolidation loan care may need to be exercised to establish nexus for all underlying loans.

Loan Size. The Code limits supplemental loans to “the difference between the total cost of attendance and other forms of student assistance ... for which the student borrower may be eligible.” The “may be eligible” language has resulted in troublesome challenges in IRS audits, where IRS agents have suggested that issuers might be responsible for documenting that students actually had applied for all other potentially available student assistance, or obligated to downsize loans by the amount of other student assistance that was hypothetically available but not received by the student. The Notice confirms that tax-exempt bond issuers may rely on certifications from the student’s school as to total cost of attendance and as to other student assistance. Further, the school may rely on definitions provided under the Higher Education Act, including a definition of “estimated financed assistance” which looks only to assistance the student “will receive.”

Type of Loans Eligible for Refinancing. The Notice states that supplemental student loan bonds can be used to refinance not only original loans which were themselves supplemental loans but also other loans, “for example, a FFELP loan or a student loan made by a private lender, provided that the refinancing loan meets all of the requirements for a State Supplemental Loan.” Although not addressed by the Notice, it should be noted that tax-exempt bonds issued to refinance prior loans, including consolidation of prior loans, generally will require an allocation of state volume cap, which in some states is a scarce commodity. The need for volume cap may be avoided to the extent the refinancing loans made with proceeds of a bond

issue refinance loans financed with other tax-exempt bonds issued by the same issuer or a related issuer and the payoffs on the refinanced loans are applied to redeem such other tax-exempt bonds in a manner that qualifies for the volume cap exception for current refunding bonds.

As a general proposition, the national student loan market is growing and dynamic. Notice 2015-78 will assist governmental issuers in fulfilling their intended role.

Article by Maxwell D. Solet

Last Updated: November 20 2015

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

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.

[Bond Math Bootcamp.](#)

November 16-17, 2015, New York City

February 4-5, 2016, San Francisco

The Bond Math Boot Camp program will be a two-day training program delivered via interactive lecture format. The BootCamp will be 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.

To learn more and to register, [click here](#).

Why Are Closed End Bond Funds On Sale Like Its Black Friday?

Many closed end bond funds ("CEFS") are trading at large discounts to net asset value ("NAV").

I selected Western Asset Managed High Income Fund for this chart, but there are many closed end bond and loan funds (including funds invested in Municipal Bonds) that exhibit similar patterns.

We have seen the discount to NAV (the yellow line) increase. This has largely been due to the price performance of the CEF, as the underlying NAV has been reasonably stable as of late.

The most common reasons I hear for the discount to NAV on so many CEFS are:

- Fear of the Fed raising rates and its impact on bond prices
- Concerns about the leverage the funds use in a rising rate environment
- Nervousness over the asset quality of the fund's holdings and true value of the fund
- Tax Loss Harvesting

I will attempt to address each of these reasons in turn and will add one additional reason to consider deeply discounted funds.

A December Rate Hike and Bond Prices

According to Bloomberg, the market is pricing in a 72% chance that the Federal Reserve Open Market Committee will raise the Federal Reserve Fund Target Rate range by 0.25% in December.

I wanted to be explicit about what rate is being hiked because it is crucial to understand that the Fed has limited ability to set longer term rates. The treasury market yield curve for bonds with maturities 2 years or less is heavily influenced by the Fed Funds Rate and by the messages the Fed sends. As you move further out the curve, to 10 years and beyond, rates are influenced by longer term policy indications and fears (or hopes) of growth and inflation.

With the rate hike so well telegraphed, there is little reason to believe that bond yields across the curve will move by much. Any change in longer term yields are more likely to be based on the tone of the Fed meeting - which will likely be very dovish and show that they will be extremely cautious in terms of future interest rate hikes.

So based solely on the hike, there should be little movement in bond prices.

There is concern that the rate hike will cause the dollar to strengthen, causing yet more pressure on commodity prices, in turn hurting bonds of those producers. That is a possibility, but as we have seen time and time again, when something is so logical and widely anticipated, it rarely occurs. The market has had almost a year to digest the impact of the first rate hike, and the dollar (as measured

by the DXY Index) is already at highs of the past 12 years (first reached in February).

So being concerned about further dollar strength is rational, it may already be priced in.

The Impact of Leverage

A rate hike will likely increase the cost of the leverage used by most CEFs. Assuming the fund borrows using short term rates (3 month LIBOR for example), without an interest rate floor, then the cost of those borrowings is likely to increase. That will impact the Net Interest for the CEF (Total Interest minus Cost of Funds).

