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EMINENT DOMAIN - CALIFORNIA

[People ex rel. California Deparment of Transportation v. Hansen's Truck Stop, Inc.](#)

Court of Appeal, First District, Division 4, California - April 24, 2015 - Cal.Rptr.3d - 2015 WL 1877332

Department of Transportation brought eminent domain action. The Superior Court entered judgment on special jury verdict awarding compensation between the statutory offer and demand, and denied litigation expenses based on its finding that landowner’s demand was unreasonable. Landowner appealed.

The Court of Appeal held that offers and demands used as basis for award of litigation expenses may be made after first phase of eminent domain trial.

Offers and demands used as the basis for an award of eminent domain litigation expenses must be made 20 days before the trial on the amount of compensation to be awarded, not necessarily before phase one of a bifurcated proceeding in which preliminary issues of the property owner’s right to seek damages for impairment of access, loss of goodwill, or other severance damages are adjudicated, since the phrase “trial on issues relating to compensation” found in the statute has a particular meaning in eminent domain practice, and refers to the trial in which the trier of fact determines the amount of compensation, including the amount of damages if any, to be awarded to the property owner.

ANNEXATION - KANSAS

[Stueckemann v. City of Basehor](#)

Supreme Court of Kansas - April 24, 2015 - P.3d - 2015 WL 1874513

After city unilaterally annexed platted subdivision adjoining city, affected landowners and association for subdivision sued city, seeking to invalidate annexation. The District Court upheld annexation. Landowners and association appealed. The Court of Appeals affirmed. Landowners and association petitioned for review, which was granted.

The Supreme Court of Kansas held that:

- City’s description and depictions of land subject to annexation substantially complied with annexation statutes;
- City’s correction of erroneous legal description of land substantially complied with annexation

statutes;
- City’s service plan substantially complied with annexation statutes;
- Adoption of statute permitting landowner to challenge annexation decision did not codify prior annexation caselaw; and
- City’s unilateral annexation decision was reasonable.

City’s description and depictions of land subject to annexation substantially complied with annexation statutes, such that city’s description of land was adequate, despite contention that no one was able to read annexation plan and determine what city was trying to annex. City included a legal description of land to be annexed with its annexation resolutions, city provided sketches delineating area it proposed to annex to affected landowners, and even though there were errors in initial identification of land subject to annexation, affected landowners were able to determine what area city sought to annex.

City’s correction of erroneous legal description of land to be annexed in annexation resolution before publication of annexation ordinance substantially complied with annexation statutes, despite contention that city’s attempt to correct mistaken legal description violated public hearing provisions of statutes. City gave affected landowners renewed opportunity to voice their opposition to annexation after they were publicly informed of the correction of legal description.

City’s service plan for police protection and for street and infrastructure maintenance applicable to land subject to annexation substantially complied with annexation statutes, such that city’s plan was adequate, since plan was submitted in a good faith effort to honestly extend and implement municipal services. Plan satisfied statutory requirement of supplying sufficient detail to provide reasonable person with full and complete understanding of intentions of the city, and plan addressed factors required by statute detailing requirements of service plan, including estimated cost of providing services, method by which city planned to finance extension of services, and explanation of how city would provide better service than that currently provided.

Adoption of statute permitting landowner to challenge whether city’s unilateral annexation decision was reasonable did not codify prior annexation caselaw addressing reasonableness, but rather, statute expanded grounds on which landowner was permitted to challenge annexation decision to include a challenge for substantive reasonableness. Statute’s departure from its predecessors was significant and reflected legislative declaration that original law did not embrace statute.

City’s unilateral decision to annex platted subdivision adjoining city was reasonable. Residents of property subject to annexation benefited from their property adjoining city, and annexation provided value to residents by providing them with police protection, street infrastructure and maintenance, trash service, and wastewater treatment services.

IMMUNITY - MARYLAND

O'Brien & Gere Engineers, Inc. v. City of Salisbury

Court of Special Appeals of Maryland - April 28, 2015 - A.3d - 2015 WL 1932332

Engineering firm brought action against city, alleging that city violated non-disparagement clause in a settlement agreement resolving claims relating to new wastewater treatment plant that was designed by engineering firm, and whose failure remained the subject of city’s ongoing litigation with non-settling parties. The Circuit Court dismissed action. Engineering firm appealed.

The Court of Special Appeals held that city was immune from liability for the words used in arguing its case at trial against non-settling parties.

City that entered into non-disparagement agreement as part of settlement of claims against engineering firm relating to new wastewater treatment plant that was designed by engineering firm, and whose failure remained the subject of city's ongoing litigation with construction manager, was immune from liability, pursuant to the absolute liability privilege, for the words used in arguing its case against construction manager and presenting evidence at trial. Claims against construction manager and engineering firm were facets of same litigation, evidence about flaws in engineering firm's design and cause of plant failure was indispensable to resolution of city's contract claim against construction manager, evidence of flaws in engineering firm's design would necessarily portray firm in a negative light, city was entitled to use court system to recover losses sustained, and administration of justice would be served by application of privilege.

FINANCE - NEBRASKA

Nebuda v. Dodge County School District 0062

Supreme Court of Nebraska - April 23, 2015 - N.W.2d - 290 Neb. 740

Taxpayers brought action against school district, seeking declaratory and injunctive relief arising out of lease-purchase agreement that district entered into with bank in order to fund school improvements after voters rejected a bond proposal. The District Court entered judgment after a bench trial dismissing taxpayers' claims. Taxpayers appealed.

The Supreme Court of Nebraska held that:

- Taxpayers' claims were moot;
- Public interest exception to the mootness doctrine applied; and
- Lease-purchase agreement did not violate statute barring issuance of bonds to finance such agreements.

Supreme Court could not provide any relief to taxpayers on their claims for declaratory and injunctive relief against school district arising out of a lease-purchase agreement that district entered into with bank in order to fund school improvements after voters rejected a bond proposal, and thus taxpayers' claims were moot. Injunctive relief was not available because construction under the lease-purchase agreement was completed by the time of trial, and taxpayers did not allege that they were entitled to recoup any illegal expenditures.

Public interest exception to the mootness doctrine applied to taxpayers' appeal from the dismissal of their claims for declaratory and injunctive relief against school district arising out of a lease-purchase agreement that district entered into with bank in order to fund school improvements after voters rejected a bond proposal, which was mooted by completion of the construction project and by the fact that taxpayers did not allege entitlement to recoup any illegal expenditures. Meaning of statute allowing school districts to enter into lease-purchase agreements was unquestionably a matter affecting the public interest, and district argued that many school districts were looking for guidance on the issue.

Lease-purchase agreement that school district entered into with bank in order to fund school improvements after voters rejected a bond proposal did not violate statute governing such lease-purchase agreements, which barred a school district from "directly or indirectly" issuing bonds to fund a lease-purchase plan for a capital construction project exceeding $25,000 without voter approval. Plain language of statute did not require voter approval of all lease-purchase agreements exceeding $25,000, interpreting agreement itself as constituting issuance of a bond would be nonsensical, and legislature had acquiesced in prior interpretation of statute as permitting the action district took.

ZONING - NEW JERSEY

Township of Fairfield v. State, Dept. of Transp.

Superior Court of New Jersey, Appellate Division - April 10, 2015 - A.3d - 2014 WL 8514005

Township sought judicial review of final determination of the Director of the Division of Multimodal Services, Department of Transportation (DOT), granting a helistop "special use" license to the applicant.

The Superior Court, Appellate Division, held that:

- Sufficient evidence supported Director's decision to grant helistop special use license, and
- Township was not entitled to a contested case-type hearing concerning the application.

Although helistops were banned in township by zoning ordinance, there was sufficient credible evidence to support Director of Transportation's decision to grant application for a helistop special use license, where the Director had given careful consideration to township's objections to the application and the board of adjustment's resolution denying the use variance application, and contrary to the township's contentions, the Director had conscientiously weighed the local interests, examined carefully whether the proposed aviation facility was compatible with surrounding land uses and consulted the local ordinances and authorities in making his licensing decision.

Director of Transportation did not abuse his discretion by deciding not to conduct a public informational hearing with respect to application for a helistop license, where the Director had explained in his decision that a hearing was not required because there were no material facts in dispute and the issues had been clearly framed by the submissions of the applicant's and the board of adjustment's attorneys.

UTILITIES - NEW YORK

New York v. F.E.R.C.

United States Court of Appeals, Second Circuit - April 22, 2015 - F.3d - 2015 WL 1810416

Federal Energy Regulatory Commission (FERC) (2012 WL 6641001) issued orders adopting standards and procedures for determining which power distribution facilities were subject to FERC's regulatory jurisdiction and which facilities fell within statutory exception for "local distribution of electric energy," and clarified its orders on rehearing (2013 WL 1700286). State of New York and Public Service Commission of State of New York petitioned for judicial review.

The Court of Appeals held that:

- FERC did not act unreasonably in including 100 kV threshold to clarify otherwise ambiguous distinction under Federal Power Act as amended by Electricity Modernization Act between power

facilities over which it did and did not have regulatory jurisdiction within larger scheme of standards and procedures for clarifying its statutory jurisdiction;
- Orders did not authorize FERC to regulate any facility in advance of factually supported, explicit determination of jurisdiction; and
- Orders were not arbitrary and capricious.

Federal Energy Regulatory Commission (FERC) did not act unreasonably under FPA as amended by Electricity Modernization Act in including 100 kV threshold to clarify otherwise ambiguous distinction between power distribution facilities over which it did and did not have regulatory jurisdiction within larger scheme of standards and procedures for clarifying its statutory jurisdiction, since there was record support for selection of 100 kV threshold as initial standard and that standard was not determinative but subject to general and individualized adjustments.

Federal Energy Regulatory Commission (FERC) orders adopting standards and procedures for determining which power distribution facilities were subject to agency's regulatory jurisdiction and which facilities fell within statutory exception for "local distribution of electric energy" did not impermissibly authorize FERC to regulate any facility in advance of factually supported, explicit determination of jurisdiction. Orders established procedure for factfinding requisite to exercise of such jurisdiction, threshold finding of 100 kV operation was followed by further factfinding as to five specified inclusions and four exclusions, and factfinding process continued still further if facility not found within local distribution exception after operating voltage and configuration consideration petitioned FERC for individualized review.

Final orders of Federal Energy Regulatory Commission (FERC), adopting standards and procedures for determining which power distribution facilities were subject to FERC's regulatory jurisdiction, and which facilities fell within statutory exception for "local distribution of electric energy," did not require facilities, as precondition for petitioning FERC for individualized determination of jurisdiction, to apply for technical exemption to organization that had been certified by FERC to develop standards, and, thus, challenged orders did not impose unwarranted procedural obligations as preconditions. Filing of jurisdictional petition and filing for technical exemption were independent avenues by which facilities could seek different forms of relief.

Determination by Federal Energy Regulatory Commission (FERC) which had been based on factual record and its industry expertise, that 100 kV threshold, together with detailed predefined inclusions and exclusions, would effectively identify power distribution facilities comprising the bulk system while ensuring that most local distribution facilities were excluded from its regulatory jurisdiction as statutorily prescribed, was not arbitrary or capricious, and thus would be upheld on petition for judicial review, particularly where FERC would employ full notice-and-comment process upon request for individualized determination.

SCHOOLS - NORTH CAROLINA

Union County Bd. of Educ. v. Union County Bd. of Com'rs

Court of Appeals of North Carolina - April 7, 2015 - S.E.2d - 2015 WL 1529502

School board brought action against county commissioners regarding adequacy of funding for public school system. The Superior Court entered judgment on jury verdict for school board. Commissioners appealed.

The Court of Appeals held that:

- Error in allowing board to communicate improper legal standard to determine funding was harmless;
- Court improperly allowed evidence outside scope of board's proposed budget at trial;
- Because much of board's evidence should not have been admitted, Court of Appeals would remand for new trial;
- Jury instruction defining amount legally necessary maintain school system was proper; but
- Jury instruction that suggested that if any student was not performing at grade level, the county was not providing a sound basic education, likely misled the jury.

EMINENT DOMAIN - NORTH CAROLINA

Town of Matthews v. Wright

Court of Appeals of North Carolina - April 21, 2015 - S.E.2d - 2015 WL 1788729

Town filed complaint against homeowners, seeking to condemn homeowners' private right-of-way that had been subject of years of litigation with town, which claimed that the right-of-way was a public street. The Superior Court held town's claim to homeowners' property by eminent domain was null and void. Town appealed.

The Court of Appeals held that:

- Homeowners had burden to show condemnation would serve no public use or benefit, and
- The condemnation would serve no public benefit.

No public benefit would be achieved from town's proposed condemnation of homeowner's land containing private right of way for purposes of opening the easement for access to neighbors, utilities, firefighters, and the community, where there was no evidence that homeowner blocked access to the easement, homeowner's portion of easement was not the sole private portion of an otherwise public street, condemnation of only homeowner's portion of easement would not open access to anything except homeowner's land, and personal conflicts between town and homeowners motivated town officials' decision to condemn.

ZONING - RHODE ISLAND

Hines Road, LLC v. Hall

Supreme Court of Rhode Island - April 28, 2015 - A.3d - 2015 WL 1914658

After town and neighbor had entered into agreement regarding neighbor's retaining wall, abutting property owners filed an appeal with town's zoning board of review challenging the agreement. The board held that it did not have jurisdiction. Owners did not appeal. Subsequently neighbor commenced action to litigate issues relating to the agreement. Owners moved to intervene. Following a bench trial, the Superior Court denied the motion. Owners appealed.

The Supreme Court of Rhode Island held that:

- Status as abutting property owners did not entitle owners to intervene as a matter of right;
- Owners' interest in underlying action was contingent, not direct; and
- Court did not abuse its discretion in considering owners' failure to appeal board's decision in denying motion to intervene.

EMINENT DOMAIN - TEXAS

State v. Clear Channel Outdoor, Inc.

Supreme Court of Texas - April 24, 2015 - S.W.3d - 2015 WL 1870306

State brought action to condemn two parcels of land containing billboards, and billboard owner filed claims for inverse condemnation of billboards. After state settled with billboard owner and landowners for compensation due for leasehold and fee interests, the Civil Court granted partial summary judgment for billboard owner, and, following a jury trial, entered judgment awarding damages for taken billboards. State appealed, and the Court of Appeals affirmed. The Supreme Court granted the State's petition for review.

The Supreme Court of Texas held that:

- Billboards were "fixtures" such that compensation for their loss was part of compensation for taken property, and
- Measure of compensation for billboards was based on the structures themselves, rather than based on the profits generated by their use in advertising.

Billboards on leased land taken by State were "fixtures" such that compensation for their loss was part of compensation for taken property, where billboards were firmly embedded in the earth and their removal required that the poles be cut and the signs dismantled, and billboards were perfectly suited to the use of the realty, which was outdoor advertising alongside a busy freeway, such that an owner would have intended the structures become part of the real estate.

Compensation due billboard owner for billboards taken when state condemned underlying land was to be based on the structures themselves, rather than based on the profits the structures generated by their use in advertising. State did not take billboard operations or business, but only took the land and the billboards, billboard owner was free to continue to operate its business on new site, and business income potentially was indication of the value of the land, rather than the billboards.

INSURANCE - TEXAS

JAW the Pointe, L.L.C. v. Lexington Insurance Company

Supreme Court of Texas - April 24, 2015 - S.W.3d - 2015 WL 1870054

Owner of apartment complex damaged by hurricane brought action against primary property insurer and others, asserting claims for breach of insurance contract and violations of the Texas Insurance Code and the Texas Deceptive Trade Practices Act.

The Supreme Court of Texas held, as a matter of first impression, that losses incurred in demolishing and rebuilding to comply with city ordinances were excluded under policy's anti-concurren-
-causation clause.

Hurricane caused both wind damage, covered by all-risk property insurance policy, and flood damage, excluded by the policy, which together combined to cause enforcement of city ordinances that ultimately required owner of insured apartment building to demolish and rebuild, and thus insurance policy's anti-concurrent-causation clause excluded coverage for insured building owner losses in demolishing and rebuilding apartment building in order to comply with city ordinances. While the policy covered the cost of complying with city ordinances, such coverage only applied if the policy covered the property damage that triggered the enforcement of the ordinances, and, pursuant to the anti-concurrent-causation clause, the policy did not cover damage caused by the hurricane, as the policy excluded flood damage, which was a concurrent cause of the damage to the building.

IMMUNITY - TEXAS

Brown & Gay Engineering, Inc. v. Olivares

Supreme Court of Texas - April 24, 2015 - S.W.3d - 2015 WL 1897646

Representative of driver who was killed when his vehicle was struck by a vehicle driven by an intoxicated driver traveling the wrong way on a tollway brought an action against various entities, including private engineering firm that was contracted by county toll road authority to design the tollway.

The District Court granted firm's plea to the jurisdiction based on governmental immunity under the Texas Tort Claims Act. Representative appealed. The Houston Court of Appeals reversed and remanded. Firm petitioned for review.

As matters of apparent first impression, the Supreme Court of Texas held that:

- Extension of sovereign immunity to firm would not further the doctrine's rationale, and
- Firm was not entitled to share in authority's sovereign immunity on the ground that authority was statutorily authorized to engage firm's services and would have been immune had it performed those services itself.

Extension of sovereign immunity to private engineering firm that was contracted by county toll road authority to design a tollway would not further the doctrine's rationale, in a case in which firm was sued by representative of driver who was killed when his vehicle was struck by a vehicle driven by an intoxicated driver traveling the wrong way on the tollway. Sovereign immunity was designed to guard against the unforeseen expenditures associated with the government's defending lawsuits and paying judgments that could hamper government functions by diverting funds from their allocated purposes, and immunizing firm would in no way further that rationale.

Private engineering firm that was contracted by county toll road authority to design a tollway was not entitled to share in authority's sovereign immunity on the ground that authority was statutorily authorized to engage firm's services and would have been immune had it performed those services itself, in a case which firm was sued by representative of driver who was killed when his vehicle was struck by a vehicle driven by an intoxicated driver traveling the wrong way on the tollway. The lawsuit did not threaten allocated government funds and did not seek to hold firm responsible merely for following authority's directions, and firm was responsible for its own alleged negligence as a cost of doing business and could insure against that risk.

Fixing Public Sector Finances: The Accounting and Reporting Lever.

Abstract:

The finances of many states, cities, and other localities are in dire straits. In this Article, we argue that partial responsibility for this situation lies with the outdated and ineffective financial reporting regime for public entities. Ineffective reporting has obscured and continues to obscure the extent of municipal financial problems, thus delaying or even preventing corrective actions. Worse, ineffective reporting has created incentives for accounting gimmicks that have directly contributed to the dramatic decline of public sector finances. Fixing the reporting regime is thus a necessary first step toward fiscal recovery. We provide concrete examples of advisable changes in accounting rules and advocate for institutional changes, particularly Securities and Exchange Commission involvement, that we hope will lead to better public accounting rules generally.

Download the Paper.

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March 1, 2015

UCLA Law Review, Vol. 62, No. 3, 2015

Harvard University John M. Olin Center for Law, Economics, and Business Discussion Paper No. 814

Successful Investing In Charter School Bonds: Orrick Webinar, Part I.

Successful Investing In Charter School Bonds

> Finding Best Practices in a High-Yielding Sector
>
> Bond Buyer Web Seminar – June 5, 2013

OVERVIEW

- State Law Differences
- Basic Legal Structure for Charter Bond Financing
- Variations on the Theme

STATE LAW DIFFERENCES

43 states permit the formation and operation of charter schools under statutory schemes that are fundamentally similar in purpose, though often differing in ways that are relevant to bond financing.

States that have charter school laws:			
Alaska	Idaho	Mississippi	Pennsylvania
Arizona	Illinois	Missouri	Rhode Island
Arkansas	Indiana	Nevada	South Carolina
California	Iowa	New Hampshire	Tennessee
Colorado	Kansas	New Jersey	Texas
Connecticut	Louisiana	New Mexico	Utah
Delaware	Maine	New York	Virginia
District of Columbia	Maryland	North Carolina	Washington
Florida	Massachusetts	Ohio	Wisconsin
Georgia	Michigan	Oklahoma	Wyoming
Hawaii	Minnesota	Oregon	

Charter Authorization

- Charter schools are formed by the approval of the school's constitutional document called a "charter" or "contract".
- Charters are approved by "authorizers" which may be governmental entities, such as the state board of education, state university system, local governments or local school districts, or by quasi-governmental or nongovernmental entities.
- In New York, only [three] governmental authorizers exist for the 300+ charter schools in the state.
- In Ohio nearly 70 authorizers include private nonprofit corporations, universities and quasi-governmental entities for over 350 charter schools.
- In California each of the over 1000 school districts has power to authorize charters, and over 1000 charter schools are operating in the 2012-13 year.

Organization and Independence

- Charter schools may be formed as nonprofit corporations, for profit corporations, unincorporated associations, limited liability companies or cooperatives, depending on local law.
- Control of the charter school's governing board may be autonomous, controlled entirely by the authorizer, or some combination thereof, depending on local law.
- In California, charters may, but aren't required to, be established as nonprofit corporations, and can exist instead as quasi-governmental entities with no specific corporate character.
- In Nevada, charter schools may not be established as nonprofit corporations, and must exist as quasi-governmental entities.
- In Ohio and Texas, the law provides for independent charter school boards for some schools, but not others.
- Statutory independence of the board can affect a range of operational concerns such as employee eligibility for public pensions, collective bargaining rules, and federal tax status.

Corporate Powers

- Ordinary powers of a private corporation may be granted to charter schools entirely, or only in part or subject to statutory limitations, depending on local law.
- In states where charter schools may be organized as nonprofit corporations under local laws, the

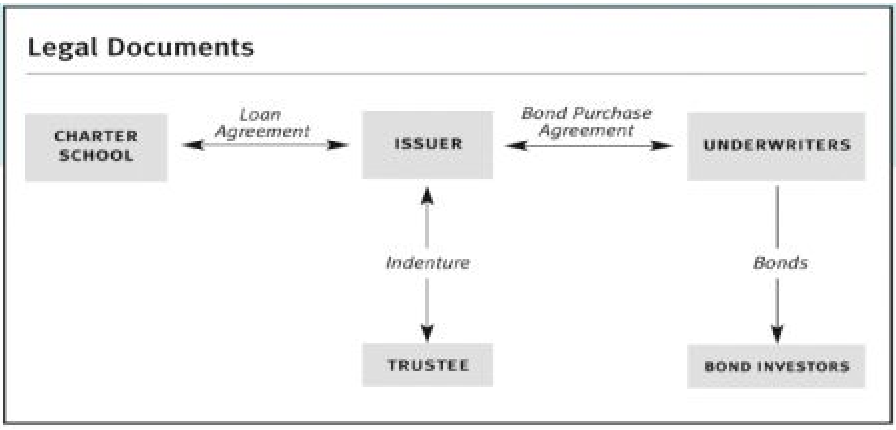
typical powers of a nonprofit corporation are granted to charter schools, including the power to own or lease property and enter into contracts.
- In states where charters are organized as associations, cooperatives or quasi-governmental entities, the scope of the charter school's corporate powers may be unclear (unless specifically outlined in law).
- Texas, New Mexico, Nevada and California are examples of states that either require or permit charter schools to be formed as entities other than nonprofit corporations.

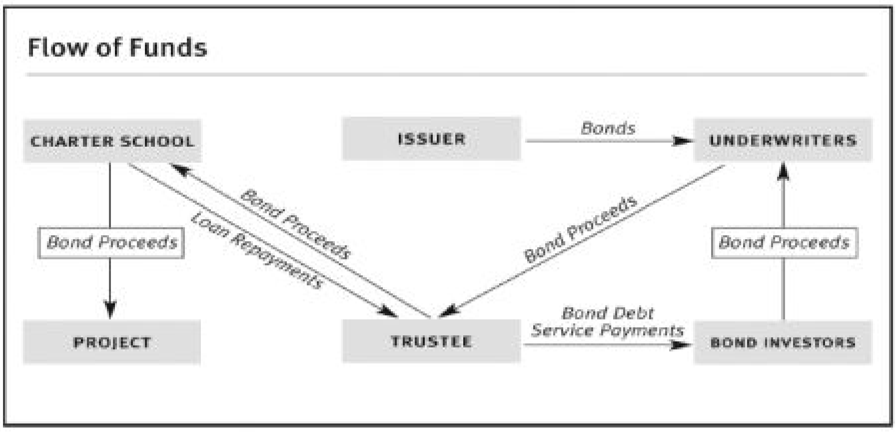
Charter Revocation

- Each state's charter school law describes the conditions under which a charter may be unilaterally nullified or revoked by its authorizer.
- Certain states, such as Arkansas, impose a high degree of objectivity and clearly defined criteria upon the revocation process, and some allow for automatic revocation upon the occurrence of certain extraordinary conditions (e.g., misconduct, fraud, chronically low test scores, etc).
- Other states permit a high degree of subjectivity in the revocation process, or provide little definition of the criteria or conditions justifying revocation.
- Some states, such as Colorado and California, maintain revocation appeals procedures that mirror or simulate constitutional due process procedures, while other states have no appeals process at all.
- Finally, in states with multiple charter authorizers, schools may be able to avoid revocation by simply "shopping" for a new authorizer without addressing the conditions that gave rise to the original revocation process.

Charter School Funding

- Charter schools are almost uniformly funded based on attendance, from the same public money that funds traditional K-12 school districts. The per-pupil funding may vary in amount, however, from the level provided to traditional public schools.
- Certain states, such as the District of Columbia and California, augment charter school operating funds with separate per-pupil funding specifically available for facilities expenses.
- Charter school funding may typically be pledged to secure indebtedness, pursuant to corporate powers of the school, however certain states such as New York specifically prohibit any security interest in charter school funds.
- Other states, such as Arizona and California, permit charter school funds to be "intercepted" before disbursement to the charter school, for direct transfer to a bond trustee as security for bond repayment.





EXEMPLAR TRANSACTIONS

Bronx Charter School for Excellence (Bronx, NY) (2013)

Structure

- Bonds issued to finance acquisition, construction and renovation of facilities.
- Charter school entity is the borrower.
- Senior lien on financed facility given to bond trustee.
- Track record of school garners “BBB-” rating.

Observations

- Pledge of school’s per-pupil revenues not permitted under New York law, and no intercept of funds available.

Rocketship Alma Academy (San Jose, CA) (2011)

Structure

- Bonds issued to refinance construction loan and finance additional project costs.
- Borrower (landlord) is limited liability company (LLC) sole member of which is nonprofit corporation controlled by the CMO.
- Borrower complies with financial covenants in loan agreement.
- Charter school (tenant) complies with financial covenants in lease agreement.

Observations

- Borrower (LLC) may pledge revenues (rental receipts) to bond trustee.
- Liquidity and coverage covenants require charter school to maintain cash and balance sheet, but CA rent reimbursement law creates disincentive to pledge charter school revenues.

Aspire Public Schools (multiple cities, CA) (2010)

Structure

- Bonds issued to acquire and construct charter school facilities.
- Nonprofit borrower/landlord uses operating leases to schools (short terms with renewals).
- Multiple properties/leases secure bond repayment, with ability of landlord/borrower to adjust "Additional Rent" to capture payments from one school to cover shortfall of another, if needed.

Observations

- California law limits power of charter school A to pay obligations of charter school B, but special purpose entity landlord may comingle rental revenues from multiple tenants to pay bonds.

New Plan Learning (Dayton and Lorraine, OH; Chicago, IL) (2011)

Structure

- Bonds issued to finance acquisition, construction of facilities and refinance existing debt.
- Leases from multiple landlord entities (commonly controlled) to multiple charter schools, landlords own property and improvements.
- Landlord entities pool property and revenues to secure single obligation.
- Borrower is obligated group representative, but repayment is joint/several obligation of entire group.

Observations

- Neither Ohio nor Illinois laws permit intercept of school revenues.
- Financial covenants embedded in school leases as well as borrower documents.

Tri-Valley Learning Corporation (Livermore, CA)

Structure

- Bonds issued to finance tenant improvements, including construction and renovation of facilities, on leased property.
- Charter school is tenant and borrower.
- Payments to ground lessor subordinate to bond debt service.

Observations

- California law permits intercept of bond debt service payments directly from state controller to bond trustee.
- Intercreditor agreement controls exercise of remedies by bondholders and landlord against charter school borrower/tenant.

Last Updated: April 29 2015

Article by Eugene H. Clark-Herrera

Orrick

Cyber Legal Seminar: Cybersecurity Law for Financial Institutions.

The Cyber Legal Seminar is a full-day program that will provide attorneys and compliance professionals with insights and regulatory perspectives on cybersecurity law, and how legal and compliance professionals should take an active role in your firm's cyber defense plan.

The seminar will cover current cybersecurity threats, the framework and guidance to best defend against those threats, and the global nature of cyber issues and their cross border legal implications. The speakers and panelists include senior officials from the U.S. Department of the Treasury, FBI, SEC, OCC and other federal regulators, as well as the European Union. You will hear perspectives from senior in-house counsel at banks and broker-dealers, as well as their trusted advisers.

Join us on **Tuesday, June 2, at the SIFMA Conference Center in NYC** for the latest cybersecurity law developments and what role you should take in your firm's cybersecurity program.

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Build America Champion Wyden Has New Infrastructure-Bond Plan.

U.S. lawmakers are renewing efforts to expand the use of municipal bonds to attract private investment in the nation's crumbling roads and bridges.

Senator Ron Wyden, the Democrat who backed legislation creating the $188 billion market for Build America Bonds, introduced a bill Monday with Republican Senator John Hoeven of North Dakota that would facilitate the use of private-activity debt for transportation projects. Separately, Republican Representative Todd Young wants to double the limit on the securities for transportation and allow their use for facilities such as courthouses. Companies use private-activity bonds to borrow in the municipal market.

The plans may face an uphill battle because of their cost and gridlock on Capitol Hill. Yet increasing financing options for public-private partnerships would be a boon for municipalities and help fill a void, the lawmakers said. Authorization for federal highway funding is set to expire May 31, and Congress has been unable to agree on a plan to address what Treasury Secretary Jacob J. Lew says is a $1 trillion backlog of infrastructure work.

"You can come up with bipartisan approaches to get private-sector money off the sidelines and into transportation," Wyden, 66, the ranking Democrat on the Finance Committee, said in a phone interview. “The transportation system needs more than a face lift; it basically needs full re-constructive surgery.”

Debt Limit

States and localities issue private-activity bonds on behalf of companies that build and operate facilities such as airports, ports and highways. There’s a limit to how much of the debt can be sold: as of April 15, $11.1 billion of the $15 billion allotted for transportation had been issued or approved, including for the replacement of the Goethals Bridge between New York City and New Jersey.

Municipalities nationwide sold Build America Bonds, taxable debt with a federal subsidy on interest costs, for infrastructure. Wyden, who represents Oregon, has tried unsuccessfully to revive the program, which debuted in 2009 and expired at the end of 2010.

The senator calls his latest proposal the “Move America” program. It would authorize as much as $180 billion of tax-exempt bonds over 10 years and provide as much as $45 billion in new infrastructure tax credits to match private-equity investment.

Cost Consideration

Interest on the bonds wouldn’t be subject to the alternative minimum tax, which limits the tax benefits and exemptions that high-earning individuals can claim. The plan would change other rules, including allowing use of the bonds for privately owned public infrastructure, such as highways.

The proposal would cost as much as $15 billion in foregone tax revenue over 10 years, Wyden’s office said.

“Move America bonds and tax credits are an effective way to leverage private-sector dollars to build the infrastructure we need across the country to grow America’s economy and create jobs,” Hoeven said in a release.

Young, a member of the House Ways and Means Committee, said he’d double the cap on issuance of private-activity bonds for transportation work to $30 billion and expand their use, including for public buildings.

“It’s almost inevitable that this will be part of the solution,” the 42-year-old Indiana representative said in a phone interview. “There’s no reason we should be lagging behind countries like Canada in bringing in private-sector expertise as well as capital to ensure we build more of these projects.”

‘Uphill Slog’

Young acknowledged hurdles, including resistance to the cost. He said he’s exploring introducing his proposal or incorporating it with other plans.

In January, President Barack Obama proposed tax-exempt debt, dubbed Qualified Public Infrastructure Bonds, that would have no issuance cap and wouldn’t be subject to the alternative minimum tax.

At the time, it had a low probability of being enacted by the Republican-controlled Congress, said Matt Posner, a managing director at Municipal Market Analytics, a Concord, Massachusetts-based research firm.

While getting approval to expand the use of private-activity bonds would be “an uphill slog,” interest is picking up, he said.

The debt might expedite work on badly needed projects, Christopher Leslie, New York-based chief executive officer of Macquarie Infrastructure Partners Inc., said in an interview last week at a Bloomberg Government event in Washington. He oversees almost $9 billion in three funds dedicated to investments in the U.S. and Canada.

“The private sector remains keen to invest and, in fact, sees itself potentially as part of the solution to the slowness of Congress,” Leslie said.

Bloomberg Muni Credit

Mark Niquette

May 3, 2015 9:01 PM PDT

Bipartisan Bill to Include U.S. Munis as High-Value Assets Introduced.

May 4 (Reuters) – A bipartisan group of U.S. lawmakers has introduced legislation that would require federal regulators to allow banks to include muni bonds as liquid assets, an issue that cities and states say could increase their borrowing costs.

In September, U.S. regulators tightened rules on which assets banks can sell in the event of a credit crunch. They also excluded debt issued by U.S. states and cities from banks’ high-quality liquid assets, or HQLA.

Since then, many municipalities lobbied against the decision, arguing that if municipal debt is no longer considered a high-liquid asset, banks will have less incentive to buy their bonds, hiking borrowing costs.

On Friday, a group of five Republicans and five Democrats on the House Financial Services Committee introduced a bill that would require regulators to treat munis that are investment grade, liquid and readily marketable as a “2A” high-liquid asset.

The legislation was introduced by Republican Luke Messer from Indiana and New York Democrat Carolyn Maloney.

“We shouldn’t allow Federal bureaucrats to promote policies that disincentivize investment in our local communities,” Messer said in a statement.

Maloney said: “States and cities rely on municipal bonds to finance critical infrastructure, build schools, and pave roads. This important legislation ensures that municipal bonds, which are among the safest investments available, are treated fairly by the regulators.”

The bill appears to have a good chance of passage out of the committee and onto the floor of the House of Representatives for a full vote, given that Maloney and another of the bill’s co-sponsors, veteran Republican Peter King, are highly ranked.

Without legislation, there appears little prospect of regulators reversing course on the rule. A rule change would require agreement of three bank regulators: the Office of the Comptroller of the

Currency (OCC); the Federal Deposit Insurance Corporation (FDIC); and the Federal Reserve.

The Fed has publicly said it wants to amend the rule to include munis, while the OCC appears most opposed to a rule change.

Retail investors are the largest holders in the $3.7 trillion municipal bond market. Households hold about 40 percent of all outstanding municipal bonds, $1.5 trillion, while banks hold about $485 billion, or around 12 percent, according to Federal Reserve data.

BY TIM REID

(Reporting by Tim Reid in Los Angeles; Editing by Grant McCool)

Latest Victim of California's Drought: Water Bonds.

California's drought is starting to spread to the market for bonds issued by water utilities, long considered one of the safest types of debt sold by state and local governments.