For most funds that will have a very small impact on what can be distributed, as it will likely only be 0.25% and only on the amount of money borrowed (typically 25% to 33% of the funds size). I anticipate that cost will be around 0.1% in the first quarter of next year for most funds, which is small relative to dividend yields and current discounts to NAV.

So while the direct cost of increased borrowing costs is real, it is small relative to current dividend yields and NAVs for many funds. MHY, which does not use leverage, has a 9.5% dividend yield and 15.6% discount.

Leverage does amplify price moves in the underlying asset classes, but that is ongoing and has nothing to do with a change in rates. It also works in both directions, so any price increases in the underlying assets will also be impacted. Whether or not bond prices will increase or decrease from here is unknown, the impact of leverage on the return of the underlying assets cannot be ignored and bond prices could drop further, but the current discount to NAV can be a large offset over time.

Asset Quality

Much has been made about the difficulty in valuing and trading bonds. While that is true it can be overstated. According to TRACE data, the market has been averaging over \$15 billion of investment grade bond trading on a daily basis for the past month. High Yield volumes are much smaller but not insignificant.

I like to look at the ETF's to judge how "well" a market is trading. **If a market is out of favor or very difficult to value, I would expect the ETF for that market to be trading at a discount to NAV.**

But that is not currently the case as the ETF's for Municipal Bonds, Investment Grade Bonds, and High Yield Bonds are all trading at a premium to NAV.

Asset Class	ETF	Premium
Municipal Bonds	MUB	0.2%
Investment Grade	LQD	0.0%
High Yield	HYG	0.5%
High Yield	JNK	0.5%
Leveraged Loans	BKLN	-0.2%

That premium to NAV should ease concerns that the asset class is "for sale". In fact the difference in the high yield market, where many of the CEFs trading at the largest discount to NAV invest versus the ETF's trading at a premium is striking.

Leveraged loans, which also have many CEFS, are a bit more concerning as the main ETF for that market continues to trade at a discount to NAV and experience outflows.

Tax Loss Harvesting

This can be a valid strategy, particularly if coupled with buying a similarly discounted CEF – to capture the tax loss without creating a wash sale issue (please talk to your accountant for any tax related issues).

That could be causing some selling pressure but that tends to dissipate as we near year end. Furthermore, we often see new allocations to fixed income in the first part of the year where investors tend to “annualize” the yield they can receive – not a strategy I condone as I believe fixed income should be managed throughout the year, but it is a flow that tends to occur with regularity so I would not want to ignore that.

So this is a real issue, but a temporary one that should be nearing the end of this year’s flows.

Manager Buying

As we near year end, we could see some managers buy back shares of some of their most heavily discounted CEFS. I have spoken to several managers of CEFS and they all tend to start buying back shares to support prices in the 15% to 18% discount range (some types of funds start earlier). Managers do not like their funds to experience high discounts to NAV for prolonged periods as they feel it can reflect poorly on the manager.

So we are nearing levels on many funds, where another possible source of capital inflows could enter the market, supporting the trading price versus NAV.

Are CEFS the Doorbuster of the Market?

There remains a lot of risk in the bond market, but good managers can find value, and while we have all been trained to buy what retailers “discount” so far, we generally have the opposite tendency when it comes to markets. The discount to NAV for many represents fear, rather than the impulse to get a good deal.

For myself, I am not sure that the pain is over in the bond market, but well managed CEFS trading at a deep discount to NAV is interesting, especially when so many of the reasons we are seeing that phenomenon can be explained away.

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NOV 29, 2015 @ 09:30 AM

Peter Tchir

Barron’s

California Debt Foe Campaigns to Block Billion-Dollar Bond Deals.

Dino Cortopassi, who lives near Stockton, watched as the California city loaded up on debt for amenities like a waterfront ballpark, only to slash services after the community went bankrupt. So he's spending \$4 million in an effort to give the state's voters more power to curb bond sales.

The 78-year-old farmer turned businessman placed an initiative on the November ballot that would require voter approval for revenue bonds exceeding \$2 billion. That could set up roadblocks for billions of dollars of planned public projects, including California's high-speed railroad and the vast network of tunnels and water works that Governor Jerry Brown, a Democrat, wants to build across the drought-stricken state.

"This is an effort to halt California's rush into deeper and deeper debt," Cortopassi said. "It is to instill some discipline in a totally undisciplined feeding off the public trough."

The measure is part of a decades-long tradition of using the ballot box to exert influence over fiscal policy in the most populous U.S. state, sometimes with long-lasting consequences. Already, labor unions and the California Chamber of Commerce are lining up to defeat the initiative, which the state's nonpartisan Legislative Analyst's Office said would cast "substantial uncertainty" over the financing of infrastructure projects.

"You don't know what type of initiative can pop up and what the implications are fiscally for the state," said Howard Cure, head of municipal research in New York at Evercore Wealth Management, which oversees \$5.9 billion of investments. "A lot of them could ultimately result in limiting the flexibility of the legislature to deal with financial problems."

Cortopassi's campaign against profligacy comes as public finances are reviving in California, which was hit particularly hard by the real estate crash and recession. As the recovery provided California with a tax windfall, Brown has used the surplus to pay off debt and bolster savings.

In July, Standard & Poor's raised its bond grade to the highest in 14 years, marking the eighth upgrade from one of the three biggest credit-rating companies since 2010. California 10-year bonds yield about 2.34 percent, or 0.27 percentage point more than top-rated debt, down from a gap of as much as 1.7 percentage point six years ago.

Voter Approval

California voters already must approve general-obligation debt, which is backed by the government's full faith and credit. Revenue bonds are repaid through money generated by the projects being financed, such as tolls on roads or fees from water customers.

California and local agencies have sold \$310 billion of the securities since 2008, data compiled by Bloomberg show. Even so, the state has relied more heavily on general obligations: As of November, California had \$76 billion of general obligations outstanding, almost seven times what it owes for revenue bonds.

Cortopassi, a son of Italian immigrants who started out on rented land before acquiring his own farm and stakes in local agricultural businesses, said the level of debt will take decades for future generations to repay. State and local governments are already contending with swelling liabilities to workers' pension funds, he said.

Last year, he bought full-page advertisements in California newspapers with “Liar, Liar, Pants on Fire!” emblazoned in capital letters across the top. Written as columns from Cortopassi, the ads detailed the state’s debts and urged voters to reject every bond proposition. He followed that with a successful drive to put on the ballot his constitutional amendment, which would apply to debt sold by California and some local agencies.

Close to Home

One bond-funded project would run right through the Central Valley, the agricultural heart where Cortopassi made his fortune. Brown’s effort to improve the state’s water supply includes building two \$15 billion tunnels under the Sacramento-San Joaquin delta. Cortopassi said he opposes the project because of its environmental impact and has raised funds for a group that’s against it.

The Central Valley will also carry a major leg of California’s high-speed railroad. Voters have already approved the sale of \$10 billion of bonds for the \$68 billion project, which would run from San Francisco to Los Angeles. Private investors, who will be needed to help pay for the rail line, have said they won’t sign on unless taxpayers pitch in even more.

The consequences of Cortopassi’s initiative, if approved, could have a broad reach. A review by the Legislative Analyst’s Office said it may wind up reducing funding for large-scale projects, though the effects will hinge on how it’s interpreted by courts and governments. Such constitutional changes can have lasting repercussions: Proposition 13, a property-tax limit that was passed in 1978, made local governments more dependent on sales taxes.

“It’s making it harder to finance these kinds of infrastructure needs, which I think everyone acknowledges are pretty critical for the state,” said Stephen Walsh, a director with Fitch Ratings in San Francisco.

It may also leave California projects dependent on more expensive forms of financing, according to the Citizens to Protect California Infrastructure, a coalition of business groups and labor unions organized to sway voters against it. It would impose “costly delays in repairing our roads, colleges and water systems and make it harder to respond to natural disasters,” said Gareth Lacy, a spokesman for Brown.

Cortopassi is unmoved by such arguments. He said those who benefit from bond-funded projects don’t want residents to have a say.

“This is the people’s chance to choose their own destiny,” he said.

Bloomberg Business

by Romy Varghese

November 30, 2015 — 9:01 PM PST Updated on December 1, 2015 — 11:11 AM PST

[Now Available! CDFA Tax Increment Finance Best Practices Reference Guide 2nd Edition.](#)

Visit the CDFA bookstore [here](#).

[CDFA Brownfields Online Project Marketplace.](#)

CDFA is excited to announce the Brownfields Project Marketplace as part of the CDFA Brownfields Technical Assistance Program. Brownfields redevelopment financing solutions are increasingly sought across the country in order to restore contaminated sites and/or to return abandoned industrial land to productive use. The cleanup and redevelopment of brownfield sites can advance a region's economy, restore the local environment, and ultimately lead to permanent job creation and greater attraction of external capital to the community.

The CDFA Brownfields Project Marketplace provides communities the opportunity to receive special assistance with brownfields redevelopment projects. Communities will detail important information on a site and engage in open discussion with financial and brownfields experts. The purpose of these discussions is to provide initial suggestions for the communities' redevelopment plans and financing sources. CDFA will provide two in-person and two virtual marketplaces each year.