Some investors are steering clear of the bonds from hard-hit areas of the U.S. west, amid concerns that restrictions on water use will drive down water-authority revenue. Some authorities may have a tough time raising rates to offset that lost income.

If shortages persist, credit ratings may weaken and prices for outstanding bonds fall, according to analysts and rating firms.

California water and sewer bonds lost value in April for the second month in three, falling 0.61% after Gov. Jerry Brown imposed mandatory water restrictions. All California municipal bonds posted a 0.55% decline for the month, counting price moves and interest payments, according to Barclays PLC.

California is in its fourth year of drought, one of the worst on record for the nation's most populous state. It is costing billions of dollars in losses in its agricultural sector and prompting the first-ever mandatory statewide cutbacks in water use.

It is also a rare fissure in one of the most-secure and widely traded sectors of the $3.7 trillion municipal-bond market. During last year's rally in bonds, water and sewer debt nationwide outperformed the market, rising 9.7% compared with 9% for tax-exempt bonds overall, according to Barclays. California water and sewer agencies have issued about $28.8 billion in bonds since 2010, according to Thomson Reuters.

Water-utility bonds seldom default because they're typically backed by residents' payments on an essential service. And so far the drought hasn't kept water authorities from tapping the debt market.

But the persistent water shortages show how a market prized for safety and stability can contain hidden pockets of risk, some investors said.

"The way investors have looked at water in California in the past needs to go through some evolution," said Michael Johnson, co-chief investment officer at Gurtin Fixed Income Management LLC, in Solana Beach, Calif.

Mr. Johnson said heavy investor demand for California debt of all types has raised the prices of most water bonds. That means investors may be overpaying for debt from districts with growing but unacknowledged financial problems.

His firm, which manages about $9 billion, has avoided some authorities facing challenges such as limited water storage or small financial reserves.

An April report by Moody’s Investors Service warned investors that the state’s water restrictions could curb revenue at water agencies. While rate increases can offset declining water use, utilities have little time to make them, and such increases may further discourage consumption.

Fitch Ratings said downgrades could occur if policy makers hesitate to make rate increases.

California isn’t the only place these bonds are under scrutiny. Robert Fernandez, director of environmental, social and governance research at Boston-based Breckinridge Capital Advisors, said his firm sold bonds from at least one water authority in Texas because of inconsistent revenue and water supplies.

Breckinridge, which manages about $21.4 billion, uses 11 indicators to analyze how water availability, demand and oversight can affect an agency’s ability to repay debt, looking for factors including adequate backup supplies and contingency planning, Mr. Fernandez said.

“We’re not looking to say, ’we want to avoid all water systems in this area,’” he said. “We want to look for the ones that are well managed and know how to manage through these issues.”

Sharlene Leurig, who directs the sustainable water infrastructure program at Ceres, a nonprofit group that promotes sustainable investing, said that while bondholders are beginning to pay more attention, the threat posed by water shortages is still poorly understood.

“I think we have a long way to go before those risks are properly disclosed and priced,” she said.

‘I think we have a long way to go before those risks are properly disclosed and priced.’
—Sharlene Leurig of Ceres

Maintaining investor demand will be important in California, where officials are accelerating parts of a voter-approved plan to sell more than $7 billion in general obligation bonds to pay for new water projects. That plan includes grants to local authorities, who may sell their own bonds.

Gary Breaux, chief financial officer for the Metropolitan Water District of Southern California, a consortium of 26 cities and water authorities that provide drinking water to about 19 million people in cities including Los Angeles and San Diego, said he’s spoken with investors to reassure them that the triple-A-rated agency has plenty of sources for water and isn’t foreseeing effect on its budget. Several water agencies’ recent bond sales were well received, he added.

“I think investors feel reassured that we’re watching all these different variables and we’ll take them into account when we set our next budget, as well as the rates,” he said.

Jamison Feheley, head of banking for public finance at J.P. Morgan Chase & Co., said California issuers are well prepared by prior droughts and haven’t had to adjust bond offerings, though investors are paying attention.

“There are a lot of discussions with investors and rating agencies about `what’s the plan? How do you expect to manage the drought issue?’” he said.

Demand for water utility debt has grown nationwide since Detroit’s bankruptcy, because those investors proved better-protected than those holding tax-supported bonds, said Matt Fabian, partner at Concord, Massachusetts-based research firm Municipal Market Analytics. And while water bills may go up as the drought goes on, they're still a small portion of most households' expenses.

"Frankly, they just need to charge more for it," he said. "Once they start laying in new capital, either to fund conservation, or reuse, or desalination or whatever, it's just going to cost a lot more money."

THE WALL STREET JOURNAL

By AARON KURILOFF

May 4, 2015 2:19 p.m. ET

Write to Aaron Kuriloff at AARON.KURILOFF@wsj.com

Bill Would Create New Type of Bond for Infrastructure.

WASHINGTON – Sens. Ron Wyden, D-Ore. and John Hoeven, R-N.D., on Monday introduced legislation that would create Move America Bonds, which would generally be treated as exempt-facility, private-activity bonds but would have fewer restrictions and separate state volume caps that could be converted into tax credit allocations.

The bill, called Move America Act of 2015, would also allow states to convert volume cap for the bonds to allocations for tax credits. The Senators' proposal, which is designed to increase private investment in infrastructure, has some similarities to, and also differences from, the Obama administration's proposal for qualified public infrastructure bonds (QPIBs).

"Move America will turbocharge investment and give states and localities the flexibility they need to quickly and efficiently break ground on projects," Wyden, the top Democrat on the Senate Finance Committee, said in a news release. "An injection of private capital, in addition to sustainable funding for transportation programs, will help get America's economic engine running at full speed."

Move America Bonds could be used to finance airports, docks and wharves, mass commuting facilities, railroads, highways and freight transfer facilities, flood diversion projects and inland waterway improvements.

The bonds would generally follow the same rules as exempt-facility bonds, with some exceptions.

Move America Bonds would not be subject to the alternative minimum tax. Exempt-facility bonds for airports, docks and wharves and mass commuting facilities have to be governmentally owned, but Move America Bonds used for those purposes could be privately owned. Up to 50% of the proceeds of Move America Bonds could be used for land acquisition, compared to 25% for most types of PABs. Also, certain rules for exempt-facility bonds for high-speed rail facilities and for highway and freight transfer facilities would not apply to these new bonds.

Move America Bonds would be subject to new, separate state volume caps equal to 50% of the state volume caps for PABs. As with PABs, states could carry forward unused volume cap for up to three years, but with Move America Bonds any volume cap unused after the three years could be reallocated to states that fully used their cap.

Wyden and Hoeven's bill would also authorize Move America Credits — tax credits aimed at attracting private investment in infrastructure. The credits could be used on projects financed with Move America Bonds and they could be combined with the bonds and other federal and state funding.

States would have to trade in some of their Move America Bond volume cap to get allocations for the credits. They would receive $0.25 of credit allocation for every $1 of volume cap converted. The amount of credits on a project could not be more than 20% of the project's estimated cost and could not be more than 50% of the project's total private investment.

States could sell the credits or allocate them to sponsors of projects. The sponsors could claim the credits themselves or sell them to raise capital. The credits would be available to taxpayers once projects are placed into service, and taxpayers could claim the credit at 10% for 10 years.

Move America Bonds would be similar to Obama's proposed QPIBs in that both would be new types of PABs used to finance infrastructure projects that would be exempt from the AMT. However, QPIBs would have to be used for governmentally-owned projects and would not be subject to any volume caps. Also, there would be no tax credits associated with QPIBs.

Municipal bond experts were generally positive about the bill.

"Tax-exempt bonds have been a cost-effective way to finance critical infrastructure and community investment projects for more than 100 years," said Bond Dealers of America chief executive officer Mike Nicholas. "Creating additional opportunities to use these bonds will increase their benefits to the small issuers that regional and middle-market dealers work with and, particularly, to taxpayers and local communities."

"Senator Wyden's proposal represents a creative and thoughtful approach to bridging the gap between infrastructure funding needs and available resources," said Michael Decker, managing director and co-head of municipal securities at the Securities Industry and Financial Markets Association. "We are particularly encouraged that Senator Wyden's bill proposes to leverage the existing and well-proven tax-exempt bond market, which is the single most important tool for funding infrastructure in the U.S."

Susan Collet, president of H Street Capitol Strategies, said that the goal of the bill appears to be to provide as much flexibility as possible to private investors for infrastructure projects. "It's great to see a thought-provoking, bipartisan bill" on this topic, she said.

Micah Green, a partner at Squire Patton Boggs, said that while he's not prepared to comment on the specifics of the bill, "this is yet another example of the broad based bipartisan support that exists to not only infrastructure finance, but also for ideas utilizing the municipal bond market as a mechanism for delivering lower cost financing for this needed public investment."

THE BOND BUYER

BY NAOMI JAGODA

MAY 4, 2015 3:52pm ET

[Bill Introduced to Require Bank Regulators to Treat Munis as HQLA.]

WASHINGTON — A bipartisan coalition of House members has introduced legislation that would require federal banking regulators to treat certain municipal securities held by large banks and other financial institutions as high-quality liquid assets.

The bill, H.R. 2209, is sponsored by Rep. Luke Messer, R-Ind., with at least nine other co-sponsors, including several who have been prominent on muni issues such as: Rep. Steve Stivers, R-Ohio; Rep. Randy Hultgren, R- Ill.; Rep. Gwen Moore, D-Wisc.; and Rep. Michael Capuano, D-Mass. All 10 sponsors are members of the House Financial Services Committee, including high-ranking members Rep. Peter King, R-N.Y. and Rep. Carolyn Maloney, D-N.Y.

The bill is a response to a rule jointly adopted by the Federal Reserve, Comptroller of the Currency, and Federal Deposit Insurance Corporation late last year that requires the country's largest banks and other financial institutions to maintain a certain liquidity coverage ratio, or LCR, to ensure they can better deal with periods of financial stress. An LCR is defined as the ratio of HQLA to total net cash outflows. Assets would qualify as HQLA if they could be easily and quickly convertible to cash with or no loss of value during a period of liquidity stress.

Bank regulators failed to include munis as HQLA in the rules, contending are not liquid or easily marketable. They also said banks don't hold munis for liquidity.

The rule, which banks have to comply with by Jan. 1 2017, is designed to protect the U.S. financial system during times of stress by ensuring that banks with at least $250 billion of total assets or consolidated on-balance sheet foreign exposures of at least $10 billion have the flexibility to weather the storm.

Market groups and lawmakers have warned that the exclusion of munis will raise borrowing costs for issuers, as well as decrease liquidity and increase volatility in the muni market.

The Fed has seemed receptive to amending the rule to include at least some investment grade munis as HQLA, and Fed chair Janet Yellen told the Financial Services committee earlier this year that Fed staff were working "very expeditiously" to identify the munis that could qualify. But the OCC and the FDIC have been reluctant to make the change, though they have not ruled it out.

The Messer bill would require that the LCR rule treat munis that are investment grade and actively traded in the secondary market as "2A" liquid assets, the same tier as some sovereign debt and claims on U.S. government entities like Fannie Mae and Freddie Mac. Securities and bonds in the 2A category can account for up to 40% of a bank's HQLA under the rule. It is the second highest level of HQLA, below federal government securities and the strongest foreign debt.

Market groups are welcoming the bill.

"Bond Dealers of America supports efforts by legislators and regulators to accurately define municipal bonds as high-quality liquid assets," said BDA chief executive officer Mike Nicholas. "In times of extreme market stress, as in 2008 and 2009, highly-rated municipal bonds were a solid store of value, and to exclude municipal bonds from the liquidity coverage ratio would negatively impact demand and raise the cost of infrastructure and other job-producing municipal projects for issuers."

Dustin McDonald, director of the Government Finance Officers Association's federal liaison center, said his group's members support the Messer bill.

“The GFOA applauds the introduction of this important legislation and appreciates Congressman Messer’s leadership on this issue,” McDonald said. “GFOA and a number of our association partners have presented a very strong case to regulators about the need to admit muni securities as HQLA, and the liquidity of munis. There is no reason why investment grade munis should not be classified as HQLA.”

Michael Decker, managing director and co-head of municipals at the Securities Industry and Financial Markets Association, also applauded the bill.

“We are encouraged that Congress is focused on the issue of bank investment in the municipal market,” Decker said. “Banks provide a key source of demand for municipal securities, and the liquidity coverage ratio rule as finalized last fall will over time discourage bank investment in the market, to the detriment of state and local governments.”

Sources said that a unilateral move by the Fed to amend the rule to include munis as HQLA, without the OCC or the FDIC, would probably not do much to resolve the HQLA problem because most of the banks big enough to impact liquidity are nationally-chartered institutions primarily regulated by the OCC.

According to Fed data, all but two of the nine institutions with more than $250 billion in holdings at the end of 2014 were banks primarily regulated by the OCC, and sources said such institutions would probably not feel free to count munis as HQLA just because the Fed alone amended the rule.

“It doesn’t solve for what the market needs,” said one bank analyst who asked not to be identified. The banks that would get some flexibility from a unilateral Fed change are those that control “a much smaller portion of the liquidity,” then the OCC-regulated institutions, the analyst said.

Messer’s bill is awaiting action before the Financial Services Committee, and could have a bright outlook there due to the support of the high-ranking Republicans as well as Democrats who co-sponsor it.

THE BOND BUYER

BY KYLE GLAZIER

MAY 4, 2015 1:38pm ET

IRS Webinar: Taxability of Fringe Benefits, Part One.

What: Free Webinar – Taxability of Fringe Benefits Part One: What Is A Fringe Benefit and When Is It Taxable?

When: May 19, 2015; 2 p.m. (Eastern)

How: Register for this event. You will use the same link to attend the event.

Learn about:

- What fringe benefits are
- Which fringe benefits are taxable
- Special accounting rules for fringe benefits

- What is a working condition fringe benefit
- What is a *de minimis* fringe benefit
- Taxability of per diem payments
- The accountable plan rules

Chicago Mayor Pledges End to Scoop-and-Toss Restructurings.

CHICAGO – Chicago will phase out the use of scoop-and-toss debt restructuring, convert $900 million of floating-rate debt to fixed rate and exit the attached interest rate swaps under measures announced by Mayor Rahm Emanuel Wednesday.

The city also plans over the next four years to reduce its reliance on debt to cover operating expenses like judgments and legal settlements and continue rebuilding reserves partially drained before Emanuel took office four years ago.

"They are the right steps" for the financial well-being of the city, Emanuel said during an address to the Chicago Civic Federation, a government research organization that follows the city's budgeting and fiscal policies and has chided some of its borrowing practices.

Canceling the interest rate swap agreements attached to the city's general obligation and sales tax-backed floating-rate debt would result in costly termination payments based on recent negative mark-to-market valuations of about $200 million. The city will use its short-term commercial paper line to cover the costs and eventually fold it into a long-term GO bond sale, said Chicago's chief financial officer Lois Scott.

The city has three general obligation-backed floating rate deals outstanding from 2003, 2005, and 2007 with swaps attached that are negatively valued at $162 million. Another 2002 sales tax deal has a swap attached that's negatively valued at $29 million. The city's most recent downgrade triggered swap termination events on four derivative contracts, adding to the city's fiscal headaches.

The city's 24 swaps tied to $2.4 billion of floating-rate general obligation and revenue-backed paper were almost $400 million underwater based on market valuations at the close of 2014, but the mayor did not propose any changes to revenue-backed credits.

In announcing the debt-related measures, Emanuel is taking aim at practices attacked by his critics during the recent mayoral election and criticized by many market participants as shoddy fiscal maneuvers used by distressed issuers for near-term relief that add to the city's long-term structural budget woes.

Emanuel acknowledged as much, saying the debt maneuvers "mask the true costs of government."

The time is right, Emanuel said to take a "bigger step forward" on righting the city's fiscal ship with the debt reforms as the local economy is on the mend following the recession and the budget's structural deficit has been cut in half.

The plan, dubbed a roadmap for reform, comes three weeks after Emanuel won a second term following a runoff contest during which the city's deteriorating credit ratings and fiscal hardships took center stage. The city's massive $19 billion tab of unfunded liabilities and the burden of funding a $550 million increase in its pension contribution for police and firefighters next year have driven the credit rating dive.

The debt-related policy changes don't solve the city's most daunting challenge, its pension funding shortfalls, and will actually pose a near-term burden as the city uses more operating funds to cover legal costs and phases out the practice of pushing of upcoming debt principal payments off.

Emanuel acknowledged the measures may not stabilize or boost the city's credit standing, but he's hoping analysts and investors will view them "as very good and positive steps."

Moody's Investors Service in late February knocked the city's down one notch to Baa2, only two levels above speculative-grade territory, but assigned a negative outlook.

The downgrade triggered termination events on four swaps with a combined negative valuation of nearly $60 million. BMO Harris Bank agreed to lower the rating threshold on one swap relieving the city from a potential $20 million payment if demanded by the bank. Wells Fargo Bank, the counterparty of the other three, has so far refused.

The city is expected to soon shift the 2003 floating-rate paper attached to one of those swaps to a fixed-rate and cancel out the swap and three others on the transaction that all combined carry a negative valuation of $33 million.

To cover any swap expenses, the city could tap its short-term borrowing program, although that is one of the practices Emanuel is targeting in his reform plan. The city last year drew $36.3 million from its short-term borrowing program to cover termination payments on two of its swaps on a notional principal amount of $206 million from a 2002 issue. The city then planned to convert the paper to a fixed-rate structure.

THE BOND BUYER

BY YVETTE SHIELDS

APR 29, 2015 5:05pm ET

MSRB To Publish Best Ex Guidance.

WASHINGTON – The Municipal Securities Rulemaking Board plans to publish interpretive guidance on its best execution rule no later than July, MSRB chair Kym Arnone said Monday.

Arnone, a managing director and head of municipal securitization initiatives at Barclays Capital, made the comments during a press call following the board's quarterly meeting at its Alexandria, Va. headquarters late last week.

The meeting did not feature any formal regulatory action, but Arnone said staff updated the board on the development of the guidance, which will be in a frequently-asked-questions, or FAQ, format.

The best execution rule, G-18, will become effective on Dec. 7. It generally would require dealers to use "reasonable diligence" to determine the best market for a security and then buy or sell the security in that market so the resulting price to the customer "is as favorable as possible under prevailing market conditions."

Some dealers have voiced questions about how traders will be able to demonstrate due diligence. MSRB chief legal officer Robert Fippinger said the FAQs will purely be interpretive of the rule, and will not modify it in any way.

The staff also provided the board with an update on its exploration of adding certain pre-trade pricing information to EMMA. Arnone said the MSRB has been working with at least one alternative trading system to find out what kinds of data might be available as a useful addition to EMMA. Earlier this year the Financial Industry Regulatory Authority proposed requiring ATS' to provide information to FINRA "solely for regulatory purposes," and panelists at the National Municipal Bond Summit in Florida last month said they expected the MSRB would likely not be far behind

MSRB executive director Lynnette Kelly said it is premature to discuss a timeframe for when the board might make a decision about collecting and adding more pre-trade information, but that the MSRB could eventually either require it by rule or request that ATS' supply some set of information to EMMA.

"The goal is to review a broad spectrum of information," Arnone said.

The board also discussed comments it received on its proposal to require dealers, when acting as principals, to disclose to customers on their confirmations, a "reference price" of the same security traded that same day. The MSRB made that proposal jointly with a FINRA proposal for corporate bonds last year, and the Securities Industry and Financial Markets Association told the MSRB in a January comment letter that the approach is wrong and that enhancements to EMMA are a better way to inform investors about pricing information.

Arnone said the board spent "considerable time" discussing the reference price proposal, and agreed to continue evaluating the proposal in coordination with FINRA.

"There's no question that this is a very complex issue," Arnone said.

The next MSRB board meeting will be July 29-31, the last one of the fiscal year.

THE BOND BUYER

BY KYLE GLAZIER

APR 27, 2015 2:46pm ET

Fund Manager Seeks City Projects With High-Yielding Bonds.

When Steve Czepiel talks about traffic on the Pennsylvania Turnpike or retirement communities in Florida, odds are he isn't referring to his daily commute or plans for his golden years. As co-manager of the $944 million Delaware National High-Yield Municipal Bond fund (ticker: CXHYX), Czepiel spends his days thinking about the economics of toll roads, charter schools, hospitals, and other projects financed by municipal bonds.

Over the past decade, his fund has averaged 5.6% returns annually, putting it in the top 2% of Morningstar's high-yield muni category, with most of its total return coming from income. Those results, however, aren't the product of interest-rate bets—the fund keeps its duration in line with its Lipper peer group—or wagers on places like Puerto Rico or Detroit. It is the product of careful securities selection. "Our focus is on building the portfolio bond by bond," Czepiel says.

Those bonds are typically rated just above or below investment grade or, in the case of 22% of its holdings, not rated at all. The managers' goal: Find a mismatch between the viability of a project and the rating of its bond to deliver high yield to investors without an inordinate amount of risk. "At times, it's like finding a needle in a haystack," says Czepiel of choosing the right securities; high-yield muni bonds represent just a sliver of the muni-bond market. "It's a regionalized and fragmented market that can be very quirky." Investors who understand the twists and turns are earning 5% to 7% in tax-exempt income.

Czepiel, 57, for his part, has made a career of navigating the nuances of the muni market. After graduating from high school, the Pittsburgh native worked road construction for three years to save up enough to study finance and economics at Duquesne University. When he graduated in 1982, he was the first person in his family to have gone to college. "I always tell people I'm most proud that I put myself through school," says Czepiel, who landed a job at Kidder Peabody after graduation and went on to trade muni bonds for more than two decades. In 2004, Patrick Coyne, president of Delaware Investments, and Joe Baxter, head of municipal bonds, recruited Czepiel to join the Philadelphia firm.

In a typical week, Czepiel, his two co-managers, and seven credit analysts look at a dozen deals, ultimately passing on most. They add about 30 new holdings to the portfolio a year, with most of these bonds coming in as new issues. "Once these bonds are issued, you may never see them again," Czepiel says, noting that most are owned by individuals and held to maturity. Because of this, the team spends two to three weeks peeling back the many layers of each project and deal structure. "In some cases, we'll suggest changes to the underwriter," he adds.

The fund's universe is composed of revenue-based bonds that get dinged by credit-rating agencies for any number of reasons. "An example would be a hospital in a lower-income area," says Baxter, who is a co-manager on the fund. "It might get a lower rating because of its location, but that doesn't mean it's going to default."

Delaware Nat. High-Yield Muni Bond

	Total Returns* 1-Year	5-Year	10-Year
CXHYX	9.7%	7.0%	5.6%
Barclays Muni Bd Idx	5.0	4.8	4.7

Top 10 Holdings	Coupon	% of Portfolio**
Buckeye Tobacco Settlement Financing Authority	5.88%	2.6%
County of Jefferson, Ala., Sewer Revenue	6.50	2.1
Golden State Tobacco Securitization	5.75	1.8
Salt Verde Financial	5.00	1.6
Tobacco Settlement Financing Corp/N.J.	5.00	1.5
New York Liberty Development	5.25	1.3
Pennsylvania Turnpike Commission	5.25	1.1
New York Liberty Development	7.25	1.0
Foothill-Eastern Transportation Corridor Agency	6.00	1.0
California Statewide Communities Development Authority	5.50	1.0
Total		15.0%

*Returns are as of 4/29; three- and five-year returns are annualized.
**as of 3/31 Sources: Morningstar; company reports

Unlike general-obligation bonds, which are backed by the taxing authority of local and state governments, these high-yield bonds are typically earmarked for specific projects and depend on relatively narrow sources of revenue to repay that debt. Investors need to go into these deals with their eyes wide open, says Czepiel, but the default rate among below-investment-grade municipal bonds is significantly lower than that of junk-rated corporate bonds. Between 1970 and 2013, for example, the cumulative default rate for U.S. speculative-grade muni bonds was 6.5%, versus 33.1% for speculative global corporate bonds, according to Moody's Investors Service.

One of the more interesting sectors is health care—more than 22% of the fund. This group includes hospitals, nursing homes, assisted-living facilities, and continuing-care retirement communities. The fund recently owned debt tied to six such developments in Florida, including one in Boca Raton with a 6.75% coupon. "This facility was a start-up," says Czepiel, "but we were reassured by a number of factors, including a high level of investment from the developers."

Corporate issuers make up 19% of the fund. "You see corporate debt in the muni world if the bonds are being issued for the public good," Czepiel says. These bonds provide financing for everything from tobacco settlements and pollution control to opening new gates at airports.

Education is another area rich in tax-exempt income. The fund recently owned debt from dozens of charter schools in 16 states and the District of Columbia. One such holding is View Park Preparatory Accelerated Charter School in Los Angeles, which raised $15 million in BB-rated bonds last fall to build a new facility. "This is an established school that had gone through several charter renewals," says Czepiel. "They have good test scores, a strong school board, and a 94% student-retention rate."

The revenue, based on per-pupil payments from the state, is enough to cover its debt and expenses, says Czepiel, but the slim margins of charter schools tend to lead to lower credit ratings. In this case, the bonds yield nearly 6%.

Though turnover is low, "the ongoing surveillance of these projects is critical," says Czepiel, who keeps tabs on everything from construction timelines and budgets to revenue and operation costs. "If we see that something isn't tracking properly, we'll sell."

One trend that Czepiel is keeping a close eye on is the intersection of private investors and public issuers in what's known as a public-private partnership, or P3. The fund has invested in a number of these deals, including one that is building and repairing bridges in Pennsylvania, putting a light rail line from downtown Denver to its airport, and helping water-starved California desalinate seawater. If everything goes according to schedule, the Carlsbad Desalination Project will begin producing 50 million gallons of fresh water daily by 2016. "It will provide 7% of San Diego County's daily water usage," says Czepiel. In the meantime, the municipal bonds that financed the lion's share of the $1 billion project are pumping out 4.5% tax-free income.

BARRON'S

By SARAH MAX

May 2, 2015

Muni Issuance Dipped in April, But Spiked So Far in 2015.

May 1 (Reuters) – Issuance of U.S. municipal bonds fell slightly in April, but sales for the first four months of 2015 jumped over 67 percent compared with the same period a year earlier, according to Thomson Reuters data released on Friday.

Total sales in April were $39.3 billion, 9.5 percent lower than March, but 55 percent higher than the $25.3 billion sold in April 2014.

The spike in sales this year – there has been $143.2 billion of municipal issuance in the first four months of 2015 compared to $85.4 billion during the same period last year – is due to more issuers refinancing, market watchers say.

Issuers sold $101.2 billion of refunding bonds in 2,544 deals during the first four months of this year, more than double the $42.2 billion of refunding bonds sold during the same period in 2014 across 1,244 deals, the data shows.

"The story for the first part of 2015 – and April specifically – has been low interest rates," said Tom Kozlik, managing director and municipal credit analyst at Janney Capital Markets. "That environment has created refundings, refundings, refundings."

New debt sales rose slightly in April as issuers sold $14 billion in new bonds across 579 deals, compared to $13 billion over 474 deals in April 2014. Overall, new money deals fell slightly in the first four months of 2015 with $41.9 billion compared to the same period in 2014 with $43.2 billion of new sales.

"New issuance has been down," said Kozlik. "Muni credits do not want to add more fixed costs than they already have."

Next week's sales will be relatively small in size, with an estimated $9.8 billion of issuance, according to Thomson Reuters data. This week, municipal issuance totaled $4.9 billion.

Next week's four largest deals are the state of Louisiana with $335 million of general obligation bonds; the Los Angeles Unified School District with $330 million of general obligation refunding bonds; the Los Angeles Community College District with $310 million of general obligation refunding bonds, and the Indiana Finance Authority with $302 million of stadium lease appropriation refunding bonds.

BY ROBIN RESPAUT

(Reporting by Robin Respaut, editing by G Crosse)

Risk Transfer Success Leads to Ratings Upgrades for Florida Citizens.

It's an exceedingly rare thing that I'd ever point to anything my adoptive state of Florida does in the area of insurance markets as an example that others might want to copy. But in at least one important respect, recent moves by the state-run Citizens Property Insurance Corp. offer a model not only for other residual markets, but also for the National Flood Insurance Program and, perhaps most importantly, for Citizens' sister agency, the Florida Hurricane Catastrophe Fund.

Citizens' efforts to slim down its portfolio and shift more risk to private reinsurance markets already are paying off in a big way. Late last week, the rating agencies Moody's and Fitch both upgraded Citizens' debt credit rating ahead of a planned $1 billion municipal bond issuance, Citizens' first in three years.

Moody's upgraded both Citizens' personal lines and commercial lines accounts from A2 to A1, and assigned an A1 rating to the pending $750 million of tax-exempt senior secured bonds and $250 million of floating-rate notes.

> *The upgrade to A1 on all the Accounts notes CPIC's track record and expertise with administering the assessment mechanism, during and after heavy storm seasons, as well as the state's robust economy and* ***the corporation's successful efforts to transfer risk and reduce the necessity for post-event bonding in coming years.***

Fitch upgraded more than $2.6 billion of Citizens' outstanding senior secured debt from AA- to A+. Those bonds include $746.6 million issued in 2009, $1.24 billion issued in 2010 and $645 million issued in 2011. For the forthcoming issues, Fitch again assigned an AA- rating.

> *The upgrade to 'AA-' from 'A+' on the senior secured bonds reflects Citizens'* ***successful efforts to lower and transfer risk****, reducing its exposure to claims and reducing the magnitude of potential future borrowing.*

How these changes, particularly the Moody's upgrade, ultimately affect Citizens' cost of borrowing will be seen more definitively when the issues come to market May 18. The last time Citizens did a bond issuance, in 2012, its 10-year bonds were priced at 3.77 percent, about 180 basis points above the benchmark.

As seen in the ratings guidance, credit goes to Citizens management for embarking on a bold plan to leverage soft pricing conditions in the private reinsurance markets. Citizens previously only received reinsurance from the Cat Fund, thus multiplying the solvency risk should the state be hit by a major storm. In addition to purchasing billions in traditional reinsurance in recent seasons, Citizens also followed the lead of entities like North Carolina's Beach Plan, Massachusetts' FAIR plan and Louisiana's own all-purpose Citizens by jumping into the catastrophe bond market in a major way.

Between them, Citizens' Everglades Re and Everglades Re II entities have issued catastrophe bonds for $750 million in April 2012, $250 million in March 2013, $1.5 billion in May 2014 and, most recently, a $250 million issuance this coming month. The $1.5 billion 2014 cat bond remains the largest single issuance in history, and Citizens' combined $2.75 billion in cat bonds represents about 12 percent of the $23 billion global market.

Credit also belongs to Citizens' successful depopulation program, as its policy count has fallen by more than half in the past three years (from 1.5 million to about 600,000) and their total insured value has over the past four years fallen from $518 billion to less than $200 billion.

Of course, these improvements have only been made possible by an unprecedented nearly decade-long drought of major storms hitting the Sunshine State. Citizens ended 2005, following the strike of Hurricane Wilma, with a deficit of $1.8 billion. Were it a private company without the ability to assess "hurricane taxes" on other privately sold policies, that would have been the end of the line for Citizens. Instead, policyholders across Florida were forced to pick up the slack and, thanks to the lucky streak, Citizens was able to end 2014 with a surplus of $7.4 billion.

Now, the next step is to import that same success to the Cat Fund. Earlier this month, the Florida Cabinet approved a plan by the fund to buy $1 billion of retrocessional reinsurance cover, which would mark its first ever private reinsurance deal. The Citizens upgrades suggest similar improvements are possible for the Cat Fund should it follow through with these risk-transfer plans.

Not only would transferring more risk back to the private market better protect Florida taxpayers and policyholders from future hurricane taxes (and given current pricing, with no or close to no impact on rates) but it would mean cheaper borrowing costs in the long term. Approving the final deal should be a no brainer for the State Board of Administration.

By Ray Lehmann | Right Street Blog | April 30, 2015

Insurance Journal

A Cautionary Tale For Bond Buyers.

We are all aware of sticker shock. We are aware of those pesky gummed price stickers on things we buy. Your kids and grandkids grew up with stickers that adorned their schoolbooks, art projects, hands and arms. You get the picture.

After 36 years of being a bond professional I was not acquainted with the process of stickering a municipal bond Official Statement until the week of April 20.

Stickering simply is amending, correcting, or supplementing information in a new issue Official Statement (OS) during the offering period. The amendment is supposed to clarify or correct information in the OS. Sounds simple, doesn't it? Read on.

Our firm purchased Beaumont Special Tax municipal bonds for some higher risk-taking clients. The city of Beaumont is 80 miles east of Los Angeles. This bond was a refunding issue, secured by revenues collected from a special tax levied on a specific group of homes in a designated area. We studied the area, the number of homes, loan-to-value, how much of the area is developed, and any overlapping debt. All the essential facts that needed to be studied before purchasing the new issue.

We purchased the bonds (yes, I personally did too), which had an extended settlement like many new issues. Fast forward to April 23. The brokerage firm that underwrote the deal contacted us. Bad news. The FBI and Riverside District Attorney's office raided Beaumont City Hall and Urban Logic Consults with search warrants. They also served warrants in Temecula and Palm Desert.

The investigation is about Urban Logic's business relationship with the city. Apparently Urban Logic has provided consulting and management services to Beaumont for more than 20 years.

Does this investigation affect the Special Tax bonds we purchased? Or the homes in the area whose tax revenues go to pay timely interest and principal? It doesn't matter. I've learned over my decades of investing in bonds that there's rarely ever one cockroach. Ever live in or visit the desert and see a big, fat cockroach skitter across the floor at night? If there's one, there is always, without fail at least another.

Because this FBI investigation was new information the underwriter had to initiate the stickering process. Investors who purchased the newly issued bonds—which had yet to settle—now had a choice of closing the purchase or canceling the trade. We cancelled out as an abundance of caution.

During the same week, Louisiana State University—which had already priced and offered municipal bonds—had to cancel their deal before it closed. The reason cited was Governor Bobby Jindal has to make deep budget cuts. Louisiana faces $1.6 billion in budget shortfalls, partly due to falling energy prices.

Since the LSU bond deal was cancelled school officials are crafting a financial exigency plan. This is similar to a bankruptcy plan. "Exigent" means immediate action or attention, urgent, critical—all words rarely seen in the municipal bond space. Clearly this was a exigent circumstance not covered in the OS. Some of the information disseminated in the aftermath of the LSU deal mentioned material declines in state support. I'll say! As a result LSU cancelled the deal.

The numerous lessons in telling these two municipal bond sagas are: Whether non-rated as were Beaumont's Special Tax bonds or LSU's rated bonds (A by Moody's and AA- by Fitch), things can happen. Do-it-yourself investors need to keep up on their municipal bonds as much as they do with their other investments. Buying municipal bonds with a set it and forget it mindset is like using an old Motorola flip phone and wondering why there's no text messages or news.

Forbes

Marilyn Cohen, Contributor

4/29/2015

Marilyn Cohen is president of Envision Capital Management, Inc., a Los Angeles fixed-income money manager.

TAX - OHIO

Hillenmeyer v. Cleveland Bd. of Rev.