Next Project Marketplace

February 2-4, 2016

12:00PM - 5:00PM EST

The Online Project Marketplaces will consist of a brief presentation by a community detailing important information on their brownfield site followed by an open discussion period among community officials and technical assistance partners. Join us online to consult with financing professionals and brownfield project experts who can help identify potential resources for the project.

To enroll in the Online Project Marketplace, please complete the application below. CDFA staff will follow up with you at the contact information you provide below to confirm your submission.

[REGISTER.](#)

Contact:

Jakob Dyck
Program Coordinator
614-705-1306
jdyck@cdfa.net

[CDFA Webinar Series: Financing Green Energy on Brownfields.](#)

CDFA is excited to announce the CDFA Brownfields Financing Webinar Series as part of the CDFA Brownfields Technical Assistance Program. Brownfields redevelopment financing solutions are increasingly sought across the country in order to restore contaminated sites and/or to return abandoned industrial land to productive use. The cleanup and redevelopment of brownfield sites can advance a region's economy, restore the local environment, and ultimately lead to permanent job creation and greater attraction of external capital to the community.

The series will include three 90-minute webinars over the year and will focus on effective utilization

of brownfields and redevelopment financing tools, while highlighting best practices, case studies, and CDFA's technical assistance program participants. This series is designed for professionals who work directly with brownfield sites as well as economic development professionals and communities interested in shaping programs to enhance redevelopment financing opportunities.

Brownfields Financing Webinar Series: Financing Green Energy on Brownfields

January 14, 2016 @ 2:00 PM EST

Join CDFA, US EPA, and experienced brownfield communities as we discuss the potential behind using brownfields as sites for renewable energy generation, the unique financing tools available for these projects, and the potential benefits for impacted communities and energy developers.

[REGISTER.](#)

Muni Volume Dips 21.6% in 3rd Month of Decline.

Municipal bond volume fell for a third straight month in November, as refundings declined by more than one-third from the same month last year.

Long-term muni bond issuance declined by 21.6% to \$23.19 billion in 834 issues from \$29.56 billion in 995 issues during the same period last year, according to Thomson Reuters data. The last November with lower volume was in 2000, when the monthly issuance totaled \$19.80 billion.

"I am not totally surprised by the decline but a little surprised by the magnitude," said Dan Heckman, senior fixed income strategist at U.S. Bank Wealth Management. "It is playing out how we thought, all in and all. This trend will continue and will make for continued outperformance for munis."

The drop is "evidence of the volatility in the overall market," said Natalie Cohen, managing director at Wells Fargo Securities, who noted that Federal Reserve policymakers have continued to put off raising interest rates from historic lows. "At the end of August, there was a major equity drop and a rally in municipals," she said. "Since then we have been very bouncy. After the rates didn't rise, it took some time until we starting seeing issuance again."

Refundings have now declined in four of the past five months, plunging 39.5% to \$7.42 billion in 319 deals in November from \$12.26 billion in 444 deals a year earlier.

"Refundings have fallen off a cliff and it is getting more and more challenging with how much refunding has taken place, there is not much left to refund," Heckman said. "We are not issuing enough to keep up with number of bonds that have been called."

New money issuance slipped 1.7% to \$11.93 billion in 449 transactions from \$12.13 billion in 473 transactions a year earlier.

Issuance of revenue bonds fell 17.1% to \$14.22 billion, while general obligation bond sales dropped 27.7% to \$8.97 billion.

Negotiated deals were down 15.3% to \$17.43 billion and competitive sales decreased by 26.8% to \$5.62 billion.

Taxable bond volume was 22.7% lower to \$1.69 billion from \$2.19 billion, while tax-exempt issuance declined by 24% to \$20.42 billion. Minimum tax bonds more than doubled to \$1.08 billion from \$508 million.

Bond insurance broke a three-month streak of decreases, as the par amount of deals with guarantees improved by 16.8% to \$2.09 billion in 121 deals from \$1.79 billion in 147 deals in November 2014.

Cities and towns saw an increase of 49.4% increase to \$4.37 billion in 224 transactions from \$2.92 billion in 254 transactions, while state governments, state agencies, counties and parishes, districts, local authorities, colleges and universities and direct issuers all saw decreases and hefty declines at that.

"When it comes to cities and towns, that's a reflection of some of the large borrows doing refundings in the month and a reflection of infrastructure that state and local governments are doing what they need to do. The logic is there with the rates being low so they are saying 'let's get it done'," Cohen said.

Cohen also said that while large deals by the likes of Industry City, Calif., Los Angeles municipal development corporation, Miami-beach and Anchorage had an effect, the system for bringing deals to market is more complex for cities and towns than it is for revenue bonds. The combination of delayed deals and new ones coming to market all at once could be another reason why issuance by cities and towns improved, she said.