Supreme Court of Ohio - April 30, 2015 - N.E.3d - 2015 -Ohio- 1623

Nonresident professional football player filed applications for refunds of income taxes paid to city. The Central Collection Agency (CCA), city's tax administration authority, upheld its imposition of tax using the games-played method of allocation, and player appealed. City's Board of Review upheld the CCA's position, and player appealed. The Board of Tax Appeals (BTA) affirmed, and player appealed.

The Supreme Court of Ohio held that:

- Statutory occasional-entrants rule did not violate player's equal protection rights;
- City's application of its games-played method of allocating income violated due-process rights of player; and
- Duty-days method comported with due process and ensured that the tax collected was not disproportionate to the income received for work in city.

Nonresident professional football player's election of appellate avenues, namely appealing to Board of Tax Appeals (BTA), rather than the common pleas court, did not waive his constitutional claim that city's allocation method known as "games-played," under which the taxable portion of professional athlete's income was based on the number of games the athlete played in city in relation to the total number of games played that year, violated due process. Statute, governing appeal from final determination of local board of tax review, set forth appellant's right to choose the forum and imposed no restrictions on its doing so.

Nonresident professional football player did not ignore statutory grounds for relief in order to present a constitutional argument, namely that city's allocation method known as "games-played," under which the taxable portion of professional athlete's income was based on number of games the athlete played in city in relation to total number of games played that year, violated due process. Player argued that Central Collection Agency's regulation conflicted with city ordinance and that the games-played method was preempted by statutory occasional-entrants rule, stating that municipal corporation shall not tax the compensation paid to a nonresident individual for personal services performed by the individual in the municipal corporation on twelve or fewer days in calendar year unless individual is a professional athlete.

Statutory occasional-entrants rule, stating that municipal corporation shall not tax the compensation paid to a nonresident individual for personal services performed by the individual in the municipal corporation on twelve or fewer days in a calendar year unless individual is a professional athlete, did not violate nonresident professional football player's equal protection rights. Classification of professional athletes as distinct from other occasional entrants neither involved fundamental rights nor proceeded along suspect lines, there was rational relationship between disparity of treatment and legitimate governmental purpose, professional athletes were typically highly paid so that a city could earn significant revenue with comparative ease, professional athletes and their events incurred much larger public burdens relating to police protection and traffic and crowd control than did other occasional entrants, and imposing limit on local taxation while protecting cities' interest in collecting existing taxes constituted adequate rational basis for General Assembly's actions.

Although city had right to tax the compensation earned by a nonresident professional athlete for his work performed in city, the city's application of its games-played method of allocating income violated due-process rights of nonresident professional football players. Under games-played method, taxable portion of a professional athlete's income was based on number of games the athlete played in city in relation to the total number of games played that year, games-played method resulted in city allocating approximately 5 percent of player's income to itself on the basis of two days spent in city, games-played method reached income that was performed outside of city because it foreseeably imposed city income tax on compensation earned while player was working outside city, and thus, city's income tax, as applied to players, was extraterritorial and violated due process.

Consistent with the rule that the taxing authority could not collect tax on a nonresident's compensation earned outside its jurisdiction, the duty-days method, whereby the numerator represented the number of days spent in the taxing city and denominator represented the total number of work days, properly included as taxable income only that compensation earned in city by accounting for all the work for which nonresident professional football player was paid, rather than merely the football games he played each year, and as such, the duty-days method comported with due process and ensured that the tax collected was not disproportionate to the income received for work in city.

TAX - TEXAS

Texas Student Housing Authority v. Brazos County Appraisal District

Supreme Court of Texas - April 24, 2015 - S.W.3d - 2015 WL 1870013

Higher education facility authority sought review of county appraisal district's denial of tax exemptions for a student residential facility that it used as summer housing for non-college students attending university-sponsored instructional programs. The District Court affirmed the denial. Authority appealed. The Court of Appeals affirmed in part, reversed in part, and rendered in part. Both parties appealed.

As a matter of first impression, the Supreme Court of Texas held that authority did not forfeit its tax exemption by using the facility as it did.

Higher education facility authority did not forfeit its tax exemption for a student residential facility, under a provision of the Education Code, by using the facility as summer housing for non-college students attending university-sponsored instructional programs. The provision exempted property owned by a properly constituted higher education facility authority and did so without conditions, and county appraisal district did not dispute authority's assertion that authority was properly constituted.

S&P: U.S. Regulated Water Utilities' Credit Quality Remains Buoyant, But Key Risks Remain That Could Weigh It Down.

Standard & Poor's Ratings Services continues to maintain high-investment-grade ratings on most U.S. regulated water utilities (USRWUs) even though we estimate these companies' capital spending will exceed more than $2 billion in capital spending annually by 2020. We've identified three key areas that we expect will likely affect USRWUs' ability to manage regulatory and operating risks in coming years: Regulatory lag, drought, and declining sales. USRWUs have fared well thus far in managing these risks. And this is reflected in USRWU ratings, which compare favorably to ratings for regulated gas and electric utilities (see chart 1). Nevertheless, USRWUs will continue to confront these three aforementioned issues, which could likely affect their credit quality over the long term. In evaluating these…

Purchase the Report.

White House Hopes to Boost P3s in Promise Zones.

The Obama Administration this week announced eight additional Promise Zones across the country. Promise Zones are high-poverty communities where the federal government partners with local leaders to increase economic activity, leverage private investment, improve educational opportunities, reduce violent crime, enhance public health and address other priorities identified by the community, according to the U.S. Department of Housing and Urban Development. Through the Promise Zone designation, these communities will work directly with federal, state and local agencies to give local leaders proven tools to improve the quality of life in some of the country's most vulnerable areas.

The new Promise Zone communities are:

- Camden, New Jersey
- Hartford, Connecticut
- Indianapolis, Indiana
- Minneapolis, Minnesota
- Sacramento, California
- St. Louis/St. Louis County, Missouri
- Pine Ridge Indian Reservation of the Oglala Sioux Tribe, South Dakota
- South Carolina Low Country

"The Promise Zone effort is proof positive that partnerships are the key to community economic development," said Agriculture Secretary Tom Vilsack. "Families and children in rural and tribal communities are full of potential to compete and succeed in the 21st Century. When we invest our resources and establish long-lasting public-private alliances to strengthen educational opportunities, deliver health care, build infrastructure and create jobs, we are investing in our country's future."

The newly designated zones join five others that were named in January 2014 — San Antonio; Los Angeles; Philadelphia; Southeastern Kentucky Highlands and the Choctaw Nation of Oklahoma.

All Promise Zones will receive priority access to federal investments that further their strategic plans, federal staff on the ground to help them implement their goals, and five full-time AmeriCorps VISTA members to recruit and manage volunteers and strengthen the capacity of the Promise Zone initiatives.

A competition to select a third round of Promise Zones will commence later this year. HUD will publish this summer a notice in the Federal Register requesting public comment on the proposed selection process, criteria, and submissions for the final round of the Promise Zones initiative.

NCPPP

By Editor April 30, 2015

S&P's Public Finance Podcast (Rating Actions On Puerto Rico And Louisiana's Universities).

In this week's Extra Credit, Senior Director Dave Hitchcock discusses our recent rating action on Puerto Rico and Director Sussan Corson and Associate Director Debra Boyd explain the rationale behind our rating actions on Louisiana's universities.

Listen to the Podcast.

Apr 30, 2015

Municipal Issuer Brief: Superdowngrades

Read the Brief.

Municipal Market Analytics | Apr. 28 |

Moody's: Regardless of Legal and Political Outcomes, Chicago's Pension Pressures Will Grow for Years.

New York, May 01, 2015 — Chicago's (Baa2 negative) pension plans face an uncertain future. Statutes that govern the city's pension funding requirements have come under legal and political fire, particularly during the last year, as pensioners, politicians, taxpayers and investors have questioned the laws' constitutionality and affordability, Moody's Investors Service says in a new report.

Regardless of the ultimate answers, one outcome is certain: Chicago's unfunded pension liabilities and ongoing pension costs will grow significantly, forcing city officials to make difficult decisions for years to come.

If current laws stand, Chicago's annual pension contributions are projected to increase by 135% in 2016; by an average annual rate of 8% in 2017-21; and by an average annual rate of 3% in 2022-26.

The 2016 increase alone equals a significant 15% of the city's 2013 operating revenue, Moody's says in "Chicago's Pension Forecast — Tough Choices Now or Tougher Choices Later."

"Although the growing contributions will place enormous strain on the city's operating budget, the initial payments will still be insufficient to cover the annual interest accruing on the plans' massive accumulated unfunded liabilities. By 2027, however, unfunded liabilities should begin to decline and annual contribution increases should begin to moderate," says Moody's Vice President and Senior Analyst Rachel Cortez.

If current laws do not stand, Chicago's annual pension contributions will remain well below the plans' actuarially determined funding needs.

The city's impending contribution increases to the Municipal and Laborer plans will be reduced if the courts find Public Act 98-0641 unconstitutional. The city's impending contribution increases to the Police and Fire plans will be reduced if the state amends Public Act 96-1495 per the city's request. Without the increased payments that current statutes require of the city, the plans will continue to liquidate assets to pay benefits. As the plans approach insolvency, risks to the city's solvency will grow.

The report is available to Moody's subscribers here.

Fitch: CA Court Decision Limited, May Pressure a Few Utilities.

Fitch Ratings-New York-28 April 2015: A court ruling reinforcing the requirement that California water utilities link their tiered fees to the cost of providing water may reduce revenue and increase compliance costs slightly for a few but will likely have limited credit impact, Fitch Ratings says.

Nearly all Fitch-rated water utilities in the state use tiered water rate pricing. Those that have sufficiently justified their tiered water pricing based on direct cost recovery of capital, conservation programs, higher treatment, and purchased water costs will see limited impacts. However, some may be required to re-examine their rate structures, undergo more rigorous analysis of cost of service, and provide greater rate transparency going forward.

Further, Fitch expects utilities to raise rates to account for the higher cost of providing services and reduced revenues, if they have not already done so, in response to the state's recently announced mandatory 25% reduction in water usage.

California's 4th District Court of Appeal ruled in the case of the city of San Juan Capistrano last week that tiered rates are allowable but must be tied to the cost of service, as required by Proposition 218, passed in 1996.

If a utility's rate structure does not comply with the requirements of Proposition 218 and reiterated by the court ruling, a reduction in revenues is possible. However, that reduction would likely be managed in the following fiscal year through reasonable budget modification as well as a change in rate structure and associated public notice and hearing (a legal requirement for local utilities in the state proposing changes to fees).

California water utilities developed a tiered-fee structure because they use a combination of groundwater, surface water, imported water, recycled water, stored water reserve agreements and brackish groundwater. The costs of these supplies vary widely. Desalination, slated to become a more significant component of the state's water supply mix, will be among the most expensive sources. Tiered rate structures can be used to allocate higher cost supplies to higher usage customers, whose above-average demand has resulted in the need for adding costlier supplies.

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Orr to Leave Atlantic City Emergency Management Team.

(Reuters) – Lawyer Kevyn Orr will leave Atlantic City's emergency management team, finalizing his work on the struggling New Jersey gambling hub by the end of the month, Governor Chris Christie's office said on Monday.

Christie appointed the team, led by Kevin Lavin with Orr as an adviser, in January. Orr's previous role as the man who crafted Detroit's historic bankruptcy sparked concern in the $3.7 trillion U.S. municipal bond market that a bankruptcy or bond restructuring could be likely for Atlantic City.

The appointment by Christie, a possible 2016 Republican presidential candidate, also signaled to Wall Street credit rating agencies that New Jersey's historically strong support of its struggling local governments could be eroding.

Moody's Investors Service put seven distressed cities on notice of a possible ratings cut because of their reliance on state aid in a less supportive environment when the state's budget itself is strained.

One of those cities, Trenton, was downgraded a week ago and forced to cancel a bond deal.

Last week, Jones Day announced that Orr, a corporate bankruptcy attorney, would return to the law firm on May 1 to serve as the partner in charge of its Washington office. Orr left Jones Day in March 2013 when he was tapped by Michigan Governor Rick Snyder to serve as Detroit's emergency manager.

"From the start, it was made clear that Kevyn Orr would lend his expertise as a short-term consultant" to Lavin, Christie spokesman Brian Murray said in a statement.

Lavin and his team, which includes Ernst & Young consultants who worked closely with Orr in Detroit, plan to release their next report in June, Murray said.

Casinos, labor unions, bondholders and other creditors will be negotiating through a mediator to keep Atlantic City afloat.

State lawmakers are still pushing a plan to help stabilize the city's free-falling property tax base, which has dwindled rapidly as casinos suffered from increased competition for gambling dollars in neighboring states.

Reuters requested Orr's Atlantic City contract with the state, but was told in March that the Division of Local Government Services, which employs Lavin, had no such document.

“As soon as an executed contract is available, it will be made public and a copy will be provided to you,” the state said in its response. No contract was ever provided to Reuters.

By REUTERS

APRIL 27, 2015, 2:34 P.M. E.D.T.

(Reporting by Hilary Russ; Editing by Alan Crosby)

Chicago Mayor's Debt Reforms to Sting Budget.

CHICAGO — Chicago’s clean up of its debt practices, including ending interest-rate swaps and phasing out bond restructurings, will cost more than $275 million, the city’s top financial officials said on Wednesday.

Mayor Rahm Emanuel unveiled several steps earlier on Wednesday that he said would restore “fiscal sanity” to Chicago’s sagging budget.

Lois Scott, Chicago’s chief financial officer, said the benefits from converting about $800 million of variable-rate general obligation bonds into fixed-rate bonds and the elimination of related interest-rate swaps should offset the approximately $200 million the city will have to pay banks to end the swaps, due largely to low interest rates.

But that move will lead to more debt as the city would raise the $200 million initially through the sale of commercial paper that would eventually be replaced with long-term bonds.

Chicago is already paying a hefty interest-rate penalty in the U.S. municipal bond market as it struggles with a $20 billion unfunded pension liability and a looming $550 million increase in pension contributions that needs to be made from a budget with a $300 million structural deficit.

“We have to get back to the basics – long-term fixed rate bonds, fund this year’s costs with this year’s revenues,” Scott said.

A rating downgrade of Chicago to two notches above the junk level by Moody’s Investors Service in February triggered the termination of four swaps and put the city closer to triggering another 11.

The mayor also called for phasing out over four years the so-called scoop and toss practice of restructuring the city’s debt service on bonds to push payments into future years and free up money for operations.

Chicago Budget Director Alexandra Holt said that plan would impact the city’s next operating budget by $75 million.

“What that looks like and how we pay for it, don’t know yet,” she said, adding that the mayor will first look to savings and reforms before turning to taxpayers.

The budget for the fiscal year beginning Jan. 1 would also have to accommodate an increasing share of legal settlements and judgments that have been funded in part with bond proceeds, under the mayor’s reforms.

Chicago's $8.9 billion all-funds budget, which includes a $3.54 billion operating fund, is already buckling under escalating pension costs at the same time Illinois Governor Bruce Rauner has proposed cutting about $135 million in funding for the state's biggest city.

By REUTERS

APRIL 29, 2015, 7:06 P.M. E.D.T.

(Reporting By Karen Pierog; Editing by Cynthia Osterman)

Save the Date – GASB 68 Teleconference.

NABL will present a teleconference, "It is 2015: Pension Disclosure and GASB 68" on Tuesday, June 16, 1:00-2:30 pm Eastern.

In May 2012 NABL, with the assistance of a number of national associations, published "Considerations in Preparing Disclosure in Official Statements Regarding an Issuer's Pension Funding Obligations". The publication described what were then proposed changes in the accounting standards for pension plans and participating employers.

The new standards are contained in GASB Statements 67 and 68 and are now effective. The teleconference will provide an overview of the changes in the accounting standards and what should be considered in preparing disclosure materials following implementation of the new accounting standards. The panel will also review how pension funding disclosure has evolved since the release of the "Considerations" publication in 2012.

Stay tuned – additional details, CLE and registration information will be available soon.

- The Bond Lawyer – Spring 2015
- Federal Securities Laws of Municipal Bonds Deskbook, Sixth Edition.
- Katten: Municipal Advisors and "Bank Purchase" Bonds: What's All the Commotion About?
- MSRB Releases Content Outline for First Municipal Advisor Professional Qualification Exam.
- Opportunities and Risks in Municipal Underwritings and Derivatives: WilmerHale
- PA Treasury Successfully Completes Commonwealth's First-Ever Competitive Bidding Process for Bond Counsel.
- SIFMA Forum: Alternative Financing in the Muni Market.
- *AHF-Bay Fund, LLC v. City of Largo* – Appeals court invalidates all state PILOT agreements that require a party to make payments that are the equivalent of ad valorem taxes that would otherwise be due but for a statutory tax exemption; certifies to the Florida Supreme Court as a question of great public importance.
- *Louisiana Local Government Facilities and Community Development Authority v. All Taxpayers* – Supreme Court of Louisiana holds that Community Development Authority's motion to validate certain municipal bonds pursuant the Bond Validation Act was not rendered defective by the Authority's failure to introduce the resolution authorizing the bonds into the record.
- *Radian Asset Assurance Inc. v. Madison County, Miss.* – District Court sides with bond insurer, holding that provision of Contribution Agreement entered into between County and (failed) Improvement District giving District two years to reimburse County for any bond payments made

by County did not constitute a two-year cap on County's obligation to make bond payments; insurer's ultimate obligations to bondholders awaits adjudication.

- And finally, Fish/Barrel is brought to you this week by *City of Magee v. Jones*, in which the Supreme Court of Mississippi waded delicately into a case in which raw sewage entered a residence via a shower drain and flooded the home. Could there perhaps exist a common vulgarity applicable to this scenario? Golly, can't for the life of me figure out what that could possibly be.

EMINENT DOMAIN - CALIFORNIA

Jefferson Street Ventures, LLC v. City of Indio

Court of Appeal, Fourth District, Division 3, California - April 21, 2015 - Not Reported in Cal.Rptr.3d - 2015 WL 1838772

In 2007, the City of Indio conditioned approval of Jefferson Street Ventures, LLC's 2005 application for development of a shopping center upon Jefferson leaving approximately one-third of its property undeveloped to accommodate the reconstruction of a major freeway interchange that was in the planning stages.

Jefferson sued the City contending the development restrictions were invalid because they constituted an uncompensated taking of its property. Following a hearing on the writ petition, the trial court found the development restrictions were permissible and denied the writ. Although the court originally declined to consider whether the facially valid development restrictions nonetheless amounted to an uncompensated taking, it subsequently granted the City's motion for judgment on the pleadings on the inverse condemnation causes of action agreeing the ruling on the writ petition included a finding there was no compensable taking.

The appeals court reversed, holding that the City's development restrictions constituted an uncompensated de facto taking of the development-restricted portion of Jefferson's property.

BOND VALIDATION - LOUISIANA

Louisiana Local Government Facilities and Community Development Authority v. All Taxpayers

Supreme Court of Louisiana - April 17, 2015 - So.3d - 2015-0417 (La. 4/17/15)

The Louisiana Local Government Environmental Facilities and Community Development Authority (LCDA) filed a motion for judgment pursuant to the Bond Validation Act seeking to validate the issuance of certain municipal bonds.

The District Court denied the motion, expressing concerns over publication of notice. On appeal, the Court of Appeal found the district court erred in finding proper notice was not given. Nonetheless, the majority of the Court of Appeal, over two dissents, affirmed the District Court's judgment on different grounds, finding LCDA did not introduce into the record the resolution authorizing the issuance of the bonds.

The Supreme Court of Louisiana reversed, finding that the LCDA's motion to validate was not defective because it failed to introduce the resolution into the record.

The Court noted that the legislature chose not to specify what evidence a governmental entity must introduce to meet its burden of proof under the Bond Validation Act and that it was not the function of the judicial branch in a civilian legal system to legislate by inserting provisions into statutes where the legislature had chosen not to do so.

ZONING - MARYLAND

Anne Arundel County v. Bell

Court of Appeals of Maryland - April 21, 2015 - A.3d - 2015 WL 1798953

Objectors brought action against county, seeking declaratory relief, challenging comprehensive rezoning ordinance. The Circuit Court dismissed complaint with prejudice. Objectors appealed. The Court of Special Appeals vacated and remanded. County petitioned for certiorari.

The Court of Appeals held that:

- Objectors lacked property owner standing to bring action, and
- Objectors lacked taxpayer standing to bring action.

Objectors lacked property owner standing to bring action for declaratory relief challenging county's adoption of comprehensive rezoning ordinance. Objectors were not specially aggrieved by the ordinance merely because they owned property in the area affected by the ordinance, and expanding the doctrine of property owner standing to a challenge to comprehensive zoning legislative action would be unwarranted and unprudential.

Objectors lacked taxpayer standing to bring action seeking declaratory relief challenging county's adoption of comprehensive rezoning ordinance, since objectors failed to sufficiently allege that their taxes would be increased or that the allegedly illegal action would result in any other form of pecuniary loss. Objectors' alleged frustration with increased traffic, annoyance with increased noise, and violations of a right to participate in zoning changes, even if within the purview of taxpayer standing, were not unique to objectors, as opposed to the general public.

PENSIONS - MICHIGAN

FT Michigan v. State

Supreme Court of Michigan - April 8, 2015 - N.W.2d - 2015 WL 1578785

In 2010, the Michigan Legislature enacted Public Act 75, which modified retirement benefits for current public school employees. The statute supplemented and altered the Public School Employees Retirement Act (Retirement Act), which governs the Michigan Public School Employees' Retirement System (MPSERS). The most controversial provision of 2010 PA 75 required all current public school employees to contribute 3% of their salaries to the MPSERS to assist in funding retiree healthcare benefits for current and future public school retirees.

Labor organizations representing public employees challenged the constitutionality of 2010 PA 75.

The Supreme Court of Michigan held that:

- PA 75 did not constitute an uncompensated taking under either the Michigan or United States Constitutions;

- PA 75 did not impair the obligation of contracts in violation of either the Michigan or United States Constitutions; and
- PA 75 did not violate the guarantee of due process in violation of either the Michigan or United States Constitutions.

IMMUNITY - MISSISSIPPI

City of Magee v. Jones

Supreme Court of Mississippi - April 23, 2015 - So.3d - 2015 WL 1848083

Landowner brought action against city after raw sewage entered her house through a shower drain and flooded several rooms. The Circuit Court denied city's motion for summary judgment. City sought review.

The Supreme Court of Mississippi held that:

- To determine if city's sewage-system operation was discretionary under Tort Claims Act, court must first determine overarching governmental function, and
- Remand was required in light of drastic change to test.

To determine if city's sewage-system construction, operation, and maintenance was discretionary for the purpose of discretionary function exception of Mississippi Tort Claims Act (MTCA), court must first determine whether overarching governmental function at issue is discretionary or ministerial, examine any narrower duty associated with the activity to determine whether a statute, regulation, or other binding directive renders that particular duty a ministerial one, notwithstanding that it may have been performed within the scope of a broader discretionary function.

For a plaintiff to defeat a claim of discretionary-function immunity for the purpose of discretionary function exception of Mississippi Tort Claims Act, the plaintiff must prove that an act done in furtherance of a broad discretionary function also furthered a more narrow function or duty which is made ministerial by another specific statute, ordinance, or regulation promulgated pursuant to lawful authority.

BONDS - MISSISSIPPI

Radian Asset Assurance Inc. v. Madison County, Miss.

United States District Court, S.D. Mississippi, Northern Division - April 20, 2015 - Slip Copy - 2015 WL 1780190

In 2002, Madison County created the Parkway East Public Improvement District. In 2005, the District issued bonds to finance improvements. The bonds were to be repaid by special assessments on the landowners within the District. Radian insured the bonds.

The County entered into a Contribution Agreement with the District, which provided that: 1) If the County was satisfied with the District's performance, it would step in and pay the District's bonds if the District experienced an assessment shortfall; 2) If the County made such a payment, the County could take the proceeds of tax sales to recoup the money it spent on bond payments; and 3) The District had two years to reimburse the County for the County's bond payments.

The subsequent collapse of the economy caused the District to fail. It was unable to attract the development necessary to make its bond payments. When the District failed, Madison County made the District's bond payments between October 2011 and September 2013. The County then stopped, arguing that the contribution agreement required it to cover bond payments for only two years.

Madison County contended that it was now Radian's duty as insurer to step forward and repay the bonds.
Radian filed suit seeking a declaration that Madison County remained responsible for bond payments.

The District Court held that the two-year limit in the Contribution Agreement does not constitute a two-year time limit on the County's obligation to make bond payments, but refers solely to the amount of time the District has to reimburse the County.

The Court was sympathetic to the County's contention that it could not be forced to make bond payments "ad infinitum," since the Contribution Agreement also recites that the bonds are not backed by the full faith and credit of the County. Radian conceded this, but argued that the County must make bond payments as long as it has "sufficient unrestricted funds in its General Fund." The Court noted that Radian's position may be contradicted by the plain language of the contract and may cut against the very purpose of purchasing bond insurance, but that that question was not at issue in this proceeding.

"Nor are other arguments raised by the parties, ranging from the County's acceptance of the Landspan Property to the adequacy of Radian's underwriting process, ripe for adjudication. It is enough at this juncture simply to say that the contribution agreement does not state how long Madison County agreed to cover the District's bond shortfall. The County agreed to make the District's bond payments for some period of time, but whether the parties contemplated payments of one year, two years, five years, or something else is not contained within the four corners of the contract and cannot be inferred by the Court. Additional proceedings are necessary to answer that question, whether in the form of a trial (given the fact dispute suggested by the briefing, but not before the Court today) or additional motion practice."

PENSIONS - NEW JERSEY

In re I/M/O Town of Harrison

Superior Court of New Jersey, Appellate Division - April 15, 2015 - A.3d - 2015 WL 1736801

Municipalities and collective bargaining agents for municipal police officers and firefighters brought declaratory judgment action challenging decision by Acting Director of the Division of Pensions and Benefits to refuse to implement final determination of Board of Trustees of the Police and Firemen's Retirement System (PFRS) concerning certain senior officer and longevity pay provisions of collective bargaining agreements.

The Superior Court, Appellate Division, held that Acting Director of the Division of Pensions and Benefits did not have authority to act unilaterally to refuse to implement a final decision reached by the Board of Trustees of the PFRS concerning what constitutes creditable compensation for calculation of policemen and firemen pension benefits.

Under statutory and regulatory scheme established to administer PFRS pension system, the PFRS Board of Trustees was the only administrative body authorized to make a final administrative determination regarding what can be considered creditable compensation.

LIABILITY - NEW YORK

[Staten v. City of New York]

Supreme Court, Appellate Division, Second Department, New York - April 22, 2015 - N.Y.S.3d - 2015 N.Y. Slip Op. 03347

High school student, by his mother and guardian, brought action against city, city department of education, and camp owner to recover damages for personal injuries sustained at football camp when fellow student broke window near his face. The Supreme Court, Richmond County, denied city's and department's motion for summary judgment, and entered summary judgment in owner's favor. Parties filed cross-appeals.

The Supreme Court, Appellate Division, held that:

- City was not liable for school officials' alleged negligence, and
- Other student's disciplinary history did not place board on notice of dangerous conduct requiring greater level of supervision.

Fact that student was previously involved in altercation, for which he received in-school suspension, did not place city board of education on notice of dangerous conduct requiring greater level of supervision at football camp operated by public high school, and thus board was not liable for personal injuries sustained by camp participant when student broke window near him, where participant's injury was result of spontaneous, unanticipated act that could not have been averted through exercise of greater supervision.

TAX - WASHINGTON

[New Cingular Wireless PCS, LLC v. City of Clyde Hill]

Court of Appeals of Washington, Division 1 - April 20, 2015 - P.3d - 2015 WL 1788055

Taxpayer that was assessed municipal fine for allegedly making false statements or misrepresentations in its utility tax returns brought action against city, seeking declaratory judgment that the municipal fine was invalid. The Superior Court entered summary judgment for city and dismissed taxpayer's complaint. Taxpayer appealed.

The Court of Appeals held that:

- Taxpayer was not limited to appellate review of city mayor's dismissal of its protest of the fine;
- Statute governing writs of review did not prohibit taxpayer from invoking trial court's original trial jurisdiction; and
- Taxpayer was not barred from seeking declaratory judgment, despite availability of appellate review as a remedy.

Provision of city code stating that determination by mayor regarding municipal fine was "final" unless a "judicial appeal" was filed in the superior court could not limit the superior court to its appellate jurisdiction and, thus, did not preclude taxpayer from bringing declaratory judgment action in superior court to challenge assessment of municipal fine for allegedly making false statements or misrepresentations in its utility tax returns.

Taxpayer was not limited to appellate review of city mayor's dismissal of its protest of municipal fine, imposed for allegedly making false statements or misrepresentations in its utility tax returns, and thus it could challenge the fine by invoking trial court's original trial jurisdiction by filing a declaratory judgment complaint, where no statute required appellate review or any specific procedure for challenging the legality of a municipal fine, and taxpayer had exhausted its administrative remedies.

Statute governing writs of review did not prohibit taxpayer, after dismissal of its protest by city mayor, from invoking trial court's original trial jurisdiction through declaratory judgment complaint to challenge the legality of a municipal fine, imposed for allegedly making false statements or misrepresentations in its utility tax returns. The statute provided a means of invoking trial court's appellate jurisdiction and explained the circumstances under which a writ of review should be granted, but the statute did not say that a writ of review was the exclusive means of resolving a dispute over the validity of a municipal fine.

Taxpayer was not barred from seeking declaratory judgment in action challenging legality of municipal fine, which taxpayer filed after city mayor dismissed its protest, even though an alternative remedy was available in that taxpayer could have challenged the mayor's decision by obtaining a writ of review. The availability of appellate review as a remedy was not an absolute bar to seeking declaratory judgment, and city identified no statute establishing strict procedural rules or short time limits in connection with the mayor's decision concerning the validity of the fine that would weigh against granting declaratory judgment as an alternative remedy.

The Bond Lawyer - Spring 2015

The Spring 2015 issue of The Bond Lawyer® is now available.

The Bond Lawyer®: The Journal of the National Association of Bond Lawyers is published quarterly, for distribution to members and associate members of the Association. Members may access current and past issues here. Article submissions and comments should be submitted to Linda Wyman, (202) 503-3300.

Click here to read.

MSRB Board of Directors Meeting Summary.

The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) met April 22-23, 2015 where it discussed the following rulemaking topics:

Pre-Trade Information
The Board received an update from staff on the potential addition of pre-trade information to the Electronic Municipal Market Access (EMMA®) website and supports staff's plan to review data voluntarily provided by market participants as part of its continued analysis.

Best Execution Interpretive Guidance

The Board directed staff to continue developing interpretive guidance for municipal securities dealers for MSRB Rule G-18, on best execution, which is effective December 7, 2015.

Pricing Reference Information
The Board discussed comment letters received on its proposal to require dealers to provide pricing reference information on retail customer confirmations and agreed to continue evaluating the proposal in coordination with the Financial Industry Regulatory Authority.

Rep. Larson: Munis 'The Lifeline of Any Given Community'

WASHINGTON – House Ways and Means Committee member Rep. John Larson considers municipal bonds to be "the lifeline of any given community."

"Without the ability to use municipal bonds, both municipalities and not-for-profits, 501(c)(3)s, have a very difficult time in funding the projects that they need," the Democrat from Connecticut said. Munis help cities and towns, including those in rural areas, address issues like infrastructure and housing, he added.

Larson, 66, talked about bonds and other topics in a recent interview with The Bond Buyer, part of an ongoing series of profiles of members of Congress, particularly those with backgrounds in state and local government.

A former teacher and insurance agency owner, Larson previously served on the Board of Education and Town Council of East Hartford, Conn., as well as in the Connecticut State Senate. He was elected to the U.S. House of Representatives in November 1998 and is currently in his ninth term.

The congressman, in 2005, was named to the House Ways and Means Committee which has jurisdiction over tax policy and has co-sponsored bond bills. These include the Municipal Bond Market Support Act, which would have increased the annual issuance limit for issuers of bank-qualified bonds to $30 million from $10 million, and the Build America Bonds Act, which would have reinstated the popular direct-pay bond program at lower subsidy rates. Both bills were pending in the last Congress but failed to gain traction.

Larson said he worked closely with Rep. Richard Neal, D-Mass., as well as with Republicans such as Rep. Tom Reed of New York, on the legislation. He said he plans to get the bills reintroduced in the current Congress.

"The concept is that you want to create both capacity and also, in this time of lack of work, you want to be able to help create jobs," Larson said. "And I think there's a direct correlation between both creating capacity — and by that I mean what municipalities can borrow — and then also tying it to specific initiatives that are usually primarily infrastructure-related."

The idea is that, "you're both enhancing the community's ability to deliver a service to pay for roads, to build whatever's necessary, but also making sure that it's easing the burden on taxpayers as well," he added.

In any tax reform legislation, Congress should not just protect bonds but also preserve and expand municipalities' abilities to finance their own projects. But this becomes more difficult to do if tax reform isn't done through "regular order" and instead Congress votes on bills whose contents are only known by the chairmen of the tax-writing committees, Larson said.

Congressional Democrats want tax reform in "as open and as transparent a manner as you can," Larson said. He praised former Ways and Means Committee Chairman Dave Camp, R-Mich., for setting up working groups in 2013 that brought in industry groups to talk about the impacts of tax-code changes. Larson was vice chairman of the working group on financial services.

Larson hopes current Ways and Means chairman Paul Ryan, R-Wis. continues along the same lines. He was not happy that Ryan held votes on making certain expired tax provisions permanent because the legislation would lose revenue that could be used for tax reform.

During the last Congress, Larson was a co-sponsor of the Marketplace Fairness Act, which would allow states to require out-of-state online retailers to collect their sales taxes if the states simplified their sales tax laws. Larson said the online sales tax issue is important to Connecticut Gov. Dan Malloy and Commissioner of Revenue Services Kevin Sullivan.

Currently, states can only require a remote seller to collect its sales taxes if it has a physical presence in the state. While customers are supposed to pay use tax on their remote purchases, they typically don't and this requirement is not well-enforced.

States are losing revenue and their finances will improve if they can recoup the money, Larson said.

Infrastructure

Larson is also an advocate for the federal government helping state and local governments to fund infrastructure.

He has introduced legislation last year called the America's Energy Security Trust Fund Act that would use revenue from a carbon tax to make up for the shortfalls in the dwindling Highway Trust Fund. He plans to reintroduce the bill in this Congress.

He also recently co-sponsored the Bridge to Sustainable Infrastructure Act, H.R. 1846, which would index federal gasoline and diesel taxes to inflation and create a bicameral, bipartisan commission that would be tasked with making recommendations for sustainable transportation funding.

"If you don't have a steady stream of revenue coming in, a predictable stream, then how can any business, or any municipality, or any state plan?" Larson asked.

On the day The Bond Buyer interviewed Larson, groups from a transportation construction coalition met with the congressman. Representatives from the groups were "nearly distraught," Larson said, noting that it will be difficult if "we have to go through another kick-the-can-down-the-road" temporary extension of funding for the HTF.

Don Shubert, the executive director of several of the construction groups that visited the congressman, said Larson is important because of his position on the Ways and Means committee, which is responsible for the funding portion of surface transportation legislation.

When it comes to the benefits of investing in infrastructure, Larson "really understands the whole picture," Shubert said. The groups visit Larson "not to lobby, but to learn," Shubert added.

Ray Oneglia, vice chairman of construction company O & G Industries who also attended the meeting, said Larson is good at bringing people together who are interested in infrastructure. Larson brought House Transportation and Infrastructure Committee Chairman Bill Shuster, R-Pa., the committee's top Democrat Peter DeFazio of Oregon, and others to Connecticut to meet with transportation industry groups, Oneglia said.

The New England Water Environment Association also met with Larson that day to bring attention to the need to improve water infrastructure, said that group's executive director, Mary Barry.

In the Hartford area, there are levees that are in great need of repair. "There is always going to be the need for federal and state assistance," Larson said.

Lengthy Public Service Career

A life-long resident of East Hartford, Conn., Larson has always had an interest in public service. He learned politics from his mother, who served on the East Hartford Town Council and was active in the Federation of Democratic Women and the Democratic Town Committee. His interest in serving the public also was piqued when John F. Kennedy was president.

Kennedy viewed giving back to the community as an important value and "something that one should aspire to," said Larson, who was sitting near a picture of the former president during the interview.

Larson was a high-school teacher from 1971 to 1976 and then owned a Mom-and-Pop insurance agency until around the time he was elected to Congress. As he was leaving the education profession, there was an opening on the East Hartford Board of Education. "I ran and I got the most votes and the rest is history," he said.

After serving on the Board of Education from 1977 to 1979, Larson then served on the East Hartford Town Council from 1979 to 1983. The two entities are intertwined. The BOE is a "creature of the state," but its members are elected locally. The board develops its budget separately from the town council, but the council has to approve it.

"You get very intimately involved and understand and appreciate the need for the bonding capacity of a town and specifically where it most frequently it comes up is on educational and infrastructure needs," he said.

Larson served in the Connecticut State Senate from 1983 to 1995, and for eight of those 12 years, he served as Senate President Pro Tempore, a position that is third in line to the governor. Following a loss in the 1994 Connecticut gubernatorial Democratic primary election, he returned to the private sector, lectured at Yale University's Bush Center in Childhood Development and Social Policy, now the Edward Zigler Center in Childhood Development and Social Policy, and continued to stay active in community service. He was elected to Congress four years after that election.

When asked how his time in state and local government has influenced his role in Congress, Larson referenced the famous quote from former House Speaker Tip O'Neill: "All politics is local." His background helped him learn about the needs and concerns of municipalities, which are very different from those of the federal government.

"In terms of an education and in terms of understanding at a grassroots level the needs of a constituency, a background first in local government … puts you in touch at a level where government is most directly in touch with the people," Larson said. "And whenever you are most directly in touch with the people, it creates a greater demand, but also I think gives you better access and better opportunity to understand their needs."

THE BOND BUYER

BY NAOMI JAGODA

APR 24, 2015 11:45am ET

PREPA Calls Bondholders' Plan Overly Optimistic.

The Puerto Rico Electric Power Authority said that the forbearing bondholders’ plan to revamp its business and avoid default on more than $8 billion of debt was overly optimistic on costs.

Over the course of nine years the forbearing bondholder plan is at least $3.1 billion or 7.75% overly optimistic on costs, PREPA said in a public statement late Thursday.

“PREPA continues to work on a business plan that will provide a roadmap for a complete operational and financial transformation over the next several years,” chief restructuring officer Lisa Donahue said in the written statement. “We will continue to work with [the forbearing bondholders] and all of PREPA’s stakeholders to create a consensual plan that provides the best outcome.”

PREPA has openly been in financial distress since the summer of 2014, when a group of bondholders agreed to forbear as the authority worked to transform itself. PREPA has about $8.3 billion in bond debt outstanding.

On Thursday PREPA responded to a plan presented at the end of March by the Ad Hoc Group of PREPA Bondholders (the forbearing bondholders). The plan included $2 billion in capital investments to modernize PREPA’s plants, comply with environmental regulations and help the authority to meet debt obligations.

Donahue had expressed doubts about some of the plan’s assumptions on April 1. The authority’s formal response came Thursday.

PREPA’s said the Ad Hoc Group’s assumptions were incorrect or unrealistic in the following ways:

- Accounts payable terms. The proposal assumes unrealistic credit terms that artificially increase the authority’s cash flow;
- Aguirre Offshore Gasport Project. The plan’s assumptions for this capital project are not possible under existing permits. Its assumptions about timing of completion and flexibility of permits are not achievable and thus allow the bondholders’ plan to produce higher and more immediate savings than possible;
- Environmental compliance. The plan relies on fuel blending, which will not work in the authority’s plants, to achieve this compliance. This leads to artificially lower authority costs;
- Securitization financing. The proposal has financing assumptions that do not reflect what should be expected and artificially decreases PREPA’s costs;
- Renewables. The plan relies on a rapid increase in the use of renewable energy sources that is neither technically nor commercially realistic;
- Fuel costs. The plan assumes that future fuel prices will be lower than leading forecasts, thereby lowering the authority’s projected costs;
- Electrical use forecast. The plan predicts higher use, which is inconsistent with recent trends. This assumption allows the plan to include higher than realistic revenue levels.

PREPA said it doesn’t yet have exact projections of fuel costs or electrical use but is sure that if these were also factored in, the actual costs will add to the $3.1 billion extra that will need to be covered.

“We appreciate PREPA and its advisors providing detailed feedback in response to the Ad Hoc Group’s revitalization plan,” said Stephen Spencer of Houlihan Lokey, the Ad Hoc Group’s financial advisor. “The Ad Hoc Group looks forward to working with PREPA and its professionals to refine a long-term plan for PREPA that is in the best interest of all stakeholders. However, while we have had limited time to review PREPA’s critiques, we believe that a number of the criticisms are based on fundamentally flawed analysis or a misunderstanding of our proposal.”

PREPA said in its presentation to the bondholders that it did not expect the Aguirre Offshore Gas Port to start operating until July 1, 2017. In December 2013 PREPA chief executive officer Juan Alicea Flores told The Bond Buyer he expected this port to be operating in the summer of 2015.

The forbearing bondholders as well as other forbearing creditors have agreed to continue their forbearance until at least the end of April 30. Donahue has said she hopes this forbearance agreement will be extended into the summer.

THE BOND BUYER

BY ROBERT SLAVIN

APR 24, 2015 1:19pm ET

[Federal Securities Laws of Municipal Bonds Deskbook, Sixth Edition.]()

Federal Securities Laws of Municipal Bonds Deskbook, Sixth Edition

Another essential resource from LexisNexis® and the National Association of Bond Lawyers®—the gold standard for municipal bond research.

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[Opportunities and Risks in Municipal Underwritings and Derivatives: WilmerHale]()

In the current economic climate, opportunities are expanding significantly for municipal underwriters and derivatives specialists as states and municipalities across the country clamor to pay for infrastructure and services, fill expanding budget gaps, and shore up unfunded or underfunded pension obligations. In evaluating and pursuing these opportunities, however, banks need to proceed with caution. Regulators are ever more focused on the activities of financial institutions in the municipal market due to possible disparities in sophistication between underwriters and municipal decisionmakers, the potential for municipal financial advisor conflicts of interest, and issues surrounding the adequacy of disclosure concerning the risk profile of different financial products in a period of elevated volatility in global financial markets. In particular, banks should cautiously assess and carefully document the appropriateness and suitability of proposed financing solutions and the disclosure to counterparties of risks associated with those solutions.

The Securities and Exchange Commission (SEC), Municipal Securities Rulemaking Board (MSRB), and the Financial Industry Regulatory Authority (FINRA) are all paying greater attention to these issues in 2015. The importance of scrutinizing transactions in this area cannot be overstated – a finding by the SEC of inadequate or inaccurate risk disclosure or a conflict of interest can lead to significant liability.

Continue reading.

Benjamin Neaderland and Harriet Hoder

WilmerHale

April 21, 2015

Michigan Governor Signs Bill to Aid Detroit Bond Sale.

(Reuters) – Michigan Governor Rick Snyder on Wednesday signed into law a bill aimed at reducing interest rate costs for an upcoming Detroit bond sale.

Detroit privately placed $275 million of variable-rate bonds with Barclays Capital to finance its Dec. 10 exit from the biggest-ever municipal bankruptcy. As part of the city's U.S. Bankruptcy Court-approved plan, that debt is due to be sold in the U.S. municipal market in a fixed-rate mode by May 9. The deal will mark the city's first post-bankruptcy public bond sale.

"We need to ensure Detroit's debt is repaid under the terms of the bankruptcy to allow the city to continue its recovery," the Republican governor said in a statement. "The savings from lower interest costs will allow Detroit to reinvest in critical areas like public safety and municipal services."

The new law boosts security for the bonds by placing a specific statutory lien on Detroit income tax revenue pledged to pay off the debt. The move is expected to result in investment-grade ratings for the bonds, which in turn could save Detroit between $20 million and $30 million over the life of the issue, according to the governor's office.

There was no immediate comment from Detroit Mayor Mike Duggan's office on the status of the bond sale.

Proceeds from the bonds were earmarked for retiring a prior $120 million Barclays loan to the city, to pay certain creditor claims from the bankruptcy and to finance city improvements.

Wed Apr 22, 2015

(Reporting By Karen Pierog in Chicago; Editing by Lisa Shumaker)

MSRB Releases Long-Awaited MA Test Outline.

WASHINGTON – The Municipal Securities Rulemaking Board has released a "study outline" of its qualification exam for municipal advisors — the first mandatory competency exam for professionals giving bond-related advice to state and local governments.

The Series 50 exam testing muni advisor competency, which the MSRB plans to administer in a pilot program this year and to all MAs next year, will be required for MAs in or entering the profession.

According to the outline released Wednesday, the exam will contain 100 multiple choice questions, 12 of which will test knowledge of MSRB and Securities and Exchange Commission rules governing MAs. Thirty-five of the questions will test the understanding of muni finance, 12 will be related to credit analysis and due diligence, 31 will touch on structuring, pricing, and executing muni debt products, and 10 will test the understanding of the requirements for issuing municipal debt.

All MAs will be required to pass the Series 50 exam within one year of its launch. Some market participants had asked that certain MAs be exempt from the exam on the basis of having considerable experience or having passed broker-dealer exams testing much of the same knowledge, but the MSRB said all MAs will be required to take test.

"Today is an important day for the municipal advisor profession," said MSRB executive director Lynnette Kelly. "Requiring municipal advisor professionals to demonstrate a minimum level of knowledge of the business and applicable rules will help ensure that state and local governments are advised on municipal bond transactions and financial products by qualified advisors."

There will be four choices for each question, with each answer worth one point. Candidates will have three hours to complete the examination, after a thirty-minute tutorial about the exam's administration. Candidates should answer every question, even if they are unsure of them, the outline said. Any materials needed to complete the examination will be provided by the test center or within the test itself.

"The MSRB will publicly announce the passing score for the examination after a committee of municipal advisors determines the passing score, which reflects the level of performance the committee judges necessary for registration as a municipal advisor representative," the outline said.

The outline also contains five sample questions covering topics such as swaps, private-activity bond rules, and other post-employment benefits besides pensions. It also provides an answer key.

To help municipal advisors prepare to take the exam, the MSRB has scheduled a webinar on June 11, to review the content outline, provide more information about participating in the pilot and discuss the administration of the exam.

The development of the competency test is another major step in the MSRB's efforts to complete rulemaking to help implement the SEC's MA registration rule. The Dodd-Frank Act subjected MAs to SEC and MSRB regulation and oversight. It also imposed on the advisors a fiduciary duty to put their state and local clients' interests ahead of their own.

THE BOND BUYER

BY KYLE GLAZIER

APR 22, 2015 12:57pm ET

SIFMA Forum: Alternative Financing in the Muni Market.

June 9, 2015 | SIFMA Conference Center, NYC | 1:30 – 5:45 PM

Join SIFMA for a half-day forum that will take a fresh look at alternative financing in the municipal market. Recently, there has been an increase by state and local governments turning to banks as a source of debt finance, instead of using a traditional public markets debt offering. However, with limited legal and regulatory guidance, the convergence of the public (underwriting) and private (bank loan) markets has investors and others calling for disclosure of private market transactions similar to those required in public market transactions.

The lack of guidance compels each financial firm to establish its own standards for legal and accounting purposes. The scarcity of legal and regulatory guidance on this topic has led to fundamental changes in our industry. During this event, our speakers will discuss the legal, regulatory, accounting and compliance questions that have arisen from this uncertainty. We invite you to participate through sponsorship opportunities available during this event.

[Ed. Note: We'll keep you posted on webinar opportunities for this event.]

REGISTER.

TAX INCREMENT FINANCING - ARIZONA

City of Apache Junction v. Doolittle

Court of Appeals of Arizona, Division 1 - March 17, 2015 - 345 P.3d 138 - 708 Ariz. Adv. Rep. 4

Cities brought actions against county treasurer, seeking writ of mandamus ordering treasurer to distribute all past and future owed tax increment financing (TIF) funds. The Superior Court entered judgment in favor of county treasurer, and cities appealed.

The Court of Appeals held that:

- Repealing act did not leave intact cities' right to TIF distributions arising from taxes levied after December 31, 1998;
- Repealing act did not violate the rule of statutory construction that "no right accrued is affected by the repealing act"; and
- Repealing act's abrogation of a municipality's authority to include a TIF based repayment provision in any new redevelopment plan did not violate the deeply rooted policy against retroactive legislation.

Repealing act, which abrogated a municipality's authority to include a tax increment financing (TIF) based repayment provision in any new redevelopment plan, did not leave intact cities' right to TIF distributions arising from taxes levied after December 31, 1998, even though they had adopted their plans before the repeal. The act also repealed the obligation of taxing agencies like the county treasurer to allocate, collect and pay the portion of property taxes generated when redevelopment property exceeds its base value.

Cities' authority to include a tax increment financing (TIF) based repayment provision in any new redevelopment plan did not accrue when they approved their respective plans, but rather were expectant and contingent on property values within the redevelopment areas exceeding their base values, taxes being levied, allocated, and collected, and thus, the repealing act did not violate the rule of statutory construction that "no right accrued is affected by the repealing act."

Repealing act's abrogation of a municipality's authority to include a tax increment financing (TIF) based repayment provision in any new redevelopment plan did not violate the deeply rooted policy against retroactive legislation, absent any claim by cities to a vested right to TIF distributions.

TAX - FLORIDA

AHF-Bay Fund, LLC v. City of Largo

District Court of Appeal of Florida, Second District - April 22, 2015 - So.3d - 2015 WL 1809577

In December 2000, RHF Brittany Bay, LLC (RHF) acquired the subject property. RHF was a tax exempt 501(c)(3) organization. RHF planned to develop the property to provide affordable housing for persons with low to moderate income pursuant to chapter 420, Florida Statutes. As set forth in section 196.1978, Florida Statutes (2000), affordable housing projects owned by a 501(c)(3) organization are exempt from ad valorem taxation.

To finance the project, RHF reached an agreement with the City wherein the City would arrange for the issuance of tax-exempt bonds that carried a considerably lower interest rate than RHF could have obtained using traditional bank financing. In exchange for the issuance of the bonds, RHF entered into a "payment in lieu of taxes" (PILOT) agreement, thereby agreeing to make annual payments to the City "in an amount equal to the portion of ad valorem taxes to which the City would otherwise be entitled to receive for the [p]roperty as if the [p]roject were fully taxable in accordance with standard taxing procedures."

AHF–Bay Fund, LLC (AHF) subsequently purchased the property but failed to make the payments as required. As a result, the City sued, and the trial court entered summary judgment on the two claims, followed by entry of final judgment in the City's favor. AHF appealed.

The District Court of Appeal reversed, holding that:

- Based on the statutory exemption from ad valorem taxation as set forth in section 196.1978, the City did not have authority to collect ad valorem taxes from AHF via enforcement of the PILOT agreement;
- The PILOT agreement violates the public policy of promoting the provision of affordable housing for low to moderate income families and is therefore void;
- A PILOT agreement that requires a party to make payments that are the equivalent of ad valorem taxes that would otherwise be due but for a statutory tax exemption violates article VII, § 9(a) of the Florida Constitution, which permits municipalities to impose taxes only as authorized by law.

"Finally, we recognize that PILOT agreements similar to the one in this case abound in municipalities throughout Florida. Thus, the magnitude of our opinion holding that these types of agreements violate Florida law may pose a significant hardship on municipalities that rely on such payments to meet their budget requirements. We therefore certify to the Florida Supreme Court the following question to be of great public importance:

DO PILOT AGREEMENTS THAT REQUIRE PAYMENTS EQUALING THE AD VALOREM TAXES THAT WOULD OTHERWISE BE DUE BUT FOR A STATUTORY TAX EXEMPTION VIOLATE SECTION 196.1978, FLORIDA STATUTES (2000), AND ARTICLE VII, § 9(a) OF THE FLORIDA CONSTITUTION?"

TAX INCREMENT FINANCING - INDIANA

Redevelopment Com'n of Town of Munster v. Indiana State Bd. of Accounts

Court of Appeals of Indiana - March 16, 2015 - N.E.3d - 2015 WL 1186102

Town redevelopment commission filed complaint against the State Board of Accounts, seeking declaratory relief allowing it to use tax increment financing funds to maintain redeveloped parks. The Circuit Court granted summary judgment in favor of the Board. Commission appealed and Board cross-appealed.

The Court of Appeals held that:

- Commission had standing to bring action for declaratory relief, and
- Statutes did not permit commission to use tax increment financing funds for the continued maintenance of completed, redeveloped parks.

Town redevelopment commission had standing to bring action against State Board of Accounts for declaratory relief to determine its authority to use tax increment financing funds to pay for the maintenance of completed, redeveloped parks, where the commission had already budgeted and utilized tax increment financing funds to pay for park maintenance, and the Board sent letter to commission stating such funds could not be used to maintain park land.

Statutes listing permissible uses of tax increment financing funds by redevelopment district, authorizing the use of tax increment financing funds for the maintenance of buildings before redevelopment is complete, and prohibiting fund allocation for redevelopment commissions' operating expenses, did not permit town redevelopment commission to use tax increment financing funds for the continued maintenance of completed, redeveloped parks.

State Refinances $1 Billion of Bonds, Saving Taxpayers Over $180 Million.

State Treasurer John Chiang today announced the successful sale of $1.09 billion in State general obligation bonds, which included the refinancing of approximately $1 billion in previously-issued bond debt.

"This successful sale is a strong indicator that investors are bullish about the Golden State. From approval of a rainy day fund to aggressively paying down debt accumulated during the Great Recession, California has made significant strides to put its fiscal house back in order and Wall Street has taken notice," said Chiang. "Importantly, my office was also able to save taxpayers more than $180 million in debt service payments by refinancing more than $1 billion in previously-issued, higher interest rate borrowings."

Since he took office earlier this year, he has carried out six different re-financings that will together save taxpayers more than $1.79 billion over the life of the bonds.

Some key facts from the sale:

- Final Size: $1.09 billion, the largest competitive sale in the U.S. markets in 2015.
- Final yields ranged from a low of 0.10% for a 2015 maturity to a high of 3.5% for a 2035 maturity.
- Today's offering included $105 million in taxable bonds for infrastructure projects, providing much needed funds to transportation, education, and children's hospitals.
- Notably, California enjoyed pricing that outperformed its credit rating. The $105 million portion of the sale was sold at a yield of just one basis point (i.e. 0.01%) above comparable taxable AAA municipal bonds. California's current general obligation bond rating is Aa3 by Moody's Investors Service, A+ by Standard & Poor's, and A+ by Fitch Ratings.

The next State general obligation bond sale is expected to occur in the summer or fall of 2015.

The State Treasurer has broad responsibilities and authority in the areas of public investment and finance. In particular, he oversees the issuance of State debt and is responsible for crafting best practices for the sale of debt and the investment of public funds for California's more than 4,000 local bond issuers, including the State, school districts, cities, counties, and special districts.

For more news, please follow the Treasurer on Twitter at @CalTreasurer, and on Facebook at California State Treasurer's Office.

This article was released by the Office of the State Treasurer.

New Jersey Capital City, Trenton, Scraps Bond Deal.

(Reuters) – New Jersey's capital city, Trenton, has canceled a bond refunding sale because a credit downgrade on Monday left it unable to save enough money for the deal to meet legal standards, Trenton's finance director told Reuters.

The scrapped deal is one of the first signs of local financial fallout from broader concerns about New Jersey's public pension problem and Governor Chris Christie's appointment of an emergency manager for the struggling gambling hub Atlantic City.

Cash-strapped Trenton had planned to sell about $17.8 million of general improvement and sewer utility refunding bonds on April 28. As a result of the ratings cut by Moody's Investors Service, however, the city would have to pay a higher interest rate and therefore would not have met the minimum 3 percent savings required by state law, Trenton Finance Director Ronald Zilinski said.

"The state's getting hammered, hence we're getting hammered," Zilinski said.

Christie, a likely 2016 Republican presidential candidate, appointed an emergency manager in January to run Atlantic City. The appointment signaled to investors in the $3.7 trillion U.S. municipal bond market that the state's historically strong support of its struggling cities could be eroding.

Christie also slashed $1.6 billion from the state’s 2015 pension contribution, which New Jersey could now be forced to pay anyway with just over two moths left in the fiscal year. That would put further strain on the already tight state budget and could prompt cuts in state aid to Trenton and other struggling cities.

In March, Moody’s warned that it could downgrade seven distressed New Jersey cities, including Trenton, Newark and Paterson.

Moody’s cut its rating on the state a week ago, New Jersey’s ninth credit downgrade by Wall Street since Christie took office in 2010.

Debt from six of the seven cities subject to Moody’s review was priced weaker on Thursday than at the start of the year, according to a Reuters analysis of price evaluation data provided by Markit.

One of those cities, Newark, saw the price of one of its bonds drop by $1.74 since Jan. 2, but it’s still above par at $104.57, according to Markit.

Overall, though, the seven cities’ bonds have mostly charted the same path as benchmark 10-year muni yields, according to Municipal Market Data, a unit of Thomson Reuters.

Cities are also getting a lift from yield-hungry investors, who are paying higher prices even for riskier credits amid a shortage of available new muni bonds.

“Tax-free bonds are in huge demand, so people are willing to pay a little more to get yield than in the past,” said Ben Eiler, a partner at Georgia-based muni bond broker dealer First Southern Securities.

That could be good news for Trenton. It is still planning to sell $10.6 million of new bonds on May 28, though it will now have to pay more to insure them, Zilinski said. The city is also planning a bond anticipation note sale on June 3.

NEW YORK | BY HILARY RUSS

Apr 23, 2015

(Reporting by Hilary Russ; Editing by David Gregorio)

U.S. Municipal Bond Sales Next Week Fall Back from High Levels.

(Reuters) – Sales of U.S. municipal bonds and notes next week will total about $4.9 billion, according to Thomson Reuters estimates, a decrease from the more robust and much-heralded issuance levels so far this year.

No deal next week is expected to top the $275.4 million offering from the Dormitory Authority of the State of New York, a late entry on Thursday to the negotiated calendar.

The authority is selling State University of New York dormitory facilities revenue bonds on Thursday through lead manager Siebert Brandford. The bonds will refund outstanding lease revenue bonds the authority issued from 2003 through 2007, according to the preliminary official statement.

Separately, the authority plans to price $68.9 million of Orange Regional Medical Center Obligated Group Revenue bonds, rated Ba1 by Moody’s Investors Service, through lead manager JP Morgan.

Next week’s low level of issuance is a change from the first quarter, when primary muni sales spiked upward, driven mostly by refundings. By comparison, this week an estimated $9 billion of muni bond deals priced.

The low-interest rate environment has been favorable for refundings, with a “subdued transition upward across the curve” for the rest of the year expected, CreditSights analysts Isaac Codrey and Howard Sitzer said in a commentary on Friday.

With that interest rate outlook, “we would continue to expect strong refunding volumes over the remaining course of the year, just not at the remarkable levels that were realized” in the first quarter of 2015, they wrote.

NEW YORK, APRIL 24

(Reporting by Hilary Russ; Editing by Jonathan Oatis)

Katten: Municipal Advisors and "Bank Purchase" Bonds: What's All the Commotion About?

There has been a renewed focus in recent months on how to determine which regulatory regimes apply to the various parties involved in private placements of municipal debt. The very public controversy over the question of whether a municipal advisor that is not a registered broker-dealer may facilitate the purchase of a municipal loan by a bank directly from the municipality is an example of this renewed attention. This advisory summarizes the applicable legal tests and briefly describes their implications for stakeholders in a typical transaction.

As shown in the chart below, the determination of whether the debt instrument in a private placement should be treated as a loan or a security has significant legal and regulatory implications for borrowers, lenders and advisors:

PARTY	REGULATORY IMPLICATIONS
Issuer or Borrower	• Treatment as a security as opposed to a loan would invoke applicable federal securities laws, including anti-fraud provisions (SEC Rule 10b-5). • State and local law may treat a security differently from a loan for purposes of authorization, pledge of security, tax levy and many other pivotal considerations.
Lender	• Treatment as a security as opposed to a loan may have the effect of converting a loan participation or assignment into a transfer of securities, exposing the lender to federal securities laws (including anti-fraud provisions) and broker-dealer regulations.
Municipal Advisor	• Treatment as a security as opposed to a loan may subject municipal advisors to broker-dealer regulations, federal securities laws and several additional MSRB rules. • If a municipal advisor were to be reclassified as a placement agent its participation in the transaction may be restricted under MSRB Rule G-23.

While the determination of whether a municipal debt in a private placement constitutes a loan or a security is based on many factors, as a whole, the factors that have been identified comprise a vague "facts and circumstances" test rather than a bright-line safe harbor. The Securities and Exchange Commission (SEC) has issued no-action letters[1] advising intermediaries to register as broker-dealers if they are engaged in making introductions to, or negotiating with, potential investors on behalf of an issuer of securities and receive transaction-based compensation from the issuer (e.g., fees conditioned on the closing of the transaction and/or representing a percentage of the transaction amount). Regarding whether a note does or does not constitute a security, the US Supreme Court[2] has held that a note would generally be presumed to be a security unless it (1) fell within a limited category of non-security notes[3] or (2) shared a strong "family resemblance" to such non-security notes based on an analysis of the following factors:

Family Resemblance Factors
1. Would reasonable parties be motivated to enter the transaction for commercial or investment purposes?
2. Does the plan of distribution involve common trading for speculation or investment?
3. What are the reasonable expectations of the investing public?
4. Are there any other risk-reducing factors, such as an alternate regulatory regime?

The first factor (commercial vs. investment purpose), oft-criticized for vagueness[4] and subject to varied interpretations by subsequent courts[5], is likely to be the most concerning for typical private placement structures—particularly those that relate to instruments secured by enterprise revenues. Regarding the second and third factors (plan of distribution; investor expectations), many common traits of private placements, including one-on-one negotiations[6], a lack of an offering prospectus[7] or CUSIP number and transfer restrictions, should weigh significantly toward the determination that the instrument in question is not designed for, and would not be viewed by the public as intended for, common trading. Additionally, insofar as it relates to the fourth factor (alternative regulatory protections), many private placements involve lenders that are qualified institutional buyers, entitled to only limited protections even if the transaction were subject to federal securities laws.

While the stakes in how the securities laws are applied to these transactions remain high, the standards for applying the laws are still unfortunately far from clear. We hope to keep you advised of developments as they occur.

Expanded Options for Qualified Management Contracts: IRS Notice 2014-67

Late last year, the IRS "amplified" the rules for qualified management contracts currently contained in Rev Proc 97-13 by, among other things, providing a new five-year term category for ordinary management contracts. This category now permits many types of compensation other than net revenue (replacing the specified compensation types that were permitted before) and eliminates the need for two- or three-year terms and early termination rights by the qualified user. Consumer Price Index and similar adjustments are permitted as are certain incentive and productivity rewards and renewals that can be vetoed by the qualified user. The chart below summarizes these changes.

Type of Compensation	**Maximum Term**
95% periodic fixed fee	Lesser of (1) 80% of project useful life and (2) 15 years (20 years in the case of certain public utility property)
80% periodic fixed fee	Lesser of (1) 80% of project useful life and (2) 10 years (20 years in the case of certain public utility property)

Any combination of a stated amount; periodic fixed fee; capitation fee; per-unit fee; or percentage of gross revenues, adjusted gross revenues or expenses of the facility (but not both revenues and expenses)	5 years

Please note that the IRS left the other principles of its management contract guidelines untouched. For example, the following tests must still be satisfied even if the terms of the contract satisfy the revised compensation and term provisions described above:

- compensation and expense reimbursement to service provider must be "reasonable";
- service provider (including directors, officers, shareholders and employees) may not control more than 20 percent of the voting power on the board of the facility owner;
- any overlapping board members may not include the chief executive officers of the service provider or the facility owner; and
- facility owner and service provider may not be related persons.
- And the following arrangements continue to be generally exempt from these guidelines entirely:
- services that are incidental to the primary function of the facility (such as janitorial, equipment repair and billing services);
- hospital admitting privileges on an equal basis to all qualified doctors;
- public utility property, where compensation is limited to reimbursement for the service provider's expenses (including overhead); and
- non-public utility property, where compensation is limited to reimbursement for the service provider's expenses (excluding overhead).

[1] See C&W Portfolio Management, Inc. (July 20, 1989); Davenport Management, Inc. (Apr. 13, 1993); John Wirthlin (Jan. 19, 1999); and Revocation of Prior No-Action Relief Granted to Dominion Resources, Inc. (March 7, 2000).

[2] Reves v. Ernst & Young, 494 U.S. 56 (1990).

[3] Notes evidencing consumer loans, mortgage loans, certain short-term secured small business loans, short-term accounts receivable loans, "character" loans to bank customers and notes formalizing open-account debt incurred in the ordinary course of business.

[4] See Cori R. Haper, Sometimes Promising Is Not So Promising: The Breakdown of the Family Resemblance Test, 29 Dayton L. Rev. 71, 71 (2003) describing it as "unpredictable," "confusing," "jumbled," and "haphazard."

[5] See, for instance, the US Court of Appeals for the Sixth Circuit decision in Bass v. Janney Montgomery Scott, Inc.,210 F.3d 577, 585 (6th Cir. 2000) which determined that a financing "to launch a new enterprise" was "a washout, since the motivation prompting the transaction on [borrower]'s end is one typical in commercial loan transactions … but from [lender]'s perspective looks more like a transaction for profit." A description that would likely fit almost every lending transaction.

[6] See e.g. Marine Bank v. Weaver, 455 U.S. 551, 560 (1982) and Bass at585.

[7] See e.g. Marine at560.

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Lower Oil Prices Have Varied Effect On Municipal Bond Market.

Summary

- Declining oil prices should be of particular interest to municipal bond investors, as many U.S. state and local budgets have a substantial dependence on oil production and exploration revenue.
- The impact of lower oil prices varies from state-to-state, with states with a heavier dependence on oil revenue being affected most negatively.
- The increased consumer spending that is typically associated with a decline in oil prices may offset the decline in oil-related revenue in some states.

Continue reading.

Seeking Alpha

By Stephanie Larosiliere, Client Portfolio Manager, Invesco

Apr. 21, 2015 5:56 PM ET

S&P: U.S. State Budgets Face Lean Margins Despite Mature Economic Expansion.

By most measures, U.S. state budget conditions are adequate to favorable—and they should be. Not only is the economic expansion mature at this point, it showed signs of accelerating during the middle of 2014. And yet, a majority of states—32 by our count—face budget gaps in either fiscal 2015, 2016, or both. In most cases the gaps are manageable and do not represent an immediate threat to credit quality. But in Standard & Poor's Ratings Service's view, the fact that so many states confront shortfalls at all serves as an early warning of sorts. After all, if a state is grappling with a budget deficit now, with the economic expansion approaching its sixth anniversary, what will be its condition when the next slowdown strikes?

Benefitting from the myriad advantages that come with being sovereign entities, U.S. states comprise one of the most creditworthy sectors we rate. We rate 43 'AA' or higher. At the same time, a large majority of the states rely on a combination of sales or personal income taxes to fund their operations. That means that at any time, current economic conditions—over which the states only have limited influence—effectively dictate the tone of their budget negotiations. What tends to differentiate the direction of any individual state's credit quality, therefore, is financial management. Indeed, the states are among the least passive of all the credit sectors within U.S. public finance; fiscal policy decisions have a significant effect on the degree to which economic conditions will affect their credit quality.

Overview

- A majority of states face budget gaps this year or next; most will be manageable.
- Yet this serves as an early warning, as the recovery nears its sixth anniversary.
- Thus the state sector could be approaching a period of rating volatility.

Continue reading.

27-Apr-2015

Public Works Financing Exclusive: Rapid Bridges Financial Close a Game Changer.

The financial close of the $899-million Pennsylvania Rapid Bridge Replacement Project on March 18 is a game changer for the P3 market.

- It is the first big U.S. P3 deal to close since Florida's I-4 Ultimate six months ago.
- Rapid Bridges is the largest road project in Pennsylvania history. Yet the concession agreement survived untouched in the transition from conservative Republican Gov. Tom Corbett to liberal Democrat Gov. Tom Wolf.
- Developer Plenary Walsh Keystone Partners and its financial advisor, Plenary Group, arranged the largest Private Activity Bond financing of a P3 deal in U.S. history: $721.5 million in appropriation-risk debt, rated BBB, which drew 40 different investors. No TIFIA loan was sought by Pennsylvania Department of Transportation (PennDOT). $59 million of equity was contributed by Plenary Group (80%) and Walsh Investors (20%).
- It is the first bundling of publicly owned assets under a single, fixed-price construction program

management contract. The agreement also shares permitting risk on 558 discrete projects between PennDOT and the Plenary-Walsh project company.

(This is the project's greatest risk, and greatest potential benefit. PennDOT negotiated a SEP-15 waiver from the Federal Highway Administration that allows it to delegate the NEPA documentation to the private program managers. If it works well, other states may pursue the same categorical exclusion from FHWA rules and this approach could become standard procedure. Key to its success is the extensive technical due diligence done by the joint venture to prepare its bid.)

"I think that one of the things that will make our project hugely successful or frankly cause a lot of consternation for the Plenary-Walsh team is how smoothly the permitting process goes," says Bryan Kendro, Director for the PennDOT Public-Private Partnership (P3) Office (until recently a one-man shop but now also run by Deputy Director Dale Witmer and supporting staff.)

- Rapid Bridges involved the first use of a UK-style performance bond, adapted for this project by Walsh Group, its surety, Travelers, and Standard & Poors (see below).
- The secret sauce: To gain the support of local labor and small contractors, all of the bridge rehabilitation work will be subcontracted, and long-term maintenance will be staffed locally—"to make the workforce in each community look like the people who live in that community," says Matthew Walsh, chairman of The Walsh Group of Chicago, Illinois.

Also, money to fund the Rapid Bridges project came from a large increase in annual highway funding to $2.5-billion, which was enacted just as the RFQ for the P3 project was being issued in December 2013.

That new money allowed PennDOT to increase design-bid-build lettings in 2014 from $1.5 billion to $2 billion.

"We passed a massive funding increase, so basically there was a lot of design-bid-build work going out at the same time, so if you didn't like the P3 program, there was plenty of other work to bid on," says Kendro.