The sectors were evenly split this month, with five seeing increases and five seeing decreases. The education, electric power, environmental facilities, housing and public facilities sectors gained.

"One of the bigger questions is why there isn't more borrowing. The rates are low and we need infrastructure. but there has been this overhang of people saying 'I can't raise taxes' but there was some change in that recently and you could see that in the local elections," said Cohen.

Both the housing and public facilities sectors saw gains despite having a lower number of transactions, compared with November 2014. Housing transactions increased 23.7% to \$1.19 billion in 35 deals from \$967 million in 44 deals while public facilities issuance jumped up 46% to \$1.65 billion in 49 deals from \$1.13 billion in 57 deals.

With only one month now left in 2015, California, Texas, New York, Florida, and Pennsylvania remain the top issuers for the year to date.

The Golden State kept the top spot with \$52.29 billion of issuance thus far in 2015, while the Lone Star State is second with \$44.63 billion. The Empire State is third with \$39.15 billion, the Sunshine State came in fourth with \$19.93 billion and the Keystone State ranked fifth with \$16.63 billion.

While it had looked like the market was almost certain reach the \$400 billion plateau for yearly issuance, it now seems less likely, as a volume total of roughly \$23 billion would be needed in December.

"I am not sure we will reach the \$400 billion plateau," Heckman said. "It will be very close - the drop off in new issuance is significant."

Heckman said his firm expects the Fed to raise the benchmark rate by 25 basis points as it takes a "patient and methodical" approach to normalization.

Cohen expects issuance to reach the \$400 billion mark and rates to rise in December, but says the bigger question is what will happen in the subsequent meetings in 2016.

"Will it be raise, raise raise? I think they will take it slow, raise it a little in December and wait and see from there on out," she said. "Hopefully markets do not react dramatically. The global factor is a big one: it will be interesting to see how global events impact the market after December, once the rates are higher."

THE BOND BUYER

BY AARON WEITZMAN

NOV 30, 2015 4:00pm ET

Puerto Rico Makes Bond Payment by Redirecting Revenue.

NEW YORK — Puerto Rico on Tuesday made bond payments on \$355 million worth of debt maturing on Dec. 1 that was issued by its Government Development Bank by diverting revenues pledged to other debt.

A default could have triggered lawsuits, further spooked investors and undermined the island's efforts to climb out of \$72 billion in debt.

MARKET REACTION: Puerto Rico's 8 percent General Obligation Bond rallied to trade at an average price of 75 cents on the dollar, with a yield dropping to 11.168 percent versus a yield of 11.809 percent on Monday.

COMMENTS:

TED HAMPTON, ANALYST, MOODY'S INVESTORS SERVICE:

"The Commonwealth of Puerto Rico's Government Development Bank made full payment of debt service to its note holders today, despite its strained liquidity. The payment, which was disclosed in a press release, indicates the commonwealth is making an effort to avoid litigation and prevent further deterioration in relations with its creditors."

"Puerto Rico's financial situation remains pressured and today's payment does not change Moody's current ratings or outlook on the commonwealth's debt. Moreover, the governor's executive order to redirect revenues allocated to certain non-general obligation bonds underscores the severity of the commonwealth's liquidity issues. Puerto Rico now must make \$945 million in total bond payments on January 1, including \$363 million in general obligation debt service. We continue to view default as likely on future commonwealth debt payments."

DAVID TAWIL, PRESIDENT AT MAGLAN CAPITAL IN NEW YORK:

"This just really buys a bit more time for the Commonwealth, but the PR leadership better act fast with respect to bond holder negotiations if they want these payments to have been worthwhile. Otherwise, if there is an eventual default, then that was good money thrown after bad."

MIKHAIL FOUX, MUNICIPAL RESEARCH DIRECTOR AT BARCLAYS CAPITAL, NEW YORK:

"The more important thing is the actual claw back... We were saying they were going to do that. It's just a question of when. And they just decided to do that before the January payments. Come January we're going to see some defaults, which was always our base case scenario on certain entities ... By clawing back on certain entities they're showing their intent."

PHILIP FISCHER, HEAD OF MUNICIPAL BOND RESEARCH, BANK OF AMERICA MERRILL LYNCH IN NEW YORK:

"I think the essential question from the hearing is where are the financials (Puerto Rico's latest audit)? Absent the financials it's extremely difficult for Congress to come to an exact assessment of where Puerto Rico stands. Absent the financials we have difficulty judging all the issues related to remedies."