The leadership at PennDOT took a risk on Rapid Bridges in hopes that it would help energize local contractors to be more efficient. "I think we're envisioning that this is going to be kind of a shock to our local contracting community, just how fast they can actually build a bridge if they are incentivized to do so and when given the opportunity to be more innovative," says Kendro. "We think that [Rapid Bridges] is going to be proof that there are certain things that can be done differently with our bridge program, and we're going to do them differently."

Where Credit Is Due

Plenary Walsh Keystone Partners has contracted with joint venture Walsh Construction Company (60%) and Granite Construction Company (40%), with HDR, to permit and manage the design and replacement of 558 mostly small bridges by December 2017.

Major maintenance over 25 years will be performed by Walsh Infrastructure Management, LLC (an affiliate of The Walsh Group.)

Advising Plenary Walsh Keystone Partners are Fasken Martineau, of Toronto (legal); BTY Group (technical); InTech (insurance); and Plenary Group (financial).

Advising PennDOT are KPMG (financial and overall strategic advisor); URS (program management); CDM Smith/ Lochner (technical); Allen & Overy (transactional counsel); Ballard Spahr (bond counsel).

Bond underwriters are J.P. Morgan and Wells Fargo, advised by Ashurst LLP (legal).

An American Performance Bond

What Travelers' construction services calls an "Expedited Dispute Resolution Performance Bond" is described by S&P "as a new form of performance bond, which we view as providing liquidity equaling as much as 10% credit to the performance bond for contractor replacement.

"Although typically performance bonds have the potential for protracted arbitration, under the terms of this policy, the maximum number of days before resolution/payment is 82, and we thus provide credit for some project downside costs. In addition, the bond provider has documented its obligation under the performance bond as a financial obligation, such that its failure to pay could result in ratings consequences for the insurer."

In fact, the Rapid Bridges financing is the first time in the U.S. that a rating agency has recognized the value of a performance bond, according to Stan Halliday, chief underwriting officer for Travelers construction services group. Zurich American and Federal (Chubb) worked as co-sureties with Travelers.

Walsh has also proposed using the new performance bond to help secure its $408-million contract with WMB Heartland Partners (Meridiam/Walsh Investors/Balfour Beatty Capital) to build the Marion County Consolidated Justice project in Indianapolis. The fate of that social infrastructure P3 project will be determined in April.

As use of the new bond spreads, the hope is that letters of credit will no longer be required from contractors on P3 deals. If so, says Halliday, that would eliminate a competitive advantage now held by non-U.S. contractors who have broader access to LOCs. "This sets the stage for U.S. contractors to have a greater role in P3s," he says. "It's a solution that works in North America."

The total security package provided by Walsh-Granite includes a $22.5 million letter of credit (2.5% of the construction value), and retainage of $22.5 million. The contractors also will provide a performance bond equal to about 100% of the contract price, in addition to parent guarantees with a liability cap of 40% under the design-build agreement.)

Public Works Financing is a monthly newsletter covering P3s in all infrastructure markets, since 1988. It is widely read and cited in the media, academic research, federal reports and congressional testimony.

NCPPP
By Editor April 24, 2015

Editor's note: As part of our strategic partnership with Public Works Financing, NCPPP will republish two articles each issue of the journal of record on public-private partnerships in infrastructure development. For a limited time, NCPPP Members can receive a 10% discount on a subscriptions to and advertising within this outstanding publication. – PK

By William Reinhardt, PWF editor

[Public-Private Infrastructure Investment Can Spur Economy, Says Treasury Department.]

Private capital has a critical can play role in supplementing public spending on the nation's infrastructure, according to a [new white paper] released Thursday by the Treasury Department.

"Years of underinvestment in our public infrastructure have imposed massive costs on our economy," said Elaine Buckberg, the department's deputy assistant secretary for policy coordination, said in a blog post. "We can more easily meet our nation's infrastructure needs by expanding sources of investment and using those dollars as effectively as possible to advance the public's interest."

Advanced economies from around the world have come to rely on private sector financing for infrastructure investment, according to Buckberg.

"Executed well, PPPs harness private sector capital and management expertise to address the challenges of modernizing and more efficiently operating infrastructure assets," Buckberg said.

The white paper, "Expanding the Market for Infrastructure Public-Private Partnerships: Alternative Risk and Profit Sharing Approaches to Align Sponsor and Investor Interests," explains new ways to share risk and profit between state and local governments and potential investors in P3s.

"For example, the private partner may transfer a portion of its earnings directly to the government, creating opportunities for more infrastructure investment, or the private partner's cost savings may lower the price of using the infrastructure, thus sharing those savings with consumers," Buckberg said. "Profit-sharing on a toll bridge operated as a PPP could translate into lower tolls for drivers. Or, in a PPP-operated water system, it could mean more investment to replace aging pipes."

The white paper is part of the Build America Investment Initiative launched by the Obama administration in July 2014. The initiative is aimed at increasing public-private collaboration in infrastructure investment and spuring economic growth.

[IRS Gives Authority More Time to Spend QZAB Proceeds.]

WASHINGTON - An authority can have additional time to spend proceeds of its qualified zone academy bonds after there were "unforeseen circumstances" such as contractor disputes, permitting delays and development plan changes, the Internal Revenue Service has ruled.

The IRS reached its conclusion in a private letter ruling that was dated Dec. 18 but not released until Friday. The PLR did not identify the issuer or other parties and did not give specific dates. It was signed by James Polfer, chief of the tax exempt bond branch of the IRS chief counsel's office.

QZABs are tax credit bonds whose proceeds can be used to finance renovations, equipment, course materials and teacher training at public schools or academic programs in them that meet certain requirements. The IRS chief counsel's office has granted a number of extensions to spend the proceeds of QZABs and other tax credit bonds, which are supposed to be spent within three years of issuance.

The issuer in the ruling is an authority that is an instrumentality of a state. The authority designs and constructs facilities for lease to the state and its agencies and municipalities.

The authority issued QZABs whose proceeds were to be spent on rehabilitating and repairing public schools in the state. The authority initially expected to spend all available project proceeds within three years.

However, the authority now doesn't expect to complete the rehabilitation efforts within three years because of "unforeseen circumstances" at some of the public schools. The unexpected events included major contract disputes with contractors, delays in the permitting process, the state's re-designating some schools as historic buildings, and altered development plans due to significant and unexpected population migration, according to the ruling.

The authority expects to spend all of the bond proceeds by about 10 months after the original expenditure period expires. It requested an extension before the three-year period ends.

Under federal tax law, 100% of available project proceeds for QZABs, qualified school construction bonds and other taxcredit bonds must be spent within three years of issuance and any proceeds unspent in that time period must be used to redeem the bonds.

Before the original expenditure period expires, issuers can request additional time to spend the proceeds. An extension can be granted if the issuer establishes that there's a reasonable explanation for why the proceeds won't be spent within the original time period and that "the expenditures for qualified purposes will continue to proceed with due diligence."

The IRS chief counsel's office concluded in the ruling that the district met the criteria for an extension, and it granted the district an approximate 10-month extension.

The Bond Buyer

by Naomi Jagoda

APR 21, 2015 10:48am ET

S&P's Public Finance Podcast (Colorado State University's Bond Outlook Revision And California's Water Utility Revenue Bonds).

In this week's Extra Credit, Director Jessica Wood discusses our outlook revision on Colorado State University's bonds and Associate Director Tim Tung discusses the impact of California's drought and water rationing on its water utility revenue bonds.

Listen to the Podcast.

Apr 23, 2015

Municipal Issuer Brief: Mixed Results for Many Issuers Last Week.

Read the Brief.

Municipal Market Analytics | Apr. 20

How Will California Water Utilities Fare Amid the Long Drought and New Conservation Mandates?

In light of the fourth consecutive year of drought conditions in California, concerns about the reliability of the state's water supply have spiked, as have worries about the effects of Governor Jerry Brown's recent statewide water conservation mandate. Standard & Poor's Ratings Services seeks to explain the effects of the persistent drought on California water utilities' financial performance and credit quality.

Frequently Asked Questions

What is the credit impact of the drought on California water utilities?

The financial and credit impact of the drought and required conservation levels vary across water utilities. Rate-setting flexibility, sources of supply, supply costs, and management's actions — either proactive or reactive — all factor into the degree of credit impact, and thus we are analyzing the impact of the drought case by case. Many of the California water utilities we rate entered this drought period with good to strong debt service coverage and solid liquidity positions, which can somewhat mitigate the impact of lower water sales volumes for a time. Also, many water utilities plan in advance for droughts from both an operational perspective and a financial perspective. We are closely monitoring how our rated water utilities respond to Governor Brown's executive order, including how they plan to adjust rates given the required conservation. Complicating the matter is the ruling by the 4th District Court of Appeal on April 20, 2015, in the case of Capistrano Taxpayers Association, Inc. v. City of San Juan Capistrano(1) that struck down certain tiered-rate structures, which are a common tool to encourage water conservation. If the regulatory framework the state adopts on May 5 or 6 differs significantly from the current proposal (which we describe below), then we will again comment on the potential for credit impacts.

Can you explain the executive order Governor Brown issued this month in response to the drought?

On April 1, 2015, California Governor Brown issued an executive order(2) mandating statewide water conservation. This is the first time in California's history that water use restrictions have been mandated, and it represents a departure from prior requests for voluntary statewide water conservation. The governor issued the order following three consecutive years of drought and against a backdrop of historically low water supply: Snowpack in the Sierra Nevada Mountains — a critical source of water for the state during the spring and summer periods — was a mere 5% of the historical average(3) for April 1. The National Drought Mitigation Center estimates that about 67% of the state is experiencing either extreme or exceptional levels of drought(4), and virtually the entire state is experiencing some level of drought.

The objective of the order is to reduce statewide urban potable water usage by 25% through Feb. 28, 2016, but the order does not affect other water use categories, such as water used for agricultural production. If achieved, the State Water Resources Control Board (SWRCB) estimates that this level of water conservation would total about 1.5 million acre-feet(5), or roughly the volume of water currently held in Lake Oroville(6), one of the state's largest reservoirs with a capacity of 3.5 million acre-feet.

How does the executive order affect California water utilities?

For urban water suppliers, the impact of the executive order varies primarily depending on 1) the service area's per capita water usage and 2) and the level of water conservation already achieved during the past year. Although the executive order targets a 25% statewide reduction in water usage as compared to 2013, state officials do not expect to achieve the water savings through a uniform reduction in water usage across the state. Instead, the revised regulatory framework(7) — which SWRCB published on April 18 and is subject to board adoption on May 5 or 6(8) –contemplates nine conservation tiers ranging from 4% to 36% reductions, stepping up in 4% increments(9).

Each urban water supplier's conservation standard is based on the service area's residential per capita water use during July through September 2014, three summer months when water demand for outdoor irrigation is typically high. The conservation standard is lower for service areas with lower residential per capita usage and higher for service areas with higher residential per capita usage. Notably, the conservation standard is measured relative to water usage during a benchmark period from June 2013 through February 2014. Some urban water suppliers have already achieved the required conservation level or are nearly at the required level, and we don't expect the modest additional conservation to significantly affect those suppliers' operations or finances relative to their prior-year performance.

For example, of the 413 urban water suppliers subject to the executive order, San Francisco Public Utilities Commission (SFPUC) had the ninth-highest total water production during the benchmark period (20.4 billion gallons), but the service area had the second-lowest residential per capita water use during July to September 2014, at 45.4 billion gallons. Based on this residential per capita use, the assigned conservation standard is 8%; however, because SFPUC already achieved 8% water conservation in 2014 relative to the benchmark period, no additional conservation would be required to comply with the executive order. In contrast, Coachella Valley Water District (CVWD) had the seventh-highest total water production during the benchmark period (28.3 billion gallons), and the service area had the seventh-highest residential per capita water use during July to September 2014, at 475.1 billion gallons. Based on this residential per capita use, the assigned conservation standard is 36%. Given that CVWD achieved only 4% water conservation in 2014 relative to the benchmark period, significant additional conservation of 32% for 2015 is required to comply with the executive order.

The SWRCB plans to assess a water supplier's compliance with the executive order by examining monthly reports that the suppliers will file. Enforcement actions for noncompliance may include informal enforcement, such as warning letters, or formal enforcement, such as cease and desist orders accompanied by administrative civil liabilities of up to $10,000 per day.

Agricultural water suppliers are not subject to the executive order; however, low river flows and low allocations from the two major water projects in the state have cut into their surface water supplies.

What impact does Standard & Poor's expect the drought and the executive order to have on water utility revenues?

Although reduced volume of water sales seem likely to cause a corresponding reduction in operating revenues and net revenues, we understand that the financial performance of urban water suppliers also depends on other factors. For most retail water systems that have a volume-based component to their rate structure, reduced volume of water sales would indeed correspond to lower revenues (barring an increase in rates). However, the relationship between the percent reduction in the volume of water sales and the percent reduction in operating revenues is not necessarily one to one. User rates for most retail water systems have a fixed component, which lower sales volume would not affect.

Many rate structures also have tiered pricing, with higher water use leading to a higher per-unit rate. In these cases, the impact of lower water sales is more complex, with the loss of revenues determined in part by the water rate tiers and the amount of usage within each tier. Even further complicating the matter is the April 20 ruling on Capistrano Taxpayers Association, Inc. v. City of San Juan Capistrano. In that ruling, the 4th District Court of Appeal struck down certain tiered-rate structures; specifically, those for which the water utility has not demonstrated that the tiers closely correspond to the actual cost of providing service at a given level of usage. We understand that the case has been remanded for further proceedings related to another issue in the case. Water utilities could also offset the volume lost with increased rates, as we address below.

Can California water utilities increase rates to offset any decline in water sales volume?

In general, California water utilities have the ability to adjust rates to offset lower sales volume. However, to increase rates, they must meet the public hearing and protest requirements under Proposition 218. The requirements include a public notice and a public rate hearing at least 45 days after the notice. The rate increase can be prevented if a majority of the parcel owners within the utility's service area protest at the public hearing or in writing. In our experience, it is rare for a rate increase to be outright prevented due to this provision although significant opposition from a vocal minority of the customer base may sway decision makers from the recommended course of action.

Some utilities already have the ability to increase rates in a drought because they have been through a previous Proposition 218 process. These utilities can likely increase rates up to the preapproved level through a governing board action. If a utility has not yet gained this ability, it would likely need to undertake a public notice process to comply with the procedural requirements of Proposition 218. This process could cause a lag between required conservation and the implementation of higher rates. In particular, if the ruling on Capistrano Taxpayers Association, Inc. v. City of San Juan Capistrano is left to stand, then the timeline to adjust rates may be significantly extended if the water utility is required to conduct a new cost-of-service study to demonstrate compliance with the ruling.

Could a reduction in water sales volume lower a utility's operating expenses?

Yes. In many cases lower water sales will lead to lower operating costs, although the impact will vary among utilities depending on their water supply sources and the marginal cost of additional supply. A water system relying exclusively on groundwater from its own wells would likely save on pumping costs if it sells less water. However, the savings may only be modest relative to a utility's operating budget because high-quality groundwater tends to be a relatively low-cost supply. If a utility directly purchases imported water on a per-unit basis, on the other hand, the lower water use will of course reduce water costs, and these savings could be substantial if imported water represents a significant portion of the utility's budget.

Although utilities could see some expense reduction, many of their costs — including fixed payments to suppliers, rents, leases, and debt service — are independent from the volume of water sold and likely wouldn't change. A decline in water sales would likewise have little short-term impact on salaries, benefits, and maintenance costs.

Footnotes
(1)http://www.courts.ca.gov/opinions/documents/G048969.PDF

(2)http://gov.ca.gov/docs/4.1.15_Executive_Order.pdf

(3)http://www.water.ca.gov/news/newsreleases/2015/040115snowsurvey.pdf

(4)http://droughtmonitor.unl.edu/Home/StateDroughtMonitor.aspx?CA

(5) http://www.water.ca.gov/waterconditions/waterconditions.cfm

(6)http://cdec.water.ca.gov/cdecapp/resapp/resDetailOrig.action?resid=ORO

(7)http://www.swrcb.ca.gov/waterrights/water_issues/programs/drought/docs/emergency_regulation s/fact_sheet_implementing_25.pdf

(8)http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/emergency_reg ulations/regulations_fact_sheet.pdf

(9)http://www.swrcb.ca.gov/waterrights/water_issues/programs/drought/docs/emergency_regulation s/draft_usage_tiers.pdf

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PA Treasury Successfully Completes Commonwealth's First-Ever Competitive Bidding Process for Bond Counsel.

HARRISBURG, PA–(Marketwired – April 22, 2015) – The Pennsylvania Treasury today announced it has successfully completed the first-ever competitive bidding process for the selection of a law firm to provide bond counsel legal services to the Commonwealth. Based on their responsive proposal, Pennsylvania Treasury selected Saul Ewing, LLP to serve as bond counsel for an upcoming general obligation debt issuance. Treasury's Request for Proposal process is expected to result in an approximate savings of 36% to the Commonwealth, as compared to the existing legal fee payment formula.

"Treasury is proud to serve as the first state agency to exercise this type of bidding process for bond counsel services," Executive Deputy State Treasurer Christopher Craig said. "The type of legal services required for a bond issuance lent itself well to the competitive bidding process, which is an open, efficient way to procure quality services at a competitive price."

Craig noted that while Treasury is not bound by the Wolf administration policy of engaging legal counsel through competitive proposals, the department chose to follow the administration's lead due to its shared commitment to bring greater business efficiencies to state government.

"Treasury is an independent state agency, but in our core role as fiscal stewards for the Commonwealth, we are committed to identifying financial savings at any opportunity," Craig said. "We are pleased to heed the Governor's call for the use of a competitive procurement process for this bond issuance and provide savings for taxpayers."

Representatives from the Governor's Budget Office, the Department of the Auditor General and Treasury reviewed and evaluated bid proposals submitted from 17 different law firms. The General Obligation debt issuance, for which these legal services were procured, is expected to be issued prior to the end of the fiscal year. The proceeds of the bond sale will be used to refinance existing debt, fund transportation projects and support various capital improvements.

Pennsylvania Department of Treasury

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Football Stadium Arms Race Pushed This School Deeper Into Debt.

Colorado State University sold $239 million of bonds to build a football stadium that students, faculty and credit-rating companies say may strain its finances. School leaders say the debt binge will help secure its future.

Colorado's second-largest university is joining an intensifying national competition to attract high-tuition, out-of-state students by pouring billions into new dormitories, classrooms, student centers and gyms.

With borrowing costs holding close to the lowest since the 1960s, the university issued debt last month to replace its 47-year-old stadium two miles from the Fort Collins campus where the Rams now play. The new arena will help push CSU's debt to $1.14 billion this year, more than double what it was in 2009, according to Standard & Poor's.

"This is one of the few things that an institution can do that's going to draw 40,000 people to campus," said Joe Parker, the school's director of athletics. "There are very few things that attract people with the same passion that athletics does."

S&P has had a negative outlook on higher-education bonds for more than a year because of the mounting debt of universities. On March 17, the company said it may lower CSU's A+ credit rating, the fifth-highest rank, as it plans to sell $160 million in additional bonds this year for new buildings.

'Greater Pressure'

The new debt will "exert greater pressure on financial resources that we already view as very weak for the rating," Jessica Wood, an S&P analyst in Chicago, wrote in a report.

Investors haven't punished the university. CSU bonds maturing in 2038 traded for an average yield of 2.9 percent on April 16, close to the lowest this year, data compiled by Bloomberg show.

Ron Speaker, chief executive officer of Equus Private Wealth Management, a municipal-bond investor, said having an off-campus stadium was discouraging attendance.

"Fixing that problem is the right thing to do despite the financial implications it has," said Speaker, whose firm is based in Carbondale, Colorado. "They can handle it. They've been under-leveraged compared to other competing high-quality institutions in the state and across the country."

Rival's Stadium

The University of Colorado, CSU's in-state rival about 55 miles (88 kilometers) south in Boulder, is completing a $156 million renovation of its athletic facilities, including 90-year-old Folsom Field for the Buffaloes, which play in a separate conference, the Pac-12.

CSU plans to fund debt payments with revenue from premium seats, concessions, naming rights, sponsorships and events other than football. Rich Schweigert, the university system's chief financial officer, said the stadium won't need money from student fees or tuition to pay off the bonds.

"We financed the stadium using the lowest projected revenue stream, which is what our current stadium is doing now," he said. "All we have to do is perform like we are currently performing — which would be inconceivable that we can't do better."

While schools in the five richest college football conferences are able to use revenue from media contracts to pay for new facilities, divisions like CSU's Mountain West have relied on student fees to help support their programs, said Amy Perko, the executive director of the Knight Commission on Intercollegiate Athletics.

"The financial policies in athletics should aim to strengthen each institution's broader educational mission, not to detract significant resources away from it," she said.

Football's Share

CSU spent $12 million on football in the 2014 budget year, the second highest in the Mountain West, according to data submitted to the U.S. Department of Education. That's up from $5.5 million in 2005, as new media contracts created an explosion of revenue and spending across college sports.

Some faculty and students opposed the school's decision to go into debt for the stadium. S&P's reduced outlook on CSU's rating signals the school is over-leveraged, said Steven Shulman, chair of CSU's economics department.

"It's the financial equivalent of a police car pulling up behind you with lights flashing and sirens blaring," said Shulman, who writes about the economics of higher education.

Winning Record

The Rams have played post-season bowl games in the past two years, posting a 10-3 record in 2014 that included a 31-17 win over Colorado. Even so, attendance at its six home games averaged 26,575, leaving 5,925 seats empty. The new stadium, scheduled to open in September 2017, will have a capacity of 40,085.

Some students aren't convinced that building a stadium on campus will increase attendance or that it won't result in higher fees.

"They should keep using the old one," said Elizabeth Bergersen, 21, a creative-writing major, as she read a textbook in front of the student center. "I don't think more people will go to the new one because people who like football go now."

Bloomberg News

by Jennifer Oldham

April 21, 2015

Chicago Schools Haunted by Bankruptcy Chatter Ahead of Bond Sale.

The Chicago Board of Education can't catch a break as it borrows to pay for upgrades to the third-largest U.S. school system.

First, Moody's Investors Service and Fitch Ratings cut it to one step above junk last month, delaying a planned $372 million bond sale. Then last week, before a pared-down $296 million version of the deal, set for Tuesday, Governor Bruce Rauner said the system may need bankruptcy protection, an option that's not legally open to it.

There's little prospect that the backdrop will brighten. The system faces a projected $1.1 billion budget gap next fiscal year as retirement costs climb. Its relative borrowing costs are close to a two-year high. And with negative outlooks from Moody's and Fitch, a downgrade to junk may chase off investors.

"There are a lot of balls in the air when it comes to our outlook," said John Miller, co-head of fixed income in Chicago at Nuveen Asset Management, which oversees about $100 billion of municipal debt. Nuveen may buy the new bonds for its high-yield fund, he said. "They might have to entice people with more spread, particularly with headline risk like this."

Pension Strain

The fiscal strains are an amplified version of the city's struggle to stave off insolvency. Chicago, with $20 billion of unfunded pension liabilities, has the lowest general-obligation grade among the 90 most-populous cities, apart from Detroit.

Michael Passman, a schools spokesman, said the bond sale is going forward as planned.

"The governor's suggestion is not a viable option to remedy CPS's financial difficulties," he said via e-mail. "The solution to CPS's financial situation lies in Springfield with legislators" who can help alleviate its budget deficit.

Tuesday's offer includes a portion maturing in December 2039 that is being marketed at a preliminary yield of 5.63 percent, according to three people familiar with the sale who requested anonymity because the deal isn't final. That's about 2.7 percentage points more than benchmark municipal debt, data compiled by Bloomberg show.

At that level, the deal offers extra yield relative to previous bonds from the school board. Debt maturing in December 2042 traded Tuesday at an average yield of about 5.3 percent, or 2.3 percentage points above benchmark munis, Bloomberg data show. That's close to the widest in at least two years, and up from 1.8 percentage points before Moody's March 6 downgrade.

The securities were part of the last fixed-rate offering from the schools in 2012, when they priced to yield 0.89 percentage point above benchmark munis.

Bankruptcy Specter

Moody's rates the school board Baa3, the lowest investment grade and equivalent to Fitch's BBB-. Standard & Poor's ranks it A-, three steps higher. All consider it riskier than Chicago. Mayor Rahm Emanuel effectively runs the schools, appointing the seven-member board.

Given the system's more than $9 billion in unfunded pension obligations and growing deficit, Rauner, a first-term Republican, raised the specter of bankruptcy April 14 at an education forum in Chicago. The governor, who supports giving Illinois localities authority to file for Chapter 9 reorganization, repeated his claim that union contracts are putting local governments in financial peril.

Default Doubts

The mayor dismissed the suggestion in a press conference the following day, saying it's better to focus on areas such as curbing pension costs. Chapter 9 isn't even an option at this point: While lawmakers have introduced a bill in the Illinois House to allow municipal bankruptcy filings, the measure remains in committee.

The school bonds have "minimal payment default risk" and investors seeking extra yield should consider purchasing the debt, according to a report Monday from research firm Municipal Market Analytics in Concord, Massachusetts.

In the latest hurdle for the system, Chief Executive Officer Barbara Byrd-Bennett took leave April 17 after the board was served with federal grand jury subpoenas seeking records about contracts, according to updated bond documents.

The district, which educates about 400,000 students, has $6.3 billion of Moody's-rated general obligations.
Perhaps most troubling for the board's path to solvency is that it has nowhere to turn for help, said Bill Black at Invesco Ltd., which handles $22.8 billion of munis.

"There may be more bumps in the road ahead — there's no one out there to spare money for the school district," Black said from Downers Grove, Illinois. "The city has its own issues, and so does the state."

Bloomberg News

by Brian Chappatta

April 20, 2015

U.S. Bridges Falling Down Get No Help From Record '15 Muni Sales.

The cheapest borrowing costs in five decades aren't enough of an incentive for states and cities to address their crumbling bridges and roads.

While municipalities have issued a record $130 billion of long-term, fixed-rate bonds this year, an unprecedented 70 percent of the deals have gone to refinance higher-cost debt, rather than fund capital expenditures, according to Bloomberg and Bank of America Merrill Lynch data.

At about $40 billion, muni sales to finance projects are unchanged from the same period last year —

even though the nation’s aging infrastructure has become a problem so dire and obvious that it was the subject of a feature by comedian John Oliver last month on HBO’s “Last Week Tonight.”

“Refunding has taken precedence over infrastructure financing,” said Phil Fischer, head of municipal research at Bank of America in New York. “It’s going to save state and local governments a lot on debt-service costs, and it’s going to help them catch up in terms of their pensions and other fixed obligations.”
“That can’t go on forever,” he said. “Infrastructure projects are needed all over the country.”

D+ Grade

The country requires about $3.6 trillion of investment in infrastructure by 2020, according to the American Society of Civil Engineers. The group’s 2013 report gave the country a “D+” grade.

This year’s issuance mix shows state and local officials are reluctant to add debt even though the recession ended almost six years ago and yields on 20-year general obligations, at about 3.5 percent, are close to a generational low set in 2012.

The $3.6 trillion municipal market shrank in 2014 for the fourth-straight year, the longest stretch of declines in Federal Reserve data going back to 1945.

Municipalities often sell bonds that they can refinance after a set period, which is a windfall if interest rates decline. California lowered debt-service payments by about $180 million through a $1 billion refunding this week, according to the state treasurer’s office. Four of the five largest muni deals this year were for refinancing, including tobacco debt from California.

Deferred Needs

“The refundings have been stronger than we expected because interest rates are lower than we expected,” said Michael Zezas, Morgan Stanley’s chief muni strategist in New York. “There’s still a lot of deferred capital needs throughout the municipal issuer system, both at the state and local level.”

Issuance is on pace to eclipse the record $408 billion of supply in 2010, when states and cities clamored to borrow in the final year of the federally subsidized Build America Bonds program. The $188 billion initiative, which debuted in 2009, was designed to boost infrastructure investment.

Should this year’s pace of refunding persist, it would beat the record set in 1993 of 67 percent of deals that reissued debt at lower yields, according to Bank of America data.

Fischer said he raised his supply forecast to $400 billion from $350 billion because of the refinancing wave. Zezas said he’s sticking with his prediction of $354 billion, for now.

At some point, bonds sales to fund infrastructure will have to go up because the spending isn’t “optional,” according to Fischer.

“America got the same grade that a 10th-grade teacher gives a nightmare kid so she doesn’t have to deal with him for another year,” Oliver said in the March 1 episode of his satire news program on HBO.

The segment, with about 3.8 million views on YouTube, carries the description: “America’s crumbling infrastructure: It’s not a sexy problem, but it is a scary one.”

Bloomberg News

by Brian Chappatta

April 22, 2015

Detroit May Win Investment Grade on First Bonds Since Bankruptcy.

Four months after emerging from the biggest municipal bankruptcy in history, Detroit may return to the bond market with investment-grade ratings.

Michigan Governor Rick Snyder signed legislation Wednesday that gives added security to investors who buy $275 million of debt Detroit plans to sell, which he said may save as much as $30 million in interest costs. The law gives bondholders first claim on income taxes that back the securities, on top of an arrangement with a trustee that helps shield the revenue from city officials.

The extra measure is a sign of what it will take to get investors in the $3.6 trillion municipal market to lend to the city, which collapsed into bankruptcy after a decades-long population slide. The debt sale, which will publicly re-offer securities that were privately placed with Barclays Plc, will be the city's first since exiting court protection in December, state documents show.

Michigan provided the additional safeguards to keep credit-rating companies from giving the bonds a junk rating. Detroit's $18 billion bankruptcy has increased scrutiny of the legal safeguards on municipal bonds, particularly those sold by financially distressed local governments.

"A statutory lien in general does give us more comfort that it's going to be repaid," said Jane Ridley, an analyst at Standard & Poor's in Chicago, who declined to comment on how the bonds will be ranked. "In most circumstances, it would lead to greater security and potentially a higher rating."

Detroit general-obligation bonds backed by state aid have a comparable security structure, Ridley said. That debt wasn't impaired in bankruptcy and has a AA rating from S&P, the third-highest grade.

David Jacobson, a spokesman at Moody's Investors Service in New York, said it may be too soon to comment on whether the bonds could earn investment grades. Elizabeth Fogerty, a spokeswoman at New York-based Fitch Ratings, didn't have an immediate comment.

John Roach, a Detroit spokesman, didn't have an immediate comment about when the bonds will be sold or the prospect that they will receive investment grades.

Bloomberg News

by Brian Chappatta

April 23, 2015

Louisiana State Bond Buyers Met by Insolvency Plan Next Day.

Investors who bought $114 million of debt sold by Louisiana State University on Wednesday were warned about the state's fiscal struggles. What they weren't explicitly told in bond offering documents was that the school was considering filing for exigency.

Officials at the Baton Rouge-based school said they plan to draw up a financial exigency plan, equivalent to college bankruptcy, in the wake of $608 million in budget cuts proposed by Governor Bobby Jindal. For those who analyzed offering documents, the first item listed under bondholders' risks now takes on added meaning.

"The ability of the university to make principal and interest payments on the series 2015 bonds is indirectly contingent upon sufficient annual state appropriations to continue the operations of the university," it reads.

Yet the word "exigency" doesn't appear in the 204-page document dated April 13. Exigency, declared when schools face insolvency, would allow Louisiana's flagship school to restructure and fire tenured faculty.

"It's bad form, if nothing else," said Bart Mosley, co-president of Trident Municipal Research in New York. "Obviously for LSU's financial structure, the state budgeting situation is a risk factor. The question this is going to come down to is how well were potential bond purchasers informed."

Buyer Aware

In an e-mail, Ernie Ballard, a Louisiana State spokesman, said: "We didn't list every possible action/contingency that might ultimately be considered because the situation was and remains fluid due to the ongoing legislative process, as it is in many other states. We are confident that we were transparent and open in the offering statement about the current state budget situation to potential investors."

The school "is exploring a wide range of contingency plans, one of which would be filing for exigency if solutions to the projected shortfall are not found," he said.

The bond document says "the university will examine all possible options to address potential reductions to state appropriations" in fiscal 2015-2016.

The deal shrank from an initially planned $130 million, according to offering documents. The largest portion of debt matures in July 2045 and priced to yield 3.57 percent, or about 0.5 percentage point above benchmark munis, data compiled by Bloomberg show.

Yields rose Thursday among the four bond trades of at least $1 million in size. The debt due in 2045 changed hands at a yield of 3.62 percent. The yield on bonds maturing in July 2033 rose to 3.36 percent, from 3.31 percent at pricing.

Moody's Investors Service rates the university A1, the fifth-highest grade. It lowered its outlook to stable from positive April 8, citing "material declines" in state support. Fitch Ratings ranks it a step higher, at AA-.

Bloomberg News

by Brian Chappatta

April 23, 2015

Nantucket Travelers Can Thank Muni Buyers for Comfier Ferry Ride.

Travelers enjoying a cup of chowder or luxuriating in new seats while ferrying to Nantucket and Martha's Vineyard next year can thank municipal-bond investors.

The Woods Hole, Martha's Vineyard & Nantucket Steamship Authority is selling $38 million of tax-exempt debt April 27, according to data compiled by Bloomberg. The biggest bond offering in the service's 55-year history will go to build a more spacious ferry equipped with a lunch counter, said Wayne Lamson, the agency's general manager. The authority carried 2.9 million passengers last year back and forth to the islands off Massachusetts.

The operator of the largest ferry service between Cape Cod and the islands is borrowing to replace a 60-year-old vessel, and the timing couldn't be better. Interest rates at the lowest in five decades are fueling record muni sales.

"We have a lot of people that visit the area from all over the country that are familiar with our operation, and then you've got the institutional investors as well," said Lamson, who's based in Woods Hole. "So we're hoping there'll be a lot of demand to buy the bonds."

State Backing

The authority plans to repay the bonds using operating revenue, including fares. The debt is also backed by the full faith and credit of Massachusetts. Moody's Investors Service ranks the bonds Aa1, its second-highest grade and the same as the state. The authority had $38.9 million of bonds as of April 17, according to bond documents.

When the agency sold debt in November, bonds maturing in March 2021 priced to yield 1.66 percent, or less than 0.1 percentage point above benchmark debt, Bloomberg data show.

Demand for the service has been rising. Ridership has climbed 5.8 percent since 2010, bond documents show.
The agency raised ticket prices this year after generating about $29.4 million in passenger revenue last year. For the trip to Nantucket, about 30 miles (48 kilometers) off Cape Cod, fares rose by $1, to $18, for adult passengers without a vehicle, Lamson said. Fare changes may bring in an additional $1.9 million, bond documents show.

The authority has never needed to tap the commonwealth guarantee, said Dan Belcher, a senior muni analyst at Columbia Threadneedle Investments. The firm, which manages about $30 billion of munis, owns some of the authority's debt.

Chowder, Beer

"From a credit standpoint, we view it as very high quality," Belcher said from Boston. "It's kind of a double-barreled security. It's self-supporting, and it has the pledge of the commonwealth."

The new vessel, to be named the M/V Woods Hole, can hold 384 passengers, about 50 percent more than the M/V Governor, which it will replace. The ship is expected to go into service in May 2016.

For the famished or parched, the lunch counter will offer sandwiches and chowder as well as beer and wine, Lamson said. The vessel will boast individual seats, rather than just benches, and will have more outlets for riders to power up electronics, he said.

The M/V Woods Hole will also carry cars and trucks, and will be able to hold 10 to 12 semi trucks, double the capacity of the M/V Governor, Lamson said.

Route Flexibility

The new ship will be able to operate in shallower channels, allowing it to make the trip between Hyannis and Nantucket and also sail from Woods Hole to Martha's Vineyard, he said. The M/V Governor is limited to the latter.

The authority, with nine vessels that typically have a service life of about 50 years, wants to replace a ship every six or seven years, he said. The last switch was in 2007.

While low borrowing costs help, the authority needed to go to the market regardless, said Robert Davis, its treasurer and comptroller.

"If it was a higher rate, we'd still be looking to go out in all likelihood," Davis said. "The overwhelming need to maintain safe, reliable service to the islands is paramount."

Bloomberg News

by Elizabeth Campbell

April 23, 2015

Louisiana State Cancels Muni-Bond Deal After Talk of Insolvency.

Louisiana State University scrapped a $114.5 million municipal-bond deal amid investor concern that its plans to address cuts in state funding may include filing for exigency.

Officials at the Baton Rouge-based school said they're considering financial exigency, which is equivalent to college bankruptcy, because of budget cuts proposed by Governor Bobby Jindal. When the university sold the tax-exempt debt this week, the offering documents circulated to investors didn't explicitly mention that possibility.

Louisiana State told investors Friday that the bond sale had been put off, said Ernie Ballard, a school spokesman. In a separate announcement, state Treasurer John Neely Kennedy said the postponement may increase borrowing costs for other state universities and even Louisiana itself as it grapples with a $1.6 billion budget gap in the coming fiscal year.

"Maybe the university was too candid in telling our taxpayers what's going on, but they're telling the truth," Kennedy said in a telephone interview. "Every university we've got is doing contingency planning and looking at the possibility of financial exigency."

If an offering is canceled before closing, the bonds aren't considered issued, according to Jennifer Galloway, a spokeswoman at the Municipal Securities Rulemaking Board, which is based in Alexandria, Virginia. Investors don't receive the debt and also don't owe any money.

'Continued Unpredictability'

"In light of recent events, LSU has decided to postpone the issuance" of the bonds, the school said in a statement. "Due to the continued unpredictably of our state budget, we believe this is the responsible thing to do, and we will re-evaluate the offering once the state's financial picture becomes clearer."

Ballard said Thursday that the university's disclosures were adequate. Bond documents said "the university will examine all possible options to address potential reductions to state appropriations" in fiscal 2015-2016.

The U.S. Securities and Exchange Commission has been stepping up efforts to crack down on municipal borrowers that fail to make sufficient disclosures to investors.

Louisiana faces a budget shortfall next fiscal year because of declining oil-tax revenue and the state's failure to enact adequate tax increases or spending cuts. Both Moody's Investors Service and Standard & Poor's lowered their outlooks on the state to negative this year.

Jindal has proposed higher-education cuts of more than $200 million to help plug the gap, along with reductions to tax subsidies for businesses.

LSU will explore its options in case state funding dries up, the school said. Exigency, declared when schools face insolvency, would allow it to restructure and fire tenured faculty.

"We remain hopeful that the legislature will develop solutions to protect funding for LSU and higher education in Louisiana," the university said. "But we owe it to our students, faculty and staff to prepare for every possible outcome, as any responsible fiscal manager would do."

Bloomberg News

by Brian Chappatta

April 24, 2015

Fortress's Muni-Fueled Florida Rail Dream Faces Wary Investors.

Fortress Investment Group LLC's plan to sell $1.75 billion of municipal debt to build the first privately run passenger railroad in a century is drawing opposition from some Florida residents. Bond buyers may pose a bigger obstacle.

Debt of All Aboard Florida, the company owned by Fortress private-equity funds that's building the project, has lost more than 7 percent of its market value since it was issued in June. And the company has been paying interest in kind, racking up more debt, according to data compiled by Bloomberg.

The Florida train is part of a quest in the U.S. to revive the 19th-century mode of transportation even as Amtrak, the national passenger railroad, loses money. Investors said the $3 billion project may struggle to make enough to pay its debt.

"This is a very high-risk project," said Dan Heckman, senior fixed-income strategist in Kansas City, Missouri, with U.S. Bank Wealth Management, which oversees $126 billion. "I would question whether they would get the kind of ridership they may need quickly enough to make it work."

The 235-mile (378 kilometer) line would link Orlando to Miami. As highways grow increasingly clogged, privately funded railroads have been proposed in Texas and the Washington area.

California’s already started work on a high-speed line to be funded in part with private money.

Lower Yields

All Aboard is asking the state-run Florida Development Finance Corp. to approve the sale of municipal debt to finance the railroad, which would have stations in Miami, Fort Lauderdale, West Palm Beach and at Orlando International Airport. That approach would allow it to borrow at tax-exempt rates, which are lower than on corporate bonds.

Gordon Runte, a spokesman for New York-based Fortress, declined to comment.

The project has drawn opposition from residents who are concerned that towns along the route would suffer and question the company’s commitment to keeping it running.

“They’re going to build this all up and sell it,” said Tom Campenni, a councilman in Stuart, Florida, a coastal city along its route. “It will put a burden on our community.”

Companies can raise money for public works such as airline hangers, toll roads and real-estate developments, as long as state or local-governments agree to issue the securities. All Aboard would be responsible for paying the debt. Taxpayers won’t be liable if it defaults.

Awaiting Approval

At an April 20 meeting of Florida’s development agency in Tallahassee, dozens of people urged officials to reject the bond plan. No date has been set to vote on it, said Beth Frady, a spokeswoman for Enterprise Florida, which oversees the development agency.

All Aboard says the rail line will provide an economic boost and reduce highway congestion.

“There is tremendous need in-state for a reliable and convenient transportation alternative to air-and-car travel,” Lynn Martenstein, an All Aboard spokeswoman, said in an e-mail.

When All Aboard sold $405 million of corporate debt in June, it paid a 12 percent interest-rate on five-year bonds. The price tumbled to a record low of 93.5 cents on the dollar by April 1 from from $1.03 in June, pushing the yield to 14.7 percent, a level typically associated with distressed securities. Five-year munis with the lowest investment grades yield about 2.1 percent, according to Bloomberg data.

Not Recommended

Marilyn Cohen, president of Envision Capital Management in El Segundo, California, said she’s leery of the possibility that the project’s price tag will swell.

“The fact that they’re trying to offload their risk to investors is very telling,” said Cohen, who manages $345 million for individual investors. “This isn’t something I would recommend for my clients.”

While it will lay some tracks, All Aboard is mostly using existing freight lines. Work has already started on the segment from Miami to West Palm Beach, which the company plans to open late next year. The entire railroad is expected to be running in 2017.

On a Feb. 26 earnings call with investors, Wesley Edens, a co-chairman of Fortress, said the company will benefit from developments around the railway.

He said the railroad is a “wild card that could have nothing but upside.”

(An earlier version of this story corrected the spelling of Stuart, Florida.)

Bloomberg News

by Darrell Preston

April 26, 2015

Fitch: State Fiscal Intervention Losing Ground in IL, NJ.

Fitch Ratings-New York-20 April 2015: Recent developments in Illinois and New Jersey are lessening the chances of state intervention that could result in better outcomes for bondholders than allowing distress to lead to bankruptcy, Fitch Ratings says. We believe efforts to resolve looming budget deficits and ensure the affordability of long-term obligations would be more productive than focusing on easing laws or practices to allow bankruptcy.

Illinois governor Bruce Rauner recently proposed granting the authority to local governments to file a Chapter 9 petition. The proposal is similar to a law introduced by a state representative last fall. It supports Fitch’s view that the needs of a distressed municipality are a better indication of the possibility of bankruptcy than whether current state law allows it. Current Illinois law bars local governments with populations over 25,000 from filing a Chapter 9 petition.

Further fueling concerns about the credit quality of Chicago Public Schools (CPS), Governor Rauner said this week that he fears the district may need bankruptcy as a solution to its large budget imbalance. According to CPS analysis, their reserves will likely be fully depleted by the end of fiscal 2016.

In New Jersey, the recent appointment of corporate restructuring experts to assist Atlantic City in resolving the city’s fiscal crisis appears at odds with the state’s strong history of aiding local governments to prevent the type of stress that could lead to bankruptcy. Of US states, New Jersey has historically provided among the strongest levels of early intervention to local governments with financial strain.

Fiscal intervention mechanisms vary by state. Most focus on helping local governments recover from distress, rather than preventing it. Many can approve or reject financial plans, budgets, and certain government contracts under state control. Their powers, however, are constrained by laws governing labor contracts, benefits including pension obligations, and service provision. Fitch believes this limits their ability to remediate financial distress.

Flexible Muni-Bond Funds Attract Advisers.

More municipal-bond fund managers today have the freedom to range across a broad array of investments.

As a result, financial advisers are beginning to embrace these flexible funds as a possible hedge against rising interest rates.

At least six muni-bond funds have been launched or retooled to give their managers more flexibility to manage duration or buy below-investment-grade bonds, according to Morningstar Inc.

BlackRock Inc. revamped BlackRock Strategic Municipal Opportunities (MAMTX) last year, for example, to permit its management team to set its duration between zero and 10 years instead of the prior 3 to 10 years. Also, the team can invest up to 50% of its assets in below-investment-grade muni bonds.

In another example, Goldman Sachs Asset Management in December changed the name of its Goldman Sachs Municipal Income Fund to Goldman Sachs Dynamic Municipal Income Fund (GSMIX), and gave it the flexibility to buy junk bonds and target a broader range of maturities.

In addition to investors' concerns over the possibility of rising interest rates, the changes stem from an evolving muni-market landscape that provides more opportunity for fund managers to distinguish themselves and the asset-gathering success of flexible bond funds that are taxable, says Elizabeth Foos, a senior analyst at Morningstar.

She recommends that investors approach the funds with caution for now. Many are new and the funds generally carry the same risks as flexible bond funds as well as some that are particular to the municipal-bond market.

For one thing: muni-bond funds fish from a far narrower universe than do their taxable counterparts, Ms. Foos says, which can make it difficult to make quick and cheap changes to credit and interest-rate exposure. Also, because these funds may have wide latitude to shift investments, investors can suffer amplified losses if a manager makes a bad call.

"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 make it difficult to find the right high-yield investment for a portfolio," she says. Also, junk bonds represent just a small portion of the muni market and can trade infrequently, she adds.

In addition, the market for credit-default swaps, and credit-default baskets that can be used to take broad-based exposure to credit risk, isn't as deep or as liquid in the muni markets as it is in the taxable markets, Ms. Foos says.

Making swift and significant adjustments to duration in a muni fund also can be challenging. Taxable managers can adjust a fund's sensitivity to changes in Treasury yields quickly and cheaply through the use of Treasury futures, and muni managers can adjust duration by changing their mix of long- and short-maturity bonds or using Treasury futures, she says.

But trading securities to adjust interest-rate sensitivity can be expensive, Ms. Foos says, and using Treasury futures can be problematic because muni and Treasury yields don't always move in tandem. When that correlation breaks down, a muni portfolio hedged with Treasuries can behave in unexpected ways, something that caused headaches for many muni managers in 2008, she says.

Peter Hayes, head of the municipal bonds group at BlackRock, says Treasury futures aren't perfectly correlated to munis. But over the longer term, there is a high degree of correlation between the two markets.

As for liquidity issues, they exist throughout the fixed-income markets with smaller issuers, but "most asset managers aren't buying small, infrequently traded issuers," Mr. Hayes says. The average credit quality of the BlackRock portfolio is around A+, he adds.

Regardless of the risks, however, investors have begun embracing the funds.

About $2.44 billion has flowed into BlackRock Strategic Municipal Opportunities since its modification in January of last year through March 31, according to Morningstar. The fund gained 4% in the 12 months through April 20, while the Barclays Municipal Bond Index rose 5.6%, according to Morningstar.

Roger Oprandi, an adviser at Vega & Oprandi Wealth Partners in Miami, has been using some flexible municipal-bond funds, including BlackRock Strategic Municipal Opportunities and Goldman Sachs Dynamic Municipal Income.

"We're hoping that their managers will be able to navigate a rising-rate environment over time," says Mr. Oprandi, whose firm is affiliated with Ameriprise Financial Services.

He's using the allocation to complement clients' municipal-bond holdings. In a portfolio calling for a 25% allocation to munis, for example, he might invest 10% in a flexible muni-bond fund. Mr. Oprandi says he hasn't committed more to the funds partly because of their short track records.

Melissa Joy, director of wealth management at the Center for Financial Planning Inc., is also using some of the funds as a portion of clients' muni allocations. The firm purchased the Thornburg Strategic Municipal Income (TSSIX) last summer and still holds it, says Ms. Joy, whose Southfield, Mich., firm manages $640 million.

But she does generally consider the funds more risky than a portfolio of general obligation bonds without the flexibility, and would discuss that risk with any client, she says. And managers of some of the new funds may have experience managing muni-bond funds, but no experience managing a flexible bond fund, she says.

"There will be some excellent opportunities within this space," Ms. Joy says. "But it will take a while to figure out who's got the staying power."

Chad Carlson, an owner of and director of research at Balasa Dinverno Foltz in Itasca, Ill., isn't using the funds yet for several reasons–one of which is their higher fees. He now uses two Vanguard funds for clients' muni allocations.

In addition, performance hasn't been great for any nontraditional bond funds generally, says Mr. Carlson, whose firm manages more than $3 billion. Most investors are concerned about rising interest rates, against which a typical defense is duration management, but it's very difficult for managers to predict when they should alter a fund's duration, he says.

That said, Mr. Carlson believes there's probably room for some flexibility in a bond portfolio. In fact, his firm does use small doses of it in client portfolios through taxable bond funds.

THE WALL STREET JOURNAL

By DAISY MAXEY

April 23, 2015 9:44 a.m. ET

Write to Daisy Maxey at daisy.maxey@wsj.com

Municipal-Bond Funds Get Flexible

Some municipal-bond fund managers have more flexibility now. That means investors may need to exercise more caution.

In recent years, fund companies have changed the rules for some funds that specialize in tax-exempt muni securities to let managers buy debt that is riskier or that can be less sensitive to rising interest rates, according to Morningstar, the Chicago-based investment-research firm. The companies also have launched new muni funds that give managers a relatively free hand.

In December, for example, Goldman Sachs Group changed the rules governing a $600 million fund—and tweaked the name. The Goldman Sachs Municipal Income Fund became the Goldman Sachs Dynamic Municipal Income Fund, and managers now can invest up to 30% of its assets in below-investment-grade—or junk—muni bonds, which had been off-limits.

The fund also can vary its holdings to guard against rising interest rates to a greater extent than before. It charges annual fees of 0.79%, or $79 on a $10,000 investment. The fund has gained 4.9% over the past year, through Thursday, compared to a 5.3% gain in the Barclays Municipal Bond Index, according to Morningstar.

The $3.2 billion BlackRock Strategic Municipal Opportunities Fund made similar changes in January 2014. Managers now can invest up to 50% of the fund's assets in junk bonds, up from 20%, and have greater leeway to adjust the portfolio to limit the impact if interest rates rise. The fund charges annual fees of 0.88%.

The changes have come at a time when many bond-fund managers are concerned that if the Federal Reserve raises interest rates, their holdings could lose value and investors could withdraw money. In addition, junk bonds tend to pay higher interest rates, which can help fund managers boost returns.

Investors have responded to the changes with enthusiasm. They poured about $2.4 billion into the BlackRock fund between Jan. 1, 2014, and March 31 of this year, according to Morningstar. The fund has gained 3.7% over the past year.

But municipal-bond funds with broader mandates could leave investors vulnerable if, for example, fund managers are wrong about the direction of interest rates or have difficulty unloading their junk bonds, which can be thinly traded in the muni market, says Elizabeth Foos, a senior analyst at Morningstar.

"For now, it's probably best to approach these funds with caution," she says. Their limited track records and the greater latitude they give fund managers make it "difficult to know how they'll perform in a bout of real market stress and therefore how to best use them in the context of a broader portfolio," she says.

Some muni funds use Treasury futures to curb their sensitivity to interest rates, according to Ms. Foos. That can pose a problem because muni and Treasury yields don't always move in tandem—a phenomenon that caught some muni-bond fund investors off-guard when it occurred during the financial crisis in 2008, she says.

Peter Hayes, a portfolio manager for the BlackRock fund, says that over the long run, there is usually "a high degree of correlation" between Treasury futures and munis, limiting the risk.

In addition, Mr. Hayes says most asset managers don't buy muni bonds issued by small, infrequently traded borrowers, so they are generally insulated from the risk that they will have difficulty unloading their holdings.

Roger Oprandi, whose firm, Vega & Oprandi Wealth Partners in Miami, is a franchise of Ameriprise Financial Services, says he has recently put some client money into muni funds that give managers wider latitude. In a portfolio calling for a 25% allocation to munis, for example, he might invest 10% of the overall portfolio in a flexible muni-bond fund.

"We're hoping that their managers will be able to navigate a rising-rate environment over time," Mr. Oprandi says. He says he hasn't committed more to the funds in part because of their short track records.

Chad Carlson, director of research at Balasa Dinverno Foltz, an advisory firm in Itasca, Ill., isn't using the funds, in part due to their higher fees.

Instead, Mr. Carlson, whose firm manages more than $3 billion, says he uses the Vanguard Intermediate-Term Tax-Exempt Fund and the Vanguard Limited-Term Tax-Exempt Fund, which both charge individuals 0.20% on a $10,000 investment.

Many investors are concerned about rising interest rates, but it is difficult to predict when they will rise and for a fund manager to adjust a bond portfolio in anticipation, Mr. Carlson says.

THE WALL STREET JOURNAL

By DAISY MAXEY

April 24, 2015

Write to Daisy Maxey at daisy.maxey@wsj.com

New Jersey Taps Former Bankruptcy Judge to Mediate Atlantic City Talks.

(Reuters) – New Jersey has appointed Donald Steckroth to negotiate talks between Atlantic City and the groups involved in its restructuring process, the former bankruptcy judge said on Thursday.

Steckroth, who served a 14-year term with the U.S. Bankruptcy Court in New Jersey, is currently a member of Cole Schotz as a part of its bankruptcy and corporate restructuring practice, according to the law firm's website.

The Wall Street Journal reported the news earlier saying that Steckroth would be attempting to broker a deal between the city's turnaround team and business and union interests.

Atlantic City faces a budget gap of more than $100 million this year, while four casino properties have closed since the start of 2014.

In January, New Jersey Governor Chris Christie had appointed an emergency management team for Atlantic City headed by Kevin Lavin. The team also includes former Detroit emergency manager Kevyn Orr.

In March, the team issued a report saying the struggling gambling hub had to consider cost cuts, layoffs and longer bond maturities, although it noted that bankruptcy was not yet on the cards.

Still, the appointment of the team has U.S. municipal bond investors and Wall Street credit rating agencies concerned that the move could signal a departure from the state’s historically strong support of its financially distressed cities.

(Reporting by Narottam Medhora and Ankush Sharma in Bengaluru and Hilary Russ in New York; Editing by Diane Craft)

By REUTERS

APRIL 23, 2015, 9:17 P.M. E.D.T.

GASB Adds Pre-Agenda Research on Going Concern, Debt; Removes Project on Financial Projections.

Norwalk, CT, April 24, 2015—The Governmental Accounting Standards Board (GASB) yesterday voted to initiate pre-agenda research on improvements to going concern and debt disclosure guidance. In a related action, the Board also decided to remove the project on Economic Condition Reporting from the current technical agenda.

The Board decided to initiate research on going concern disclosures based on feedback from stakeholders, who suggested that the GASB should examine the relevance of the “going concern” concept as it applies to governments and government organizations. Stakeholders noted that governments rarely go out of business.

The going concern research will focus on whether existing GAAP standards provide state and local government financial statement preparers with sufficient guidance about management’s responsibilities for evaluating and disclosing uncertainties associated with severe financial stress.

The economic condition project—which contemplated financial reporting requirements related to financial projections—was put on hold in 2012 and has not been subject to deliberations since that time.

“The input and feedback we received from stakeholders on the Preliminary Views on economic condition reporting was highly valuable and will likely serve to inform our work in the future—including the research the Board has called for regarding going concern disclosures,” said GASB Chair David A. Vaudt.

The GASB also approved research on potential improvements to debt disclosure guidance. With state and local governments diversifying their debt-issuance practices—increasingly seeking direct bank loans rather than issuing municipal bonds—disclosures in this area have been inconsistent. The research will focus on whether notes to the financial statements currently provide sufficient debt information to financial statement users for decision making and assessments of accountability.

Both going concern and debt disclosure guidance were identified as high priorities by the members of the Governmental Accounting Standards Advisory Council (GASAC) at their March 2015 meeting. Based on the outcomes of the research and feedback from stakeholders, including the GASAC, the Board will decide whether to add projects to the current technical agenda to consider amending the existing standards.

More information about the new pre-agenda research activities will available in the coming weeks at www.gasb.org.

Disclosure of Potential Conflicts of Interest in Municipal Finance Transactions.

The National Federation of Municipal Advisors has released the draft "White Paper on the Disclosure of Potential Conflicts of Interest in Municipal Finance Transactions".

The White Paper is a product of a subcommittee of the Disclosure Committee. Comments on the paper will be accepted through July 20, 2015.

MSRB Releases Content Outline for First Municipal Advisor Professional Qualification Exam.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) today released the content outline for the first qualifying examination for individuals who provide municipal advisory services to state and local governments. The outline includes the topics that will be covered on the exam, sample questions and a list of reference materials to assist municipal advisor professionals in preparing for the Municipal Advisor Representative Qualification Examination, which will be introduced as a pilot later this year. For the first time, municipal advisors will be required by a regulatory organization to demonstrate competence in their field.

"Today is an important day for the municipal advisor profession," said MSRB Executive Director Lynnette Kelly. "Requiring municipal advisor professionals to demonstrate a minimum level of knowledge of the business and applicable rules will help ensure that state and local governments are advised on municipal bond transactions and financial products by qualified advisors."

All municipal advisor representatives and principals are required to pass the new exam, called the Series 50 examination, within one year of its launch. The MSRB expects to launch the permanent exam in 2016. The MSRB first will administer a pilot exam this fall for those municipal advisor professionals who volunteer to participate. The pilot exam helps to validate the bank of exam questions and determine the passing score for the Series 50 exam. Sign up to receive updates about the pilot exam.

As set out in the content outline, the exam will cover the roles and responsibilities of municipal advisor professionals as well as the rules governing their activities, and the content outline has been filed with the Securities and Exchange Commission for immediate effectiveness. To help municipal advisors prepare to take the exam, the MSRB has scheduled a webinar on June 11, 2015 at 3:00 p.m. ET to review the content outline, provide more information about participating in the pilot and discuss the administration of the exam. Register for the webinar.

The Dodd-Frank Wall Street Reform and Consumer Protection Act charged the MSRB with developing professional standards as part of a comprehensive regulatory framework for municipal advisors. For up-to-date information on the MSRB's professional qualification program and other rulemaking for municipal advisors, visit the Resources for Municipal Advisors section of the MSRB's website.

IRS Webinar: Compliance Self-Assessment Tool for Government Entities.

What: Free Webcast – Compliance Self-Assessment Tool for Government Entities

When: May 14, 2015; 2 p.m. (Eastern)

How: Register for this event. You will use the same link to attend the event.

Learn about:

- Awareness of potential compliance issues
- Understanding the most common tax issues
- Identifying legal requirements that apply to public employers
- Recognizing unique federal income, social security and Medicare taxes and public retirement system obligations

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Financial Woes, Federal Probe Drive Up Interest Rate on CPS Bonds.

Chicago Public Schools was forced to pay top-of-the-market interest rates on nearly $300 million in new bonds issued today amid the uncertainty created by a federal investigation and a looming annual budget deficit of more than $1 billion.

The top yield for investors was 5.63 percent on 25-year bonds, or 2.85 percentage points over benchmark triple-A rated bonds, according to published reports.

The Chicago Board of Education delayed the sale last month after getting hit with downgrades by three ratings agencies.

"While the board's rating remains in investment grade territory, its yields aren't," according to a story published today by Bond Buyer, which tracks the municipal finance market. The yields, or amount that investors are paid, are in the range of bonds with a much lower credit rating, Bond Buyer said.

The relatively high interest rate was likely attractive to investors who discounted the chances that CPS would be unable to repay the bonds. The school district confronts a $1.1 billion budget deficit in fiscal 2016, which starts July 1. About $700 million is due in payments to the school district's woefully underfunded retirement plan.

After this story was published, a CPS spokesman said in a statement that demand for the bonds was 1.7 times the supply, a sign that investors had a strong appetite for the bonds, given the interest rate.

"The strength of today's bond sale is another indicator that investors have confidence in the district and the security of its bonds despite its well-known budget challenges," according to the statement, which did not address the relatively high interest rate needed to attract buyers.

CPS had revenue of $4.94 billion in the fiscal year that ended June 30, 2014, and $6.6 billion in long-term debt, including accrued interest.

The delay in the sale gave investors the comfort of knowing the results of the April 7 runoff election, in which Mayor Rahm Emanuel won a second term. But it also added to the school board's challenges.

TOUGH RATINGS

Reports surfaced on April 14 of a federal investigation into a $20.5 million, no-bid contract awarded to a firm with ties to CEO Barbara Byrd-Bennett. She has taken a leave of absence.

Complicating matters even more was Gov. Bruce Rauner, who talked up the option of bankruptcy for CPS and other governmental agencies. His jawboning likely unsettled investors, even if his comments were aimed at the Chicago Teachers Union, whose retirement plan is the source of much of the schools' financial troubles.

Proceeds of the bond sale will be used to refinance existing debt. Today's bond issue was actually a series of securities with different maturities and lower interest rates.

Even as the school board delayed the bond sale, it went ahead last month with the sale of about $180 million in floating rate debt. The rate on those notes, 4.02 percent, reflected a "steep penalty," according to a Bond Buyer story published April 1.

Moody's Investors Service led off the downgrade parade on March 6, lowering its rating on CPS two levels to Baa3, just above junk bond status. Then Fitch Ratings cut its grade to BBB-minus, just above junk bonds, from A-minus. Standard & Poor's Ratings Services lowered the district's rating by two notches, to A-minus, two notches above junk bond status.

The ratings reduction by Moody's and Fitch triggered a possible $228 million penalty to be paid by CPS on swaps contracts the school district has on $1.1 billion in debt. Swaps are agreements intended to reduce the risk of interest rate changes.

Ahead of the new bond sale, CPS did not seek a rating from Moody's, typically the most skeptical of the ratings agencies. Instead, CPS hired Kroll Bond Rating Agency, a relative newcomer to the field, which assigned a rating of BBB-plus.

Some bond market observers viewed dropping Moody's as "rating shopping," an attempt to obtain a more favorable report, but institutional investors were likely not affected by the change.

CRAIN'S CHICAGO BUSINESS

By THOMAS A. CORFMAN

April 21, 2015

Gundlach Buys $20 Million of Junk-Rated Puerto Rico Bonds.

DoubleLine Capital's Jeffrey Gundlach bought $20 million of junk-rated Puerto Rico bonds this year as the commonwealth struggled with its fiscal crisis.

DoubleLine's $2.26 billion Income Solutions Fund held $20 million of Puerto Rico general obligations as of Feb. 27, data compiled by Bloomberg show. The fund didn't hold any commonwealth debt at the end of 2014. The bonds, which were issued in March 2014, traded Wednesday at record-low prices.

Puerto Rico securities, which are tax-exempt nationwide, have traded at distressed levels for more than a year amid speculation the commonwealth and its agencies won't be able to repay $73 billion of debt. Municipal bonds sold in Puerto Rico lost 0.72 percent this year through April 21, the worst start since 2011, according to S&P Dow Jones Indices.

"I do think they are going to make it to the goal line," Gundlach said of Puerto Rico in a March 10 conference call. The yield on the debt is "unbelievably high," especially for residents of high-tax states such as California, he said.

As the value of Puerto Rico debt has dropped, hedge funds and distressed-debt buyers have purchased more of the securities, while municipal-bond mutual funds have cut their holdings.

High Reward

The bonds purchased by DoubleLine, which mature in 2035, traded Wednesday at an average price of 79.7 cents on the dollar, the lowest yet, for an average yield of 10.4 percent, Bloomberg data show. That's equivalent to about a 17 percent yield on taxable bonds for investors in the highest tax bracket.

DoubleLine oversaw $73 billion of assets as of March 31. Its $46.2 billion Total Return Bond Fund has beaten 99 percent of peers in the past five years. Loren Fleckenstein, a spokesman for the Los Angeles-based firm, declined to comment.

The Income Solutions Fund is a closed-end fund. Corporate debt accounts for about two-thirds of its holdings, its largest allocation, Bloomberg data show. The Puerto Rico bonds are the fund's only municipal holdings, taking up less than one percent of assets.

It's not the company's first purchase of Puerto Rico debt. DoubleLine had $2.5 million of the same general obligations in its $129.6 million Multi-Asset Growth Fund at the end of March, Bloomberg data show. That fund first bought the debt last year.

Bloomberg

by Michelle Kaske

April 22, 2015

[Hey, State Treasurers: Europe's Having a Sale on Money!]

Several governments in Europe are now borrowing at negative interest rates. Switzerland recently auctioned 10-year bonds at a yield of minus 0.055 percent. Within the Eurozone, yields have turned negative on German, French and Dutch bonds maturing within five years.

Even less fiscally sound countries are able to float paper at extremely low rates. For example, 30-year bonds issued by Spain recently yielded 2.04 percent — this from a country with 23 percent unemployment and a 98 percent debt-to-GDP ratio.

European government interest rates are low due to sluggish economic growth, fears of deflation and an aggressive bond-buying program implemented by the European Central Bank. The benefits of low

Eurozone interest rates are not only being realized by European governments. Foreign companies and countries are also enjoying the cheap money, borrowing over $20 billion in Europe during the first quarter, while U.S corporations issued $50 billion in Euro-denominated debt last year.

Can U.S. states — and perhaps even large cities and counties — benefit from Europe's sale on money? Judging from the experience of Ontario and other Canadian provinces, the answer appears to be yes. Ontario has been issuing Euro-denominated debt for many years. Earlier this year, Ontario issued a 10-year Euro bond with a coupon of 0.875 percent; recently, the bond was trading at yields below 0.5 percent. This compares quite favorably to New York State general obligation bonds maturing in 2025 that recently yielded 1.8 percent.

In fact, Ontario has a weaker credit rating than New York, so the Empire State might fare even better in the Euro market. The province is rated one notch lower than New York by both S&P and Moody's, and a look at relative fiscal conditions suggests that this rating differential is, if anything, too modest. In 2013, Ontario had a primary government debt-to-GDP ratio of 38.8 percent, while New York State's ratio was only 4.4 percent.

U.S. states may not have previously considered issuing overseas because of the tax exemption on interest. But some municipal securities, such as pension obligation bonds, are taxable. Further, the benefits of tax exemption in the U.S. have been offset by negative sentiment in the domestic municipal-bond market. European investors used to funding governments with high levels of debt and aging populations may be less frightened by the negative news about state finances reported in the U.S.

A couple of cautionary notes are in order. By borrowing in a foreign currency, a state takes on currency risk. This can be ameliorated by purchasing a currency swap. When negotiating a swap agreement with a financial institution, however, treasurers should learn from the bad experiences that Chicago and other municipal borrowers have had with interest-rate swaps. These deals often have fine print that could mandate balloon payments in the event of a rating downgrade.

Second, American states borrowed in Europe during the 19th century, and the story had an unhappy ending. Many European investors were stuck with Reconstruction-era bonds that were later repudiated by the Southern states that had issued them. The London-based Corporation of Foreign Bondholders pressed states to honor these bonds into the 1930s, at which point Britain and other European countries needed relief from their World War I debts to the U.S. federal government. The U.S. state defaults then became a non-issue.

Since another Civil War does not appear in the offing, perhaps European investors will be ready to once again lend to American states — and to so at the low interest rates they afford to foreign companies, sovereigns and our neighbors to the north.

GOVERNING.COM

BY MARC JOFFE | APRIL 20, 2015

marc@publicsectorcredit.org

Yields Hit 5.63 pct in Chicago Schools Bond Sale.

(Reuters) – The Chicago Board of Education paid a stiff penalty for its fiscal woes on Tuesday as investors demanded fat yields for its $295.7 million general obligation bond sale.

The deal was slightly oversubscribed, but not enough to warrant a repricing, according to a market source. That left yields at their initially priced levels, which topped out at 5.63 percent for bonds due in 2039 with a 5.25 percent coupon, according to a pricing scale obtained by Reuters. That yield was 283 basis points over Municipal Market Data's benchmark triple-A scale.

Municipal bonds carrying the same ratings as the Chicago school system, A-minus by Standard & Poor's and BBB-minus by Fitch Ratings, would normally trade only 85 to 100 basis points over the scale, said MMD analyst Randy Smolik.

The 283 basis-point spread was also wider than the 250 to 255 basis points over the scale the board's bonds were fetching in secondary municipal market trading just last week.

There was no immediate comment from the Chicago Public Schools (CPS).

The nation's third-largest public school system is struggling with a huge pension liability and is projecting a $1.1 billion budget deficit in its upcoming fiscal year. Those fiscal woes factored in to credit rating downgrades by Moody's Investors Service and Fitch last month to one notch above the junk level.

The downgrades triggered the termination of interest-rate hedges on variable-rate debt that unless renegotiated could cost the district about $228 million in payments to banks.

Illinois Governor Bruce Rauner raised the possibility that CPS could be headed for bankruptcy, according to local media reports, although such a move is not currently allowed under state law.

Meanwhile, the district's chief executive officer, Barbara Byrd-Bennett, took a leave of absence pending the outcome of a federal probe into a contract the district awarded to a company that had previously employed her, CPS officials said on Friday.

(Reporting by Karen Pierog; editing by Matthew Lewis)

Tue Apr 21, 2015 5:44pm EDT

David A. Noyes & Company Hires Industry Veteran and Municipal Bond Underwriting Specialist.

David A. Noyes & Company [Noyes], a 105-year old wealth management and investment banking firm, announced today the hiring of Thomas L. Enright, as Senior Vice President of its Capital Market Division.

Enright, 55, will be responsible for growing Noyes' municipal bond underwriting business of its Capital Markets Division's Public Finance Group and fixed income platform. He will report directly to Robert Welch, Jr., Senior Managing Director of Noyes' Capital Markets Division.

Welch explained that Enright's hire is perfectly aligned with Noyes' plan to expand its fixed income platform and grow its municipal underwriting business with the intent to achieve three strategic goals: expand the firm's revenue sources, add municipal bond capabilities to its platform to anticipate and meet advisors' demand, and provide small municipalities with the level of service and attention they cannot obtain from larger Wall Street firms.

"Tom is a high-caliber professional with an impressive experience in municipal bonds," stated Welch. "His hire is a strategic addition to our team that further underscores the depth and breadth of skills Noyes consistently continues to attract. Tom's knowledge, expertise and energy lift our municipal efforts to another level."