ROBERT AMODEO, FUND MANAGER, WESTERN ASSET MANAGEMENT, NEW YORK:

"Ultimately this is going to be a messy situation we believe and one that is protracted. You have the GO (general obligation) debt holders saying, 'look, we have the constitutional rights, you have to find revenue from every available source', and then you have the COFINA bondholders saying, 'we have these nice bond documents that say these are not available revenues'."

JAMES COLBY, SENIOR MUNICIPAL STRATEGIST, VAN ECK GLOBAL, NEW YORK:

"When we saw the initial headlines, we were exhaling a sigh of relief - we don't have a monetary default. But now we go to the next month. Come January 1, we've got another very significant commitment that they have to address... by no means is this to be construed as anything but just a momentary blip in what's been a continuing litany of confusing positioning and comments from the leadership" in Puerto Rico.

ROBERT RAUCH, SENIOR PARTNER AND PORTFOLIO MANAGER, GRAMERCY FUNDS MANAGEMENT, GREENWICH, CONNECTICUT:

"Padilla's comments were a game-changer. He admitted essentially that Puerto Rico is out of cash. They have no recourse but to put off the day of reckoning. They have already defaulted on a non-GO obligation. It is just a matter of time at this point."

"We'll start to see things quickly unwind and then everything goes back to the U.S. Congress. They are the only ones who have the ability to actually legislate and give Puerto Rico the tools to address the financial stress they are under. It will have to be bespoke legislation to address this."

"We have examined Puerto Rico but did not invest because of a lack of clarity on the process."

By REUTERS

DEC. 1, 2015, 1:09 P.M. E.S.T.

(Reporting By U.S. Municipal Markets Team; Editing by Daniel Bases and Bernard Orr)

[What's a Fair Fare?](#)

As transit agencies move toward income-based discounts, they still need to keep larger issues in mind.

Like so much of government, transit agencies walk a tightrope between providing a public service and not breaking the bank. Thanks to advances in smart-card technology, transit policymakers can now use income-based fare discounts to take a more nuanced approach to the public service-vs-efficiency challenge. But the fundamental tension — and the need to focus on customer service — remains.

Nowhere is the balance between access and solvency harder to achieve than in Boston, a compact metropolitan area that relies heavily on transit. The region's density and high cost of living must be weighed against the fragile physical condition and precarious finances of the Massachusetts Bay Transportation Authority (MBTA). The agency owes about \$9 billion in debt and interest, it faces a maintenance backlog of more than \$7 billion, and it famously collapsed under the weight of this year's brutal winter.

The MBTA's financial problems are worse than most, but other transit agencies have the same types of challenges. According to the American Public Transportation Association, more than 70 percent of American public transit systems cut service, raised fares or did both during the Great Recession and its aftermath.

In the wake of last winter's meltdown, the MBTA was put under the control of a Fiscal and Management Control Board (FMCB), which is contemplating fare increases that would take effect next summer. One option board members are considering is introducing low-income fare discounts to counterbalance the fare hikes.

Boston's wouldn't be the first transit agency to try that approach. The San Francisco Municipal Transportation Agency implemented a plan called Muni Lifeline in 2005, but even though 20 percent of Bay Area residents live below the poverty line, only about 6 percent of system riders participate. One reason for the limited participation could be that the discount applies only to Muni's bus and rail services, not Bay Area Rapid Transit trains.

Seattle presents a better comparison. Under a system implemented in March, together with the system's sixth fare hike in eight years, those with annual incomes below 200 percent of the federal poverty line (\$47,700 for a family of four and \$23,340 for an individual) ride for \$1.50, less than half of peak fares. Local transit officials estimate that 45,000 to 100,000 eligible residents will take advantage of the discount.

Low-income discounts are also an issue in Denver. In January, bus fares will rise from \$2.25 to \$2.60 and a monthly pass will cost \$99. Advocates there are pushing for \$1.30 fares and \$49 monthly passes for recipients of public assistance.

In an era of scarcity, transit agencies can't offer discounts to large swaths of riders without recouping the money elsewhere, and government isn't a good candidate to kick in more. A 2014 U.S. Government Accountability Office report projected that state and local government tax revenues, as a percentage of gross domestic product, won't reach pre-Great Recession levels until 2058.

But at the same time, transportation infrastructure has no more basic purpose than to facilitate economic growth. That includes providing low-income residents with a way to get to and from their jobs and an opportunity to climb the economic ladder.

Ultimately, the fate of transit agencies' worthy experiment with low-income fare discounts will rest on the answer to one question: Are more affluent riders willing to make up the difference by paying more, or will higher fares push them to other transportation options?