Enright joins Noyes with more than three decades of experience in the municipal bonds industry. Throughout his career, he has underwritten in excess of $30 billion of municipal bond issues—including the $400 million Indianapolis Airport Authority bond—and priced on a yearly basis over $2 billion of bond issues. Most recently, he was Manager of Municipal Bond Trading and Manager of Capital Markets at City Securities Corporation. Prior to that, he served as Manager of Indiana Municipal Bond Operation at Raymond James and Manager of the Municipal Bond Department of Raffensperger Hughes and Company, Inc. He began his career at Indiana National Bank as Municipal Bond Trader.

"I'm excited and honored to join an organization with such a solid industry reputation and be part of a dynamic, successful and talented team," declared Enright. "In accepting this position, I was particularly impressed, among other things, with Noyes' investment in human capital and systems, the firm's enduring stability, pristine record and unwavering 'clients first' philosophy. I look forward to playing an instrumental role in helping Noyes grow a profitable and successful municipal bond underwriting business and empower them to deliver even more exceptional service and value to both their advisors and clients."

Enright obtained a B.S. degree in Finance from Indiana University.

About David A. Noyes

David A. Noyes & Company is a full-service investment firm headquartered in downtown Chicago's with branches throughout the Midwest. Founded in 1908, the firm has the unique distinction of being the oldest New York Stock Exchange Member based in Chicago, and has served the Indianapolis area for nearly 80 years. The privately-held firm offers a comprehensive menu of products and services to individual and institutional clients. David A. Noyes & Company has seven offices in Illinois, Indiana and Michigan. For more information on David A. Noyes & Company visit http://www.danoyes.com.

CHICAGO, IL (PRWEB) April 21, 2015

- Fed Is Expected to Shift on Muni Bonds.
- MSRB Files MA Core Conduct Rule With SEC For Approval.
- Conduct Rule 'Unclear' on Underwriters Giving Advisory Services.
- Dealers Raise Some Concerns About New Trade Data Requirements.
- He Made $3.8 Million in Fees in an Odd Little Corner of the Muni Bond Market.
- Muni-Bond Insurance Actually Pays Off, Report Says.
- NABL Seeks Guidance Projects on Reissuance, Issue Price.
- *Golden State Water Company v. Casitas Municipal Water District* – Court of Appeal holds that bonds issued pursuant to the Mello-Roos Act can be used to finance eminent domain actions, in this case the acquisition of a private water utility by a newly-formed community facilities district.
- *Clarke County Reservoir Com'n v. Abbott* – Supreme Court of Iowa holds, as a matter of first

impression, that joint public-private county reservoir commission, organized under joint governmental activity statute and including private members lacking the power of eminent domain, could not itself exercise the power of eminent domain or serve as an acquiring agency seeking a declaratory judgment of public use.
- And finally, Great Moments in Deductive Reasoning is brought to you this week by *Wentworth v. Coldwater*, in which cop conducts traffic stop of driver and releases him with a stern warning for a lane violation. Driver immediately proceeds to kill some folks (oops!), but court lets cop off the hook due to the fact that there was absolutely nothing to indicate that the driver may have been a wee bit intoxicated. I mean, besides "an odor of alcohol emanating from the vehicle, admission that others in vehicle had been drinking, high rate of speed, erratic driving, that it was 2:37 a.m. on a Saturday night, intoxicated driver's numerous past driving offenses, including alcohol-related offense, and intoxicated driver's admission that he was traveling from a local bar." Other than that…

BONDS - CALIFORNIA

Golden State Water Company v. Casitas Municipal Water District

Court of Appeal, Second District, Division 6, California - April 14, 2015 - Cal.Rptr.3d - 15 Cal. Daily Op. Serv. 3592

City residents, fed up with sky high water bills, voted to oust Golden State Water Company (Golden State), the private utility that monopolized water service to their City, and replace it with the newly-formed Casitas Municipal Water District (Casitas), a community facilities district formed pursuant to the Mello–Roos Community Facilities Act of 1982 (Mello–Roos Act or Act).

Casitas determined that the Mello–Roos Act would be an appropriate means of financing the transaction. Casitas passed resolutions listing the facilities to be acquired, declaring the necessity of raising bond revenue to finance their acquisition, and submitting the matter to voters for their approval in a special election. The ballot measure passed, authorizing Casitas to issue up to $60 million in bonds to finance the acquisition of Golden State's property and property rights in the City.

Golden State was unwilling to sell its business, therefore Casitas planned to acquire the assets by eminent domain.

Golden State filed a reverse validation complaint and petition for writ of mandate seeking to invalidate and set aside Casitas's resolutions. The trial court ruled against Golden State on all issues. Golden State appealed, contending that the Mello–Roos Act cannot be used to finance a taking of property by eminent domain or the acquisition of intangible property and property rights.

The Court of Appeal held that:

- The Mello-Roos Act can be used to finance eminent domain actions, as the Act facilitates the purchase of property regardless of whether the seller consents to the sale or is compelled under force of law;
- Financing the acquisition of intangible property incidental to the real or tangible property being purchased is consistent with the Act's text and purpose;
- The legal costs associated with an eminent domain proceeding are properly classified as an incidental expense that can be financed under Mello–Roos; and
- The compensation to be received by Golden State from Casitas for its water rights and loss of goodwill are properly classified as incidental expenses that can be financed under Mello–Roos.

ZONING - CALIFORNIA

Benetatos v. City of Los Angeles

Court of Appeal, Second District, Division 5, California - April 14, 2015 - Cal.Rptr.3d - 2015 WL 1650766

Owners of 24-hour fast food restaurant petitioned for writ of mandate, seeking to overturn city determination that they operated a nuisance and imposing conditions on further operation. The Superior Court denied the petition, and owners appealed.

The Court of Appeal held that:

- Imposition of operating conditions did not implicate fundamental rights, and thus substantial evidence review was appropriate, and
- Substantial evidence supported determination that restaurant was operated in a manner that constituted a nuisance.

Imposition of operating conditions on fast food restaurant which allegedly operated as a nuisance did not implicate fundamental rights by forcing restaurant to shut down, and thus substantial evidence standard of review applied to superior court's consideration of petition for writ of administrative mandamus challenging the conditions. Although there was some discussion in the record about the cost of a security guard, there was no evidence concerning restaurant's profitability and projected losses, and thus owners suggested only an economic effect from the required operating conditions, rather than showing that the operating conditions would severely impair their ability to function or would drive them out of business.

Substantial evidence supported city's determination that owners of 24-hour fast food restaurant operated restaurant in a manner that constituted a nuisance in violation of city ordinance. There was evidence owners failed to maintain the restaurant or the property the restaurant occupied, as there was trash and debris throughout the property and graffiti covered the building, walls, and menu signs, there was evidence of loitering and gang activity, and that persons were drinking alcohol at the restaurant, there was evidence that, in less than three-year period, police department received 58 calls for service at restaurant for crimes including misdemeanor battery, public drinking, drug offenses, prostitution, pimping, two homicides, and two assaults with deadly weapons, there was evidence that half of those service calls took place during overnight hours, and there was evidence that a second restaurant, located 20 blocks away in an area with similar crime statistics, did not have any problems associated with it, and that nearby restaurants were not the subject of nuisance investigations.

CONTRACTS - CONNECTICUT

Old Colony Const., LLC v. Town of Southington

Supreme Court of Connecticut - April 21, 2015 - A.3d - 2015 WL 1612044

Contractor brought breach of contract action against town, and town counterclaimed for liquidated damages for breach of contract. The Superior Court denied town's motion for summary judgment. Following a bench trial, the Superior Court rendered judgment in favor of contractor on its breach of contract claim and in favor of town on its counterclaim. Contractor appealed.

The Supreme Court of Connecticut held that:

- In an apparent matter of first impression, town's election to terminate the contract for convenience did not preclude it from recovering liquidated damages;
- Liquidated damages clause in construction contract was not unenforceable on the basis certain misinformation by town contributed to some of the delays in completing the project;
- Town was not required to prove that it had suffered damages based on contractor's delay in order to recover under the contract for liquidated damages; and
- Town's approval of change orders did not constitute a modification of public works construction contract that would entitle contractor to equitable adjustment in time or costs due to delays beyond its control.

In the absence of any express limitation on the reservation of rights in termination for convenience clause of public works construction contract, town was not barred from seeking liquidated damages or other default based remedies after exercising its right to terminate the contract under the termination for convenience provision, even if it could be implied that a limitation existed with regard to damages incurred following the termination. Town's claim for liquidated damages would not be impaired because its rights to such damages arose as soon as the substantial completion date passed, and continued to accrue until termination of the contract.

EMINENT DOMAIN - IOWA

Clarke County Reservoir Com'n v. Abbott

Supreme Court of Iowa - April 10, 2015 - N.W.2d - 2015 WL 1586257

Joint public-private county reservoir commission filed a declaratory judgment action seeking a declaration that its proposed project to build a public reservoir for drinking water was a public use that would allow the commission to condemn private land. Landowners challenged the authority of the commission to initiate the condemnation proceeding. Following a bench trial, the District Court concluded that the project qualified as a public use. Landowners appealed.

The Supreme Court of Iowa held that:

- Appeal was not moot, and
- As a matter of first impression, the commission, because it included private members, could not itself exercise the power of eminent domain or serve as an acquiring agency seeking a declaratory judgment of public use.

County reservoir commission, organized under joint governmental activity statute and including private members lacking the power of eminent domain, could not itself exercise the power of eminent domain or serve as an acquiring agency seeking a declaratory judgment of public use. Only the legislature had the authority to delegate the power of eminent domain, and the members of the commission could not grant or delegate their own powers of eminent domain to the commission, but, rather, could only exercise their individual powers jointly.

PENSIONS - MASSACHUSETTS

Galenski v. Town of Erving

Supreme Judicial Court of Massachusetts, Franklin - April 17, 2015 - N.E.3d - 2015 WL 1737396

Retired town school principal brought action against town, seeking injunctive and declaratory relief, alleging that town had violated her right to payment by town of premiums for a portion of group medical health insurance plan governed by local option statute. The Superior Court entered summary judgment in favor of principal, and town appealed.

The Supreme Judicial Court of Massachusetts held that town could not enact retirement policy imposing a ten-year minimum term of service as a prerequisite to premium contributions.

Town that had adopted local option statute providing for group health insurance for town employees could not enact retirement policy imposing a ten-year minimum term of service as a prerequisite to premium contributions from the town, and thus retired school principal with only six years of service with town was entitled to contributions from town for cost of participating in group health insurance plan. Statute adopted by town mandated that town contribute more than 50% of premiums of "employees retired from the service of the town," and town could not alter terms of statute.

IMMUNITY - OHIO

Wentworth v. Coldwater

Court of Appeals of Ohio, Third District, Mercer County - April 13, 2015 - Slip Copy - 2015 - Ohio- 1424

Injured driver and co-administrators of estate of passenger killed in crash caused by intoxicated driver filed claims against Village and police officer who had conducted earlier traffic stop of intoxicated driver. The Court of Common Pleas found that village and officer were not entitled to political subdivision immunity. Village and officer appealed.

The Court of Appeals held that:

- Village was entitled to immunity against claims, and
- Officer's alleged conduct was not malicious, wanton, or reckless and, thus, officer was entitled to immunity.

Village was entitled to political subdivision immunity from claims of driver who was injured, and co-administrators of estate of passenger who was killed, in crash caused by intoxicated driver, that they were injured by intentional, malicious, reckless, and/or wanton conduct of police officer, who conducted traffic stop of intoxicated driver prior to crash and allegedly failed to properly conduct any field sobriety test. Village was political subdivision, officer was employed by village, police activities were governmental functions, and no statutory exception to immunity applied.

Allegations by driver who was injured, and co-administrators of passenger who was killed, in crash caused by intoxicated driver, that police officer conducted earlier traffic stop of intoxicated driver and released him with a warning for a lane violation despite an odor of alcohol emanating from the vehicle, admission that others in vehicle had been drinking, high rate of speed, erratic driving, that it was 2:37 a.m. on a Saturday night, intoxicated driver's numerous past driving offenses, including alcohol-related offense, and intoxicated driver's admission that he was traveling from a local bar, failed to allege conduct by officer that was malicious, wanton, or reckless conduct, and, thus, officer was entitled to political subdivision immunity against claims.

ZONING - WISCONSIN

NextMedia Outdoor, Inc. v. Village of Howard

Court of Appeals of Wisconsin - April 14, 2015 - Slip Copy - 2015 WL 1637200

NextMedia Outdoor, Inc. (NextMedia) owned a legal, nonconforming billboard sign in the Village of Howard (the Village) that was displaced as the result of a Wisconsin Department of Transportation (DOT) highway project. NextMedia sought to have the sign "realigned"—i.e., moved to a different spot on the same property—pursuant to a newly enacted state law. Accordingly, it filed an application for realignment with the Village, which the Village denied under a local ordinance implementing the new state law. NextMedia appealed to the Zoning Board of Appeals of the Village of Howard (the Board), which reversed the Village's decision and authorized NextMedia to realign the sign with certain conditions.

The DOT objected to the Board's decision, advising the Village it had acquired, by condemnation, NextMedia's permit rights to the sign months prior to the Board's decision. The Village then filed a motion for reconsideration, and the Board held a second hearing on the matter. The Board reversed its earlier decision, concluding NextMedia's right to apply for realignment ceased when the DOT acquired NextMedia's permit rights. NextMedia sought certiorari review, and the circuit court agreed with NextMedia and entered a judgment concluding the Board lacked reconsideration authority and erred as a matter of law by considering the evidence submitted during the reconsideration proceedings.

The Court of Appeals reversed, holding that the Board had inherent authority, based on long-standing Wisconsin precedent, to reconsider a decision based on mistake, such as occurred here.

The Court further concluded that the evidence submitted on reconsideration was sufficient to establish that the Board's earlier decision was fundamentally rooted in its mistaken beliefs that NextMedia still owned permit rights to the sign and that the DOT had proposed realignment of the sign.

The Court also rejected NextMedia's other arguments, including that the Board erred as a matter of law, that it should be estopped from reconsidering its prior decision, and that the Board's reconsideration decision was unreasonable and contrary to the concepts of due process and fair play.

Dealers Raise Some Concerns About New Trade Data Requirements.

WASHINGTON — The Municipal Securities Rulemaking Board's proposal to require dealers to submit new information through its trade reporting system has some support from the two major industry groups, but one is concerned about possible inefficiency and confusion and the other wants a longer implementation period.

SIFMA and the Bond Dealers of America made their comments in letters to the Securities and Exchange Commission late last week.

The proposed changes to Rule G-14, first floated by the MSRB last August, would require dealers to report new information through the Real-Time Transaction Reporting System, such as whether a trade occurred on an alternative trading system or involved a non-transaction based fee. It also would eliminate the requirement for dealers to report the yield for trades with customers.

Leslie Norwood, a managing director, associate general counsel, and co-head of municipals at SIFMA, told the SEC that the proposal to require dealers' trade reports to include an indicator for non-transaction based fees is potentially helpful for transparency, but operationally very difficult.

"Importantly, these non-transaction-based compensation arrangements are private agreements between the investment manager and its clients, and the information about the account and trade type is typically not resident in the systems that handle trade reporting," Norwood wrote, adding that the problem is especially difficult for third party agents who handle trade reporting on behalf of broker dealers.

"Upon further reflection, broker-dealers implementing this amendment are having a very challenging time conceptualizing automating this process," Norwood wrote. "Potentially, each account and trade would need to be researched by the reporting entity and a flag manually put on the impacted trades. The infrastructure cost to provide such information would potentially outweigh any potential benefits."

SIFMA members feel that the MSRB could provide this information itself because it already collects it, Norwood told the commission. The same holds true for a potential indicator on whether a trade was executed via an ATS, she wrote.

SIFMA supports the proposal to eliminate dealers having to calculate yield on trade reports, but is concerned that the change does come at a cost, Norwood wrote.

The questionable trade reports, however, alerted broker-dealers to trades where the dealer calculated yield was outside the acceptable tolerance from the MSRB calculated yield," she wrote. This was typically due to reference database differences in call features or day count calculation due to questionable holidays or market closes, she continued.

"Broker-dealers could then reconcile these differences. It should be recognized that this control mechanism does get eliminated with these amendments," she wrote.

Customers could be confused if the MSRB yields don't match the dealer calculated yields, Norwood added.

BDA chief executive officer Mike Nicholas said the proposal will benefit the muni market, but is concerned smaller dealers may need more than the proposed six-month testing period before the effective date in order to make the necessary changes to their systems.

"The MSRB's proposed six-month testing period in advance of the effective date may be sufficient time for larger dealers to make the required changes necessary for implementation without disruption to their information technology plans or budgets, however smaller firms with fewer IT resources require at least a nine-month testing period prior to implementation," Nicholas wrote. "Operationally, dealers will have to create new data fields and integrate them into existing systems as well as provide training for sales, trading and operations staff. Smaller firms with more limited resources will need additional time to successfully implement the changes required by the proposed rule."

The SEC must approve the proposal before it could become effective. The commission could accept the proposal as is, or require that the MSRB make changes.

THE BOND BUYER

BY KYLE GLAZIER

APR 20, 2015 2:55pm ET

MSRB Trade-Reporting Proposal Prompts Questions, Concerns.

The Municipal Securities Rulemaking Board has proposed changes to Rule G-14 requiring dealers to report whether a trade was executed on an alternative trading system, included a fee that wasn't based on the transaction, and other information. SIFMA supports parts of the proposal but is raising some concerns. Leslie Norwood, associate general counsel and co-head of municipal securities at SIFMA, said that operationally, it will be difficult to include an indicator for nontransaction-based fees in dealers' trade reports.

Read SIFMA's comments.

MSRB Reminds Municipal Advisors of the April 23, 2015 Effective Date of Amendments to MSRB Rule G-44 on Supervisory and Compliance Obligations.

The Municipal Securities Rulemaking Board (MSRB) reminds municipal advisors that amendments to MSRB Rule G-44 regarding supervisory and compliance obligations of municipal advisors, and related amendments to MSRB Rule G-8, on books and records, and MSRB Rule G-9, on preservation of records become effective on April 23, 2015. Municipal advisors are required to establish, implement and maintain a system to supervise their municipal advisory activities and those of their associated persons that is reasonably designed to achieve compliance with all applicable securities laws and regulations.

Read the approval notice.

View a recording of a webinar about the rule changes.

S&P: How Pension Funding Continues to Affect U.S. States' Budgets.

In this CreditMatters TV segment, Standard & Poor's Managing Director Robin Prunty explains why some U.S. state governments continue to face pension funding dilemmas.

Watch.

Apr 14, 2015

Yale CEFF and CDFA Energy Finance Webinar Series.

Advancing Energy Finance Policy in the U.S.

May 5, 2015
@ 1:00 pm Eastern

State and federal policy is critical to clean energy development. This installment of the Yale CEFF & CDFA Energy Finance Webinar Series Features a panel discussion of policies that would yield the greatest impact for energy markets – and the prospects for these policies to become a reality.

Moderator:

Michael Puckett
Manager
Yale Clean Energy Finance Forum

Speakers:

Casey Bell
Senior Economist and Finance Policy Lead
American Council for an Energy-Efficient Economy (ACEEE)

Jason Rittenberg
Director, Research & Advisory Services
Council of Development Finance Agencies

Devashree Saha
Senior Policy Analyst and Associate Fellow
Brookings Institution

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

REGISTER.

IRS Notice: Application of the General Welfare Exclusion to Indian Tribal Government Programs That Provide Benefits to Tribal Members.

Notice 2015-34 advises taxpayers that they may continue to rely on Rev. Proc. 2014-35 following passage of the Tribal General Welfare Exclusion Act of 2014 (the Act), and requests comments on interpreting certain provisions of the Act. (Under the general welfare exclusion, payments or benefits under certain governmental programs for the promotion of the general welfare are not includible in a recipient's gross income. Revenue Procedure 2014-35 provides safe harbors for applying the general welfare exclusion to Indian tribal government programs.)

Notice 2015-34 will be published in Internal Revenue Bulletin 2015-18 on May 4, 2015.

Relaxed Bank Rules Could Lift Municipal Bond Securities, ETFs.

The Federal Reserve may soon allow U.S. banks to hold municipal bonds to meet liquidity rules, opening up more demand for municipal securities and potentially lifting munis-related exchange traded funds.

After the fall off in March, munis have remained relatively flat for the year. Year-to-date, the iShares National AMT-Free Muni Bond ETF (NYSEArca: MUB) gained 0.6%, SPDR Nuveen Barclays Municipal Bond ETF (NYSEArca: TFI) increased 0.6% and Market Vectors Intermediate Municipal Index ETF (NYSEArca: ITM) rose 1.0%.

However, the municipal bond market could experience greater activity ahead if the Fed amends the liquidity rules for U.S. banks. According to people familiar with the matter, U.S. banks may soon be able to utilize municipal bonds as part of "high quality liquid assets" to fund operations for 30 days, the Wall Street Journal reports.

Previously, the Fed and two other bank regulators excluded city and state debt from the liquidity rules in September. While the Fed is cogitating on relaxing the rules, the Office of the Comptroller of the Currency officials argue that munis are not traded easily enough to be included in the rule.

Consequently, the Fed may push for changes, but the OCC could stand pat. The Fed's version of the liquidity rule would then apply to bank holding companies with $250 billion or more in assets, along with a less-severe version for bank-holding companies with between $50 billion and $250 billion in assets. However, the OCC has jurisdiction over some of the largest banks and would likely continue to exclude munis.

Back in September, Fed governor Daniel Tarullo said he expects the central bank to change its stance on munis inclusion as evidence that some state and local debt is frequently traded may be "comparable to that of the very liquid corporate bonds" that qualify under the high-quality liquid assets rule.

Big banks, such as Citigroup (NYSE: C) and Wells Fargo (NYSE: WFC), along with state and local officials and top Congressmen, have been pushing for the changes. Proponents contend that excluding all muni-debt securities from the liquidity rules could push banks to shun the $3.7 trillion market and force local governments to cut back on projects and spending.

According to the Fed, banks now account for 12% of the total outstanding municipal debt market. Banks have held on to munis because the asset class is seen as less risky than corporate debt and competitively priced relative to other bonds.

ETF Trends

April 20th, 2015 at 9:30am by Tom Lydon

After the Collapse of Sweet Briar, Investors are Nervous about Other Small Colleges.

Both sides are claiming victory after an unexpected twist in the fight to save an imploding college The announcement that Sweet Briar College, a 114-year -old all-women's liberal arts college in Virginia, will close after the current semester sent shock waves through the world of academia this spring. And it caused extreme heartache to a deeply loyal community of students and alumni.

But the small college's closing isn't just hurting the world of higher education, it's also worrisome for investors in the municipal bond market who buy the debt of colleges and universities.

Sweet Briar College, with an enrollment of 530 students, had its revenue bonds downgraded from a BBB to a B- by Standard and Poor's credit rating agency following the announcement of its closure. The news and subsequent rating downgrade led to its bonds trading at a discount, at 83 cents on the dollar compared to 102 cents the day before.

And other small colleges – at least 22 institutions with under 4,500 students – have experienced an uptick in trading since Sweet Briar's announcement, according to an article in Bloomberg on Sunday.

"The market definitely should be concerned," said Michael Johnson, managing partner at Gurtin Fixed Income Management, told Bloomberg. "I could see some investors deciding they'll sell anything that looks like this."

The increased trading in these college bonds reflects anxiety in the municipal market and the larger question looming over the future of higher education.

The debate over the future of small colleges has been ramping up over the past few years, with Mark Cuban as a vocal participant in the conversation warning of a "student loan bubble." After Sweet Briar's announcement, Cuban tweeted: "This is just the beginning of the college implosion."

Cuban points to the rising cost of college tuition, and the ability of students to take out loans in excess of what they can reasonably be expected to repay.

"There's a growing education bubble, with rising tuition and students taking out loans they might not be able to pay back," Cuban told Business Insider in March.

BUSINESS INSIDER

ABBY JACKSON

APR. 20, 2015

Atlantic County Pays For Pay-To-Play Ordinance: Fox Rothschild.

I work with New Jersey's pay-to-play laws on a regular basis and anyone else who wades the muddy waters of this area understands that these laws are an intricate, confusing, and often conflicting web of rules, regulations, statutes, and executive orders that apply to mayoral, county, legislative, and gubernatorial elections – except when they don't. Because every county and municipality has the legal authority to promulgate their own pay-to-play rules, things can get even more interesting. Until now, there has been very little case law or guidance on New Jersey's local pay-to-play laws. That changed last week when the judiciary published an opinion on the topic.

Like many counties, Atlantic County has its own pay-to-play law that prohibits persons seeking or holding county contracts from making political contributions to anyone running for or holding county office, including the sheriff's office. When Sherriff Frank Balles decided to run for state senate, he found no harm in taking a political contribution from Ford-Scott, a county contractor. In approving Ford-Scott's contract, the Atlantic County Board of Freeholders determined that Ford-Scott was not prohibited from being awarded a county contract because Balles was not running for county office and the contribution made by Ford-Scott was specifically made towards Balles' senate bid.

Without getting into details that might make the reader's head explode, it is sufficient to say that, under normal circumstance, a person can legally contribute to a political candidate running for an office as long as the contributor does not have a contract with the particular body of government for which the candidate is running. It is for this reason that the Freeholders determined that Ford-Scott could legally take the county contract. In the first published opinion on local pay-to-play laws, the Law Division of the Superior Court disagreed.

Although the court was careful to restrict its analysis to the county pay-to-play law, its ruling was based primarily on the legislative intent. And, in one of those ironies that we see in legal opinions from time to time, the court determined that the same county governing body which wrote the pay-to-play law and approved the Ford-Scott contract actually intended for its law to preclude such contracts. The important part of this opinion lies in the reasoning behind pay-to-play laws – reducing actual and perceived government impropriety – which is the same policy behind all pay-to-play laws regardless of whether they apply locally or statewide. In other words, this precedential opinion will likely apply to any similar case under any pay-to-play law in New Jersey.

The practical impact of this opinion is widespread. For example, if Jersey City Mayor Steven Fulop decided to run for governor, and Jersey City had a local pay-to-play ordinance with similar language to the law in Atlantic County (which it does), this case could act to prevent any person who contracts with Jersey City or plans to contract with Jersey City in the future from contributing to Fulop's gubernatorial campaign. Thus, this will be an important decision for all public contractors in the future. And, as an aside, now that this opinion is public and precedential, there exists a potential for future cases on this issue to include an action under the New Jersey False Claims Act.

Last Updated: April 15 2015

Article by Michael Coco

Fox Rothschild LLP

Conduct Rule 'Unclear' on Underwriters Giving Advisory Services.

WASHINGTON — Market participants said they are concerned and confused about an aspect of the Municipal Securities Rulemaking Board's proposed municipal advisor core conduct rule that some observers are reading as allowing investment banks to provide certain advisory services on deals they underwrite.

Groups representing both dealer and non-dealer MAs said Thursday that they are particularly interested in proposed Rule G-42's provision that would prohibit MAs from acting as a principal in most financial transactions related to their advice to state and local government clients, except certain transactions addressed in the board's Rule G-23 on the activities of financial advisors. That rule prevents dealers from "role switching" and acting as a financial advisor and underwriter on the same deal, and the SEC staff has said that an underwriter relationship is not consistent with a fiduciary relationship.

November 2011 guidance from the MSRB on G-23 states that "it shall not be a violation of Rule G-23(d) for a dealer that states that it is acting as an underwriter with respect to the issuance of municipal securities to provide advice with respect to the investment of the proceeds of the issue, municipal derivatives integrally related to the issue, or other similar matters concerning the issue."

Some market participants said that proposed Rule G-42 and Rule G-23 can coexist as written because G-23 applies to financial advisors and G-42 would apply to municipal advisors — roles that can overlap but which are not necessarily the same thing. G-23 prevents financial advisors from underwriting, while allowing underwriters to provide advice on proceeds and derivatives. Some groups affected by the rule argue the issue is confusing and warrants clarification.

"NAMA is concerned the provisions of Revised Rule G-42, specifically related to principal transactions, may serve to increase marketplace confusion and decrease clarity," said National Association of Municipal Advisors president Terri Heaton. "There is concern that the Revised Rule G-42 conflicts with MSRB Rule G-23 and provides basis for investment banks to provide advice and underwrite same transactions in connection with derivative products and investment of bond proceeds transactions. NAMA supports rulemaking and regulation which serves to eliminate the practice of market participants to serve in dual roles, or to switch roles, in municipal transactions."

Heaton said NAMA is highly supportive of the MSRB's efforts to expedite MA rulemaking, but stressed that the rules should strengthen the market and protect issuers, investors, and the public trust while cutting down on confusion and eliminating inconsistencies in the marketplace.

Jessica Giroux, general counsel and managing director at the Bond Dealers of America, said her group could benefit from some clarification.

"We believe that the revisions to MSRB proposed Rule G-42 will go a long way toward regulating a previously unregulated component of the industry, but the BDA still has some questions as it relates to certain elements in the proposed rule," she said. "In particular, we would like to see more clarity around what it means for a transaction to be considered 'directly related' to another transaction and how Rule G-42 meshes with Rule G-23. While we still have some analysis to do, we hope to be able to work with the MSRB on some interpretive guidance which might alleviate any outstanding concerns."

Leslie Norwood, managing director, associate general counsel, and co-head of the Securities Industry and Financial Markets Association's municipal group also applauded the MSRB's efforts and said SIFMA is pleased with changes from previous drafts that removed a requirement that MAs disclose potential conflicts of interest to investors and other clarifications it made about conflict disclosure.

"We have concerns, however, including our disappointment that the MSRB didn't take our suggestions regarding narrowing the principal transactions ban even further, and suitability for brokerage transactions," she said.

All three groups said they plan to comment to the SEC, which general solicits a fresh round of comments before approving significant rule changes.

THE BOND BUYER

BY KYLE GLAZIER

APR 16, 2015 2:41pm ET

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Thursday, April 23, 2015

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Webinar: Charter School Growth and Its Effect.

Successful Investing in Charter Schools Part II: Evolution of the Sector

Complimentary Web Seminar

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12 pm ET/9 am PT

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Last year, Orrick and the Bond Buyer presented an overview of the charter school facilities bond sector, highlighting transaction fundamentals, sector-level research data, and credit and structure trends.

This year, in Part II of the series, the webinar continues the dialogue by assembling a roster of experienced market participants and policy leaders to present current trends and analysis on the evolution of this fast-growing high yield market sector.

The featured speaker, Nina Rees, President and CEO of the National Alliance for Public Charter Schools, will provide insights regarding the national charter school facilities policy agenda and look ahead to trends affecting the growth of the sector in general. In addition, panelists will review legal and credit issues and trends.

Who Should Attend?

- State and Local Education Finance Officers
- Charter School Leaders, CFOs and Finance Directors
- Institutional Investors seeking High-Yield Opportunities
- Investment Analysts
- Education-Focused Investment Bankers

IRS FSLG Webinar: What is a Fringe Benefit and When is it Taxable?

What: Free Webcast – What Is A Fringe Benefit and When Is It Taxable?

When: April 23, 2015; 12 p.m. (Eastern)

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- Which fringe benefits are taxable
- Special accounting rules for fringe benefits
- What is a working condition fringe benefit
- What is a de minimis fringe benefit
- Taxability of per diem payments
- The accountable plan rules

TAX - NEW JERSEY

In re Council on Affordable Housing

Superior Court of New Jersey, Appellate Division - April 9, 2015 - A.3d - 2015 WL 1582908

Non-profit housing organization sought judicial review of Council on Affordable Housing's (COAH) failure to promulgate regulations defining when affordable housing trust funds were committed.

The Superior Court, Appellate Division, held that COAH's failure to adopt legislatively-mandated regulations warranted enjoinment of COAH's seizure of trust funds.

Council on Affordable Housing's (COAH) failure to promulgate regulations defining when affordable housing trust funds were committed, as required by legislative amendments to Fair Housing Act (FHA) and judicial order, warranted judicial order enjoining COAH and executive branch from seizing any trust funds and requiring the future disposition of trust funds to be directed by courts on case-by-case basis. COAH had taken no action in furtherance of adoption of required regulations in the four years since legislative mandate.

Rauner's Dangerous Talk of Chicago Schools Bankruptcy.

Bankruptcy, as one lawyer familiar with the legal process puts it, works best as kabuki theater.

The actors get all gussied up in outlandish outfits—some as samurai warriors with scary swords and scarier faces. Everyone postures and gestures and engages in exaggerated argument. In the end, they're hopefully all frightened enough that they've worked out a compromise rather than pulling the trigger on Chapter 9.

I sure hope Gov. Bruce Rauner knows it's theater. And I hope that his political foes—particularly in organized labor—know that theater sometimes echoes reality as Chicago Public Schools heads down the horrid path to fiscal collapse.

CPS has been making lots of news lately, almost all of it bad. Even before CEO Barbara Byrd-Bennett was ensnared in a federal corruption probe, the agency faced a $1.1 billion hole for the budget year that begins July 1, a hugely underfunded pension plan and tough negotiations with the Chicago Teachers Union.

Rauner's seeming solution: bankruptcy. "The state has a crisis. The city has a crisis. I'm concerned that (CPS) is going to have to go bankrupt," he told attendees at a school conference April 14. "Bankruptcy code exists to help the organization get out of financial trouble. There's a reason for the bankruptcy code."

The governor has his allies in pushing for a state law that would allow local governments to declare bankruptcy and bust those union contracts Rauner so detests. "I'm not saying it's a good thing, but it ought to be an option," Rockford Mayor Larry Morrissey says. "Sometimes it's better to let a court work it out."

But even Morrissey considers actually doing the deed "a last resort." Others liken it to opening Pandora's box—risky in the extreme.

"It's like yelling fire in a crowded theater," says Bill Brandt, a municipal finance expert who until last month was chairman of the Illinois Finance Authority. "Look at Detroit," which just came out of bankruptcy. "People aren't flocking (to invest) there. . . .You need to use a rifle shot in negotiations, not a cannon."

Civic Federation President Laurence Msall echoes the point. "In every case around the country, the cost of government has gone up and the quality of services has gone down" after bankruptcies, Msall says. "And the risk of contagion is high" as other local governments have to pay more to finance debt, he adds, pointing to research that Detroit's neighbors now pay as much as half a percentage point more to borrow than they should.

Others draw a distinction between private companies, which usually can fire their entire workforce with relatively minor harm to the larger society, and institutions such as schools, which can't just drop math instruction this year because it's unprofitable.

For reasons like that, veteran Chicago bond lawyer James Spiotto suggested in recent state House testimony, government bankruptcy is rare—fewer than 700 cases nationwide since the Depression, only six involving schools. "Chapter 9 is not a solution to the problems of a financially troubled (government). Rather, Chapter 9 is a process" to bring about compromise, he testified.

In that vein, the Civic Federation is pushing a plan to create a state oversight board that could intervene in distressed cases and use its expertise to help local governments come up with a way to solve their problems short of bankruptcy.

Does Rauner get that? Does he understand that scaring unions to the table may be good and effective theater, but actually pushing CPS or other governmental units into bankruptcy might blow up with lots of collateral damage?

No one seems to know. One source familiar with Rauner's ways likens him to the "Animal House" character who has a devil perched on one shoulder and an angel on the other, each urging him to take different steps. Rauner's dislike of unions is so deep he may have lost objectivity.

On the other hand, should the Illinois Supreme Court rule out any real changes when it decides a case soon governing the state's troubled pensions, extreme actions might be necessary. And that's no stage play.