Seattle's transit agency awaits the answer to that question. Boston and Denver may soon join the list. Whether those riders choose to stay or go provides a reminder of why customer service needs to be job one throughout the transit industry.

GOVERNING.COM

BY CHARLES CHIEPPO | DECEMBER 1, 2015

Puerto Rico Avoids Second Default, but Future Payments Uncertain.

NEW YORK/SAN JUAN — Puerto Rico made a crucial debt payment on Tuesday but warned that its deteriorating finances could trigger future defaults, as the governor granted the U.S. territory power to take revenues from public agencies.

There had been speculation Puerto Rico would default on all or part of the \$355 million notes issued by its financing arm, the Government Development Bank. The U.S. territory said in a statement that it made the Dec. 1 bond payment despite "extreme fiscal challenges."

While Puerto Rico first defaulted in August, failure to make the payment on Tuesday would have been more significant because part of that debt was protected by the commonwealth's constitution.

Another default could have triggered lawsuits, further spooked investors and undermined the island's efforts to climb out of \$72 billion in debt and forced it to take drastic measures to keep public services running.

But Moody's said the ratings agency would "continue to view default as likely on future commonwealth debt payments."

Puerto Rico's next deadline is \$945 million in total bond payments on Jan. 1, including \$363 million in general obligation debt service, Moody's said.

A Puerto Rico executive order signed on Monday by Governor Alejandro Garcia Padilla said it gives the commonwealth the ability to claw back revenues from certain government agencies, including the highway authority HTA and the infrastructure authority PRIFA.

Garcia Padilla told a U.S. Senate Judiciary Committee that Puerto Rico would have to "claw back revenues pledged to certain bonds issued in order to maintain public services" and to repay bonds issued with the full faith and credit of the commonwealth.

An imminent default "looms large," Garcia Padilla said.

"In simple terms, we have begun to default on our debt in an effort to attempt to repay bonds issued with the full faith and credit of the commonwealth and secure sufficient resources to protect the life, health, safety and welfare of the people of Puerto Rico," the governor said in written testimony.

Justice Secretary Cesar Miranda said that the clawbacks "could be interpreted as a technical default, in the way that we retain money destined to eventually pay a debt when due" and said it could open the door to litigation.

Puerto Rico's 8 percent General Obligation Bond rallied to trade at an average price of 74.9 cents on the dollar, with a yield dropping to 11.2 percent versus a yield of 11.8 percent on Monday, on news

that it did not default on the GDB debt.

With 45 percent of its 3.5 million population in poverty, Puerto Rico is a meteorological paradise mired in economic purgatory. Years of over-spending and the expiration of corporate tax incentives stuck it with debt that gets harder to pay as residents increasingly emigrate to the United States.

“Puerto Rico’s debt crisis didn’t happen overnight, it’s been years in the making,” said Senator Chuck Grassley, who chaired the committee at Tuesday’s hearing. “The starting point is to identify the problem.”

Puerto Rico is in the process of trying to negotiate a debt restructuring with investors which could involve a so-called superbond that provides just one credit for various existing bonds. One source familiar with the situation said negotiations had been going slowly and will now probably drag into next summer as the GDB payment buys some time.

“This just really buys a bit more time for the Commonwealth, but the Puerto Rico leadership better act fast with respect to bond holder negotiations if they want these payments to have been worthwhile,” said David Tawil, president at hedge fund Maglan Capital.

Of the \$355 million paid on Tuesday, \$81.4 million was to service non-general obligation-backed debt and \$273.3 million was for notes backed by the commonwealth’s general obligation guarantee.

The payment on bonds issued by the GDB was crucial as Puerto Rico tries to stretch its liquidity into 2016 to provide more time to restructure debt.

In August, Puerto Rico paid only \$628,000 of a \$58 million payment due on its Public Finance Corp bonds.

By REUTERS

DEC. 1, 2015, 12:57 P.M. E.S.T.

(Reporting by Megan Davies and Nick Brown; additional reporting by Daniel Bases and Edward Krudy in New York and a contributor in San Juan; Editing by Lisa Von Ahn, Grant McCool and Bernard Orr)

[MSRB Announces Members of Investor Advisory Group.](#)

Alexandria, VA - The Municipal Securities Rulemaking Board (MSRB) today announced the names of the members of its 2016 Investor Advisory Group, which was created recently to provide the MSRB’s Board of Directors with access to additional expertise on municipal market practices, transparency and investor protection issues.

Members of the 2016 MSRB Investor Advisory Group are:

- Joseph John Bridy, Partner, Hamlin Capital Management
- Joseph P. Darcy, Executive Vice President, Sector Head, Municipal Fixed Income, Hartford Investment Management Company
- Lyle Fitterer, Managing Director, Head of Tax-Exempt Fixed Income, Wells Capital Management
- Thalia Meehan, Portfolio Manager, Putnam Investments

- Bill Oliver, Retail Investor
- Betsy C. Shelton, Director of Research and Senior Portfolio Manager, Charles Fish Investments, Inc.
- Benjamin S. Thompson, President and Chief Executive Officer, Fiera Capital Inc.

“The Investor Advisory Group will help ensure that the Board’s deliberations on key issues include the perspectives of active and knowledgeable municipal securities investors,” said MSRB Chair Nat Singer. “The advisory group members each have decades of experience that will enhance the work of the MSRB to promote a fair and efficient market.”

The advisory group will meet periodically throughout the year, as directed by the Board.

Date: November 30, 2015

Contact: Jennifer A. Galloway, Chief Communications Officer
(703) 797-6600
jgalloway@msrb.org

[NABL: Registration for TSLI is Open.](#)

Start up the DeLorean and make sure the flux capacitor has enough power. The [Tax and Securities Law Institute \(TSLI\)](#) heads back to the future as it returns to its original home in Washington, D.C., March 10-11, 2016.

This year’s TSLI will utilize live polling in the mobile app to make sessions interactive and lively.

Travel through the space-time continuum and connect with your colleagues from around the country for in-depth discussions of the current topics in public finance at the Omni Shoreham Hotel.

[Read about panel sessions.](#)

[Learn about Institute highlights.](#)

[Register today.](#)

[NABL Recommends Revisions to Management Contract Safe Harbors.](#)

NABL has sent to the IRS and Treasury Department suggested revisions to expand the safe harbors against private business use in Rev. Proc. 97-13. NABL made three basic recommendations.

First, safe harbors for contracts having a term greater than five years relying on the “fixed fee” framework should be made more flexible in a manner comparable to the flexibility provided in Notice 2014-67 for five-year contracts, and certain principles developed in private letter rulings should be reflected in published guidance.

Second, there should be additional safe harbors that are not based on “fixed fee” limitations.

And third, the limitation set forth in the existing regulations prohibiting management and other

service contracts “based, in whole or in part, on a share of net profits” should be reconsidered, and a more flexible rule focusing on control relationships should be adopted.

[Read NABL's Comment Letter.](#)

TAX - INDIANA

Union Tp., St. Joseph County v. State, Dept. of Local Government Finance

Tax Court of Indiana - November 12, 2015 - N.E.3d - 2015 WL 7010912

In July of 2012, Union Township, together with the Union-Lakeville Fire Protection Territory, requested the Department of Local Government Finance’s (DLGF) permission to impose an excess property tax levy. Their appeal documentation asserted that due to a \$40 million “error” in calculating Union Township’s 2010 net assessed valuation, they each suffered a property tax revenue shortfall in 2011. More specifically, they explained that the error was the result of the DLGF certifying Union Township’s 2011 budget based on a net assessed valuation of \$159,424,430, but St. Joseph County subsequently issuing the tax bills using a lower net assessed valuation of \$119,968,732. Union Township and the Union-Lakeville Fire Protection Territory therefore requested the DLGF to increase the current net assessed valuation by at least \$40,000,000 and allow a levy for 2012 payable 2013 sufficient to make up for the cumulative effect of that error.

On October 16, 2012, Union Township submitted a second request for the DLGF’s permission to impose an excess levy. This second appeal again identified the \$40 million error as the cause of a property tax revenue shortfall in 2011; it specifically sought a levy increase in the amount of \$51,929.

On December 7, 2012, the DLGF issued two final determinations that denied both excess levy appeals. On January 8, 2013, Union Township initiated an original tax appeal.

The Tax Court reversed the final determinations of the DLGF, remanding to the DLGF so that it may determine whether an error caused the \$40 million discrepancy between the net assessed valuation used to certify Union Township’s 2011 budget and the net assessed valuation the St. Joseph County Auditor used in issuing the property tax bills related to that budget.

“DLGF has not answered ‘the \$40 million question:’ whether or not an “error” existed. Indeed, even assuming that 1) the St. Joseph County Auditor failed to timely certify Union Township’s 2010 pay 2011 net assessed valuation and 2) the DLGF was therefore authorized to certify Union Township’s 2011 budget using its 2009 pay 2010 net assessed valuation does not explain why the St. Joseph County Auditor subsequently issued the 2010 pay 2011 tax bills using a number that was \$40 million lower.”

If an error did in fact occur, the DLGF shall order a correction to be applied to Union Township’s levy limitations, rate, and levy for the ensuing calendar year to offset the cumulative effect that the error caused.