CRAIN'S

GREG HINZ

April 18, 2015

Don't Write Off High-Yield Munis.

Another April 15 has come and gone, and minimizing the taxes you'll owe next year may be top of mind. For most investors, that means checking out municipal bonds. And if you want more income, high-yield munis may look tempting.

The average 12-month yield for Morningstar's high-yield muni category is 4.34%, compared with 2.53% for intermediate municipal bonds. A 4% or 5% payout is impressive enough when the 10-year Treasury yields 1.9%, but for investors in the top bracket, that's equivalent to a 7% yield.

Yet high-yield munis are remarkably controversial. Their "high" yields are still at historical lows, though the risks are not: Rising interest rates threaten, and many investors are still smarting from Puerto Rico, Detroit, and other troubled issuers.

High-yield muni funds often buy low- or unrated munis, says John Miller, co-head of fixed income at Nuveen Asset Management, which manages Nuveen High Yield Municipal Bond fund (ticker: NHMAX) and an exchange-traded index fund, SPDR Nuveen S&P High Yield Muni Bond (HYMB). They are usually revenue-backed, issued to fund a new project that will bring in the revenue to pay back investors.

Even so, “you’re not getting paid to take that risk,” says Nicholos Venditti, who helps run Thornburg Strategic Municipal Income (TSSAX), which has just 6% of its $253 million in assets in high-yield munis—though it can go as high as 50%.

Two summers ago, high-yield munis were much cheaper than they are today. That’s when Richard Bernstein, chief investment advisor at his eponymous firm, started investing. “When we took our position in July 2013, high-yield muni bond yields averaged roughly 250 basis points [2.5 percentage points] over Iraq bonds,” says Bernstein—an indication the market felt U.S. municipalities with poor credit were a bigger risk than the nation of Iraq. “That’s ridiculous.” Even as of last week, “they were still 44 basis points over Iraq bonds,” he says.

At current rates, he says he’s not adding more, but the asset class still makes up nearly 20% of various portfolios.

BUT DON’T WRITE OFF high-yield munis just yet. Krishna Memani, chief investment officer at Oppenheimer Funds, calls them “the best asset class of all for investors who can take advantage of the tax benefits.”

Municipalities, even those with below-investment-grade debt, still have much lower default rates than comparably-rated corporates. Miller is optimistic, noting that state and local tax collections are rising, and economic conditions in most cities are improving. Moody’s Investor Services says municipal finances are better than they were during the 2008 financial crisis or in 2013 when Detroit’s bankruptcy and Puerto Rico’s financial woes rattled the sector.

Investors who want the income bump should go with a broadly diversified, actively managed fund at a company with a deep research process, says Morningstar senior analyst Beth Foos. Most funds use leverage and hedging strategies, which are disclosed on fund Websites and in prospectuses. Nuveen, for example, is hedging a year of duration (to manage interest rate risk) and has 20% total effective leverage (it’s capped at 30%). The greater the leverage, the bigger the risk if the market falls.

T. Rowe Price Tax-Free High Yield (PRFHX), run by Jim Murphy, is the only high-yield muni bond fund to earn Morningstar’s gold ranking. Murphy says he focuses on managing credit risk. He’s avoiding Puerto Rico and tobacco bonds. He likes hospital bonds, which have attractive yields, and some corporate-backed bonds, such as those issued by airlines, and transportation projects.

“Rates are historically low and spreads are tight,” says Murphy, “That is always uncomfortable. But when I look at the global landscape, these are among the highest yields in the world.”

BARRON’S

By AMEY STONE

April 17, 2015 11:46 p.m. ET

Muni Issuance $9.3 bln Next Week, Chicago Schools Face Test.

(Reuters) – A planned $300 million sale by the Chicago Board of Education next week will test the municipal bond market’s appetite for the board’s debt in the wake of recent rating downgrades, a federal probe and unresolved financial problems.

The sale comes as issuance in the market is slated to reach $9.3 billion next week, including notes, its highest since the end of March as the amount of new bonds coming to market this year continues to exceed previous years.

The Chicago Board of Education is planning to sell $296.6 million of general obligation bonds on Tuesday through PNC Capital Markets. The board has been beset by problems in recent weeks, pushing out the spreads on the bond.

Illinois Governor Bruce Rauner reportedly said earlier this week that the nation's third-largest public school system could be headed to bankruptcy, although such a move is not currently allowed under state law.

Some of the board's bonds traded on Thursday at as much as 254 basis points over Municipal Market Data's benchmark triple-A yield scale.

Last month both Moody's Investors Service and Fitch Ratings dropped their ratings to one notch above the junk level, citing the Chicago Public Schools' $1.1 billion projected budget deficit and big unfunded pension liability. The downgrades triggered the termination of interest-rate hedges on variable-rate debt that unless renegotiated could cost the district about $228 million in payments to banks.

A recent sale by the board of $178.1 million of variable-rate general obligation refunding bonds due in 2032 resulted in an eye-popping, two-year initial rate of 4 percent over the SIFMA Index. Just two years ago, the board's bonds were priced at only 75 basis points and 83 basis points over the index.

Next week will see a plethora of small deals. The largest negotiated deal is a $887.9 million sale by Energy Northwest, which is refunding taxable revenue bonds through JP Morgan Chase for its nuclear power plant, the Columbia Generating Station, in Richland, Washington.

The state of California will sell a total of $1.1 billion of taxable and tax exempt general obligations bonds in three competitive deals next week.

Next weeks sales will bring the year-to-date issuance to over $136 billion, 70 percent higher than the same period last year. New issuance in the first quarter of the year represented the strongest start to the year since the first quarter of 2010.

NEW YORK, APRIL 17

(Reporting by Edward Krudy; Additional reporting by Karen Pierog; Editing by Chizu Nomiyama)

Which States Are Holding Their Cities Back?

The dangers of underfunded pensions continue to loom over many cities, and budgets and economic development rank at the top of the list of things that keep mayors up at night. In a survey of municipal finance officers last fall, 80 percent said cities were "better able" to meet financial needs last year, but despite this, revenue was projected to remain flat for 2014.

According to the National League of Cities, states may be keeping their cities from bouncing back from the recession. The League's new report, "Cities and States Fiscal Structures," found that no state has expanded the fiscal authority of its cities since the start of the recession.

The report compares municipal fiscal systems in 50 states by looking at taxing authority, revenue reliance and capacity, state aid, and tax and expenditure limits.

"The … report supports the fact that cities and towns need more fiscal autonomy to balance their budgets, create economic growth and meet their communities' needs," Clarence E. Anthony, CEO and president of the National League of Cities, said in a statement.

Idaho, Maine, Massachusetts, New Jersey and Rhode Island are among the states classified as "behind the pack" in the study, while Alabama, Missouri, New York and Pennsylvania give municipalities more authority, thus putting them in the "ahead of the pack" category.

According to the study:

> City finances have been slow to recover from the recession in part because of continued constraints from states on cities' ability to raise revenues. hinder cities' fiscal autonomy by providing limited access to tax sources, placing caps on tax revenue and cutting aid.

With taxing power, cities continue to demonstrate creative and effective approaches to growth — from Chicago's upcoming polka-dotted intersection makeover to Houston's successful tax credit program to spur downtown development.

NEXTCITY.ORG

BY JENN STANLEY | APRIL 17, 2015

TAX - IOWA

LSCP, LLLP v. Kay-Decker

Supreme Court of Iowa - April 10, 2015 - N.W.2d - 2015 WL 1586184

Ethanol producer, which connected directly to interstate pipeline to obtain natural gas to operate ethanol manufacturing plant, sought review of Department of Revenue's denial of producer's claim for a refund of replacement tax on natural gas delivery, asserting that tax was unconstitutional. The District Court denied producer's constructional challenges. Producer appealed.

The Supreme Court of Iowa held that:

- Replacement tax did not violate Equal Protection Clause;
- Replacement tax did not violate uniform law provision of constitution;
- Framework of replacement tax did not violate dormant Commerce Clause; and
- Replacement tax did not violate extraterritoriality doctrine.

S&P's Public Finance Podcast (The Week In Review and Our Rating Action on Phoenix Civic Improvement's Excise Tax Bonds).

In this week's Extra Credit, Standard & Poor's Senior Director Lisa Schroeer reviews this week's rating actions and Senior Director Matthew Reining explains the rationale behind our rating action on Phoenix Civic Improvement Corp. of Arizona's subordinated excise tax bonds.

Listen to the Podcast.

Apr 16, 2015

NABL Seeks Guidance Projects on Reissuance, Issue Price.

WASHINGTON The National Association of Bond Lawyers would like to see reissuance, management contracts, issue price and other projects on the Treasury Department and Internal Revenue Service 20152016 priority guidance plan.

NABL made its recommendations in a letter sent to the IRS Thursday that was signed by the group's president, Antonio Martini.

Treasury and the IRS use their guidance plan to identify and prioritize tax issues that should be dealt with through guidance. The 20152016 guidance plan will identify projects that Treasury and the IRS intend to work on from July 1, 2015 to June 30, 2016.

Only one of NABL's recommendations guidance concerning the reissuance of tax-exempt and tax-advantaged bonds was not on the 20142015 plan.

Matthias Edrich, an attorney at Kutak Rock and chair of NABL's tax law committee, said NABL has requested guidance on reissuance in the past. The association is specifically interested in guidance on reissuance as it relates to private placements with banks, he said.

NABL also submitted suggestions for the guidance plan that relate to items that are on the plan for 2014-2015.

The current plan includes projects that will update the existing guidance on when management contracts do not give rise to private business use. NABL would like to see updates to the management and service contract safe harbors, with an emphasis on the safe harbors working better with transportation projects and arrangements entered into under the Affordable Care Act, Edrich said.

In October, the IRS released interim guidance on accountable care organizations, which is one type of arrangement encouraged by the ACA. The guidance includes a safe harbor about when participation in certain ACOs won't give rise to private business use.

NABL recommends that Treasury and the IRS provide additional guidance on how the private business use test applies to ACOs and other shared savings arrangements entered into under the ACA. The group submitted comments about the interim guidance in January and it wants the regulators to adjust the safe harbor to work better with ACOs that already exist, Edrich said.

The current plan includes arbitrage regulations. Treasury and the IRS proposed arbitrage regulations in 2007 and 2013. The 2013 proposed regulations included a definition of issue price that has been widely criticized by market participants.

NABL wants Treasury and the IRS to revise and repropose regulations on issue price and to finalize the 2007 proposed regulations and the nonissue price parts of the 2013 proposed regulations.

With issue price, "I think everyone understands that there are still some concepts to work through to make these regulations workable," Edrich said.

Treasury associate tax legislative counsel John Cross has said that the agencies will repropose issue price regulations and handle that topic separately from the other provisions included in the proposed arbitrage regulations.

NABL would also like to see guidance on the definition of a political subdivision. This issue has become a particular concern since the IRS issued a technical advice memorandum in May 2013 arguing that the Village Center Community Development District in Florida is not a political subdivision that can issue tax-exempt bonds because its board does not, and will not, include elected officials.

The current guidance plan also includes regulations on allocation and accounting principles and final regulations on public approval requirements for private activity bonds. NABL is recommending that Treasury and the IRS repropose regulations on these topics. Edrich noted that the proposed regulations in these areas were published a while ago.

In addition to the interim guidance on ACOs, the IRS has also published three other sets of guidance on the current plan regarding reallocation of new clean renewable energy bonds, temporary relief after a declared disaster, and arbitrage rebate overpayments.

The Bond Buyer

by Naomi Jagoda

APR 10, 2015 12:18pm ET

Municipal Issuer Brief: Negative Market Trends to Consider.

Read the Brief.

Municipal Market Analytics | Apr. 14

MSRB Files MA Core Conduct Rule With SEC For Approval.

WASHINGTON — The Municipal Securities Rulemaking Board has filed a proposed rule with the Securities and Exchange Commission that would govern the core conduct of municipal advisors, including their fiduciary duty to put the interests of state and local government clients ahead of their own.

The MSRB filed its proposed Rule G-42 on the conduct of non-solicitor municipal advisors in a 639-page release on Wednesday. Subject to SEC approval, the proposal is a key piece of the MSRB's efforts to regulate MAs under the Dodd-Frank Act's requirement that MAs act as fiduciaries to their issuer clients.

The rule is expected to affect roughly 740 firms and 3,800 individuals, the MSRB said.

"The MSRB believes this rule will further Congress' intent to build a framework of federal oversight for the advice state and local governments count on when considering municipal securities transactions and financial products," said MSRB executive director Lynnette Kelly. "The Dodd-Frank Wall Street Reform and Consumer Protection Act charged the MSRB with developing a comprehensive package of rules and professional qualification standards for municipal advisors, many of whom were previously unregulated at the federal level."

The proposed rule states that MAs owe a fiduciary duty of loyalty to their municipal issuer clients, requiring "without limitation … to deal honestly and with the utmost good faith with a municipal entity client and act in the client's best interests without regard to the financial or other interests of the municipal advisor."

It spells out a less stringent "duty of care" owed to all clients, including obligated persons such as conduit borrowers. The duty of care requires that an MA exercise "due care" in its work, be qualified to provide MA services, make a "reasonable inquiry" into the facts relevant to a client's request or a recommendation before deciding whether or not to proceed, and undertake a "reasonable investigation" to determine that its advice is not based on bad information.

The MSRB requested comment on the rule twice in 2014, initially in January and then again in July. The version filed with the SEC differs from the July version that was put out for comment in several ways.

The newest version states explicitly that, while an MA must document the municipal advisory relationship between the advisor and its client, that documentation does not have to take the form of a contract superseding existing agreements. The MA must, however, put into writing details such as the compensation structure to be used in the relationship, the scope of activities the MA will perform, any required disclosures, and any means for terminating the relationship.

The filed proposal adds that in addition to disclosing to a client any potential conflicts of interest that an MA might have it, the advisor must also disclose its disciplinary history. The MA could fulfill this requirement by directing a client to its Form MA filed with the SEC.

The filed proposal adds guidance to G-42's requirement that MAs not recommend a client enter into a transaction without determining through "reasonable diligence" that the transaction or product is suitable for the client. It states that the MA's suitability analysis can be client-specific, taking into account factors such as the client's financial situation and needs, objectives, tax status, risk tolerance, liquidity needs, experience with muni bond transactions, and more.

Another tweak to the filed version of G-42 concerns what happens when a firm inadvertently provides bond-related advice to a municipality. The previous draft introduced a provision allowing a firm to largely avoid the documentation and conflict of interest disclosure requirements of G-42 so long as it provided the municipality with a disclaimer stating that it did not mean to give that advice and had no intention of continuing an advisory relationship.

The filed version makes clear that the inadvertent advice provision "does not eliminate responsibility for compliance with the SEC's registration rule, other provisions of Rule G-42, other MSRB rules or any other applicable laws; rather, it offers narrow relief from specified requirements of Rule G-42 that are intended to apply to intentional advisory relationships."

The proposed rule would prohibit certain behavior that would be inconsistent with the fiduciary standard, including the MA acting as a principal in transactions with municipal issuer clients that are directly related to a transaction on which it is providing advice. The filed version of the rule makes clear that such prohibited transactions include bank loans of more than $1 million in size that are “economically equivalent to the purchase of one or more municipal securities.”

The MSRB said it expects the SEC to publish the proposal in the Federal Register and ask for public comments. The commission could approve the proposal as is, or require changes. The MSRB is proposing that the rule become effective six months after SEC approval.

The MSRB plans to propose a separate rule governing the conduct of firms who solicit business on behalf of municipal advisors.

THE BOND BUYER

BY KYLE GLAZIER

APR 15, 2015 1:30pm ET

The Payoffs of Financial Transparency.

For years, if residents of Rocklin, Calif., near Sacramento, wanted to review the city’s budget priorities or see how those priorities linked to revenue and spending, they had to sort through numerous PDFs. While the financial information was useful, it wasn’t very user-friendly. And that didn’t satisfy city leaders who prided themselves on Rocklin’s long tradition of transparency, according to Kim Sarkovich, Rocklin’s chief financial officer and assistant city manager.

But when a city posts its financial data in a format that’s easy to find, read and understand, the payoff can be huge. That has certainly been the case with New York City’s Checkbook NYC. The website, which was launched in 2010, lets residents track how the city spends its money through a very navigable dashboard of charts and tables. New York was not the first city to make its financial information so readily available and transparent, but the Sunlight Foundation says it’s “one of the best examples of an open checkbook-style website that we’ve found.”

As a growing number of cities have embraced the financial transparency trend and started creating their own versions of open checkbooks, they’ve either gone the route laid down by New York, using open-source software to develop their own dashboards of fiscal information, or have turned to third parties. These outside companies help with the task of transforming tabular data that often resides in proprietary software programs into the kind that can be viewed, visualized and, in some cases, republished for other purposes.

The U.S. Public Interest Research Group found in 2013 that 17 of America’s 30 largest cities had some kind of online database of expenditures. But just two cities, Chicago and New York, were considered true models of public accessibility, according to the group. Some of the problems with the other fiscal websites, included poor usability, search issues, spotty information on spending, and a lack of information on which companies and nonprofits receive taxpayer funds.

Two years ago, Rocklin launched its own checkbook-style website. Sarkovich, who has been in city government for 23 years, says interest in financial data has ebbed and flowed over the years. But today’s online tools have made financial viewing much more interesting and understandable. For example, she says, when a Walmart store opened in Rocklin many people expected the city’s revenue to jump from the store’s property taxes. “I was able to show them on the website why that wasn’t the case,” says Sarkovich. With the same financial transparency, she was able to show neighborhoods clamoring for a new park just how much it would cost. “They could see how it would affect our revenue," she says.

The ease of use explains the growing popularity of companies like Socrata and OpenGov, which have built public financial websites for more than 250 governments, including Rocklin, in just three years. "The technology is easy to install and everyone gets very excited when they see the charts," says Zac Bookman, CEO of OpenGov.

There are hurdles, however. "I get calls weekly from other cities that want to do what we're doing, but when I explain the process, some city officials realize the amount of work involved in closing their books in order to display accurate and up-to-date financial information," says Jason Johnson, Rocklin's budget and technology manager.

In addition to the initial work, there are upfront costs. Rocklin currently pays $1,800 a year to display its annual financial data, but will begin spending $3,600 when it starts updating financial data on a monthly basis. Larger cities spend more: New York spent $7 million developing Checkbook NYC.

Financial transparency, in the view of advocacy groups like the Sunlight Foundation, is fundamental to democracy. City officials agree, although they see it in more practical terms. "These dashboards," says Sarkovich, "allow citizens to better understand the mechanics of how city government works."

Governing.com

Tod Newcombe Tod Newcombe | Senior Editor

APRIL 16, 2015

Another Sign of Improving Health of Muni Market.

A lot more municipal bonds are coming to market this year than last, judging by the latest quarterly figures on requests for new CUSIP numbers gathered by S&P Capital IQ. CUSIP stands for the Committee on Uniform Securities Identification Procedures, which issues nine character codes used to identify stocks and bonds.

Municipal bond CUSIP orders jumped by 51% in the first quarter of 2015 to 3,689 requests from 2,446 in the same period in 2014.

In March alone, there were 1,438 request — the most monthly orders since May 2013 when 1,569 CUSIPs were ordered.

"It's a positive indicator for the public finance arena," says Richard Peterson, senior director at S&P Capital IQ.

Last year was a down year in overall CUSIP requests for munis. In 2014 there were 12,749 orders down from 13,152 in 2013. If 2015 stays at its current pace, it would easily top that number.

Texas had the most orders for municipal debt CUSIPs, with 460 in the first quarter. That was a 44% increase from 321 orders in 2014.

Barron's

By Amey Stone

April 17, 2015

Puerto Rico's Power Utility, Creditors in Testy Public Battle.

(Reuters) – Negotiations between Puerto Rico’s troubled electric power authority and a group of its creditors turned into a testy public exchange on Tuesday as an agreement to prevent a possible messy default by Wednesday’s deadline proved illusive.

The public dispute, highly unusual in restructuring negotiations that are normally conducted behind closed doors, shows how difficult talks have become as the sides attempt to resolve the fate of over $9 billion in debt.

Lisa Donahue, the utility’s chief restructuring officer, told a Puerto Rico Senate hearing on Tuesday that a $2 billion bondholder plan to restructure the utility, PREPA, contained overly “aggressive” elements that are unlikely to work.

Donahue’s testimony came shortly after PREPA’s forbearing bondholders, a group led by Franklin Advisers and OppenheimerFunds, offered to extend a forbearance agreement for another 30 days after a previous 15-day extension was reached on March 31.

The forbearance agreement, which stops creditors from calling defaults during restructuring talks, expires on Wednesday.

PREPA’s board said late on Tuesday it had still not agreed to the extension and that creditors had sent the extension proposal at 10 p.m. on Monday and released it publicly on Tuesday morning without notice.

“The bondholders’ public description of the proposal is incomplete, leaving out material details,” the president of PREPA’s board, Harry Rodriguez, said in a statement. “No agreement has been reached, and it is unclear whether the proposal has the support of all of the forbearing creditors.”

Donahue said demands that creditors be paid in full and on time were unlikely to work as a starting point for negotiations, although that may be a possible outcome. She also said certain cost estimates were too low and that the plan forecasts an unlikely increase in demand.

“There are elements of the plan that can’t work,” Donahue told the Senate hearing. “I am disappointed the plan was made public before we had a chance to vet it.”

Negotiations became public after creditors released their restructuring plan earlier this month in a step that appeared to be aimed and putting pressure on PREPA to reach an agreement.

Donahue’s position is becoming increasingly difficult. In addition to having to contend with rebellious bondholders, she faced criticism during her Senate hearing from politicians who questioned the cost of restructuring, a lack of disclosure, and her experience of restructuring public utilities.

Creditors said their offer to extend the agreement included a commitment to continue working on a capital investment and rate plan, a timeline for further action, and third party review with an opportunity for public review.

A source close to the forbearing creditors acknowledged relations with PREPA are frosty but said extending the agreement was the best option. The person said Donahue's apparent rejection of the notion that bondholders be paid in full and on time as a starting point for any plan had come as a surprise given her previous statements.

Failing an extension, bondholders could seek remedies, including eventually seeking a court-appointed receiver. While most bondholders might not find that option appealing given the destabilizing effect it could have on municipal bond markets, the chances of a "renegade" group of bondholders doing that would increase, the person said.

Still, Donahue said she is "optimistic" an agreement can be reached with the creditors. She said that PREPA has committed to responding formally to the restructuring plan by April 24 and would deliver a more comprehensive plan by June 1.

By Edward Krudy

(Additional Reporting by Nick Brown; Editing by Meredith Mazzilli and Gunna Dickson)

Tue Apr 14, 2015 6:24pm EDT

Tobacco-Bond Deals Revived as U.S. States Conjure Up Budget Cash.

Almost two decades after U.S. states settled with tobacco companies on payments for health-care costs, officials are still finding new ways to tap the revenue stream to close budget gaps and fund programs.

Bond deals in the past 14 months from New Jersey and Rhode Island, and a planned offer from Louisiana, show how cash-strapped states are getting creative in using the dwindling money flowing from the 1998 accord. Yet the moves are drawing criticism from holders of older debt and officials who view the deals as budget gimmickry.

OppenheimerFunds Inc. sued Rhode Island, claiming it was diverting money from earlier bondholders. In New Jersey, Democratic lawmakers said the state's move to pledge tobacco revenue to investors in exchange for almost $92 million was a budget stunt. Louisiana's plan for more debt backed by cigarette cash is "an act of desperation," according to its treasurer.

"You're seeing aggressiveness here because it's almost like there's no downside for the state to do this," said Paul Ricotta, a partner in Boston at law firm Mintz Levin who specializes in distressed debt and restructuring. "It's a really painless way for politicians to get more cash."

Tobacco Tradeoff

In the settlement, Lorillard Inc., Philip Morris USA and Reynolds American Inc. agreed to make annual payments to states in perpetuity to settle liabilities for health-care costs tied to smoking. States and cities have about $94 billion of securities backed by the revenue, data compiled by Bloomberg show.

The sales gave officials cash upfront and let them offload the risk that the money would dry up as smoking rates drop. Most of the bonds get junk grades.

New Jersey, which sold about $7 billion of tobacco bonds from 2002 to 2007, adopted a new approach in March last year. Grappling with a budget shortfall, the state pledged its remaining settlement payments from 2017 through 2023 to some debt due in 2041. In return, it got $91.6 million for expenses.

The bonds rallied to an average of 24 cents on the dollar by the end of March 2014, from 9 cents the previous three months, Bloomberg data show, as investors bet the debt will be repaid on time. Standard & Poor's raised it 10 steps to A-, seventh-highest, after the agreement.

Paved Way

"New Jersey kind of paved the way for other people to say there are ways to look at restructuring outstanding bonds," said Kym Arnone, a managing director who heads tobacco securitization in New York at Barclays Plc, which handled the deal.

Rhode Island's tobacco-bond offer last month showed the risk perceived by investors. OppenheimerFunds questioned the deal, partly because the state, which projected a $190 million deficit for next fiscal year, received $30 million of the proceeds. A judge ruled in January that the issuer was within its rights to adjust the payments.

The money manager said in a statement that its lawsuit "increased value over the originally proposed bond sale."

Kimberly Weinrick, an OppenheimerFunds spokeswoman, declined to comment further.

Rhode Island tobacco bonds maturing in June 2025 priced to yield 2.99 percent, about 0.8 percentage point more than benchmark munis, in line with similarly rated debt.

Risk Seeking

Investors have sought tobacco bonds as interest rates in the $3.6 trillion municipal market hover close to five-decade lows. Junk-rated tobacco securities rallied 11.5 percent in the past 12 months, compared with 5.9 percent for all munis, Barclays data show.

"States that securitized portions or all of their Master Settlement Agreement payments in the past are looking at their outstanding debt portfolio and seeing if they can take advantage of the current low rates," said Thomas Green, head of infrastructure finance in Citigroup Inc.'s public-finance unit. The bank led underwriters on Rhode Island's sale.

Louisiana may be next. Its tobacco agency has used 60 percent of its revenue stream to back bonds, said Kristy Nichols, the commissioner of administration. It's seeking approval to use the remainder for a deal as large as $875 million to fund scholarships and coastal restoration, she said. Citigroup would lead underwriters.

Money Grab

"Market rates are good, the spreads are good, and tobacco revenue overall has some risks," Nichols said. The state would consider the deal if it can use the proceeds over seven or eight years, instead of in one shot, she said.

John Neely Kennedy, Louisiana's treasurer, said in an interview that he worries the estimated $1.6

billion deficit for the year starting July 1 will pressure officials to use the funds as a one-time plug.

“They’re trying to rush this through so they can get their hands on the money to spend it,” Kennedy said. “The administration can’t give any assurance beyond their word that they won’t dump the money into their operating account.”

Louisiana last issued tobacco debt in 2013 for refinancing. With investment grades from S&P and Fitch Ratings, the securities differ from those that Moody’s Investors Service projects will default, including bonds from Ohio and Virginia.

In the seven years through 2006, cigarette shipments fell 1.7 percent annually on average, National Association of Attorneys General data show. The pace of declines almost tripled in the following seven years. At a 4 percent annual decline, four of five bonds would default, according to Moody’s.

Bondholders want to be paid on time. States want to make the most of tobacco funds. That’s why they’ll come to an agreement, Arnone said.

“Absent an additional infusion, restructuring or inflation igniting in the future, some of these outstanding bonds are not going to be able to withstand the huge smoking declines that have occurred,” she said. “People are going to be looking at alternatives to refinance more tobacco bonds.”

Bloomberg

by Brian Chappatta

April 12, 2015

[He Made $3.8 Million in Fees in an Odd Little Corner of the Muni Bond Market.]()

From a white ranch house in the Florida Panhandle, Ed Gray presides over a municipal-bond money machine.
The former mayor of the city of Gulf Breeze has turned the riskiest segment of the municipal-bond market into a boon for the Pensacola suburb, which has built recreation centers and boosted reserves with $11 million in fees charged on bond sales and loans since 2002. The payments also benefited Gray: He was paid $3.8 million to arrange the deals.

Capital Trust Agency, a unit set up by the city in 1999 and run by Gray, has issued more than $1.5 billion in tax-exempt debt for apartment complexes and assisted-living facilities around Florida, private jet facilities in Texas and Mississippi, and Hard Rock hotels for the Seminole Indian tribe.

Called conduits, public agencies like Capital Trust operate in a little-regulated corner of the $3.6 trillion municipal market. They issue bonds for private companies and nonprofit organizations that would otherwise lack access to tax-exempt borrowing. Local taxpayers benefit from the fees without being on the hook to repay the bonds, which are often used for risky real-estate projects.

“You have local debt being issued without adequate oversight,” said Christopher “Kit” Taylor, former executive director of the Municipal Securities Rulemaking Board, the industry’s regulator. “The state should never be permitting this sort of thing.”

More Defaults

Conduit bonds make up as much as 30 percent of the market but account for almost 60 percent of defaults, according to Matt Fabian, a partner at Concord, Massachusetts-based Municipal Market Analytics. The U.S. Securities & Exchange Commission in 2012, noting the default rate, sought to require conduit borrowers to disclose more about their finances. The proposal failed to advance in Congress.

All 50 states have conduit issuers, according to the Columbus, Ohio-based Council of Development Finance Agencies, a trade group. Florida is one of seven that allow some conduits to issue debt for out-of-state projects, according to the CDFA.

In December, Phoenix's Industrial Development Authority sold $107.4 million in tax-exempt bonds for school facilities in Guam, more than 6,000 miles (9,700 kilometers) away. The Phoenix agency received $101,177, which will go toward small-business and community-lending programs, according to Lydia Lee, an administrator. The bonds were rated B+, four levels below investment grade.

IRS Cap

Under Internal Revenue Service regulations, private entities can issue tax-exempt bonds as long as they meet public purposes. The federal government sets a limit on the amount of tax-exempt debt issued on behalf of private entities, giving each state an allocation based on population. This year, the total cap is $35.2 billion, according to the Bond Buyer.

Investors are aware that debt issued by conduits carries more risk than bonds backed by the taxing power of state and local governments, and the securities are priced accordingly, said Jason Rittenberg, director of research at the CDFA. Deals are vetted by lawyers to ensure that they comply with IRS rules, and by banks underwriting the bonds, he said.

"It's a different borrower class," Rittenberg said. "These deals are required to be sold to investors aware of how the market operates."

Gulf Breeze Story

Gulf Breeze sits on a land spit that juts into Pensacola Bay, 680 miles northwest of Miami. The affluent suburb of 5,800 is known for its beaches, including the Gulf Islands National Seashore.

The City Council created the Capital Trust Agency with the town of Century, under a Florida statute that allows two or more counties or municipalities to jointly issue debt.

The city hired Gray's firm, Municipal Advisory Services, to run Capital Trust, which has two other employees in the city-owned ranch house, an analyst and administrative assistant. Mayor Matt Dannheisser, who was then city attorney, was its lawyer, and the city manager worked as a paid consultant.

Capital Trust attracted borrowers by charging lower fees than other conduits and by being more efficient, Dannheisser said. The agency also issued bonds for air-cargo facilities and charter schools.

Since 2002, Capital Trust and another financing arm, Gulf Breeze Financial Services, contributed an average of $850,000 annually to the city budget, equal to about 50 percent of annual property-tax collections. A developer contributed $500,000 from the sale of an apartment complex whose purchase was financed by Capital Trust to scholarships for low-income students in the Pensacola area.

IRS Scrutiny

About $81 million of debt issued through the agency, about 5 percent, has defaulted, according to data compiled by Bloomberg. The rating on an additional $50 million of bonds issued for Million Air Inc., a Houston-based jetport operator, was cut in December to B3, six levels below investment grade, by Moody's Investors Service. Investors may declare the bonds in default, the rating company said.

In 2010, officials in Lauderhill, Florida, declared unsafe for residents a 352-unit apartment complex whose purchase was financed by Capital Trust, according to the Florida Sun-Sentinel. Another property in Tampa had "numerous" fire code violations, according to the Tampa Tribune.

Capital Trust deals have also drawn scrutiny from the IRS, which looks into whether the tax exemption is being misused. In 2007, Capital Trust settled an IRS audit of $410 million of bonds sold from 2002 through 2004 to finance Hard Rock hotels at two Seminole casinos.

The IRS said the bonds shouldn't have been tax-exempt because the hotel and convention center weren't used "in the exercise of an essential governmental function." Capital Trust paid $100,000 to settle the case while others in the deal, who weren't identified, paid $10 million, according to a Capital Trust financial statement.

Gary Bitner, a spokesman for the Seminoles, said he couldn't immediately respond to what amount, if any, the tribe paid to the IRS.

Stopped Payments

In 2004, Capital Trust settled with the IRS over a $220 million bond issued to refurbish derelict apartments, which produced $12 million in fees for banks and advisers even though the proceeds were never spent.

"Examinations by the IRS of selected project financings have never resulted in the bonds being declared taxable," Gray said in an e-mail. "We have always cooperated with regulatory agencies in concert with the borrowers to properly answer inquiries and reach satisfactory settlement on any tax questions raised."

Last year, city officials discovered that in 2006 Gray had stopped making required annual reimbursements to the city. Gray, 63, who was elected mayor in 1984 and retired in 1992, said it was an oversight and repaid $122,250.

The lapse led Gulf Breeze officials to bring in an outside auditor to review his compensation. Based on the auditor's interpretation of his contracts, Gray's pay since October 2002 should have been $500,000 less.

Incentive-Based

"I've been quite satisfied with compensation," Gray said in a telephone interview. "The contract is incentive-based. I didn't get paid if we didn't have success."

He said the auditor misinterpreted contract language. City management and Capital Trust's board always approved his pay, he said. Dannheisser, the mayor, declined to comment on whether Gray was overpaid, citing Florida rules regulating attorneys.

Dannheisser made about $627,000 serving as counsel on Capital Trust deals from 1999 through 2014, according to bond-closing documents obtained under a public-records request.

The city last week approved a new contract for Gray, though it lowered his pay.

Joseph Henderson, the mayor pro tem, hasn't been able to assemble a majority of council members to recoup money from Gray.

"Sometimes we think there are individuals within this city that are too big to fail, and that's unfortunate," Henderson said.

Bloomberg

by Martin Z Braun

April 14, 2015

Florida's Hurricane-Free Stretch Has Insurer Bracing for Storms.

Florida hasn't been hit by a hurricane since 2005, the longest stretch in more than a century. Its state-run property insurer isn't taking any chances.

Even though forecasters predict this year will produce the fewest named Atlantic storms since 1997, Citizens Property Insurance Corp., which provides coverage when other insurers won't take the risk, is selling as much as $1 billion of municipal debt to raise cash just in case. It would be the insurer's first bond sale in three years.

With hurricane season set to start June 1, Citizens is taking advantage of interest rates close to generational lows to bolster its claim-paying ability. Investors in the insurer's tax-exempt bonds welcome the steps toward a sturdier balance sheet: One storm is all it takes to rack up billions of dollars of expenses.

"I'm not sure they can predict what's going to happen with the weather," said Justin Land, director of tax-exempt management in Naples, Florida, at Wasmer, Schroeder & Co., which oversees about $5.3 billion. "Money is so cheap this is a good time to finance their pre-event capital."

Wilma's Toll

Wilma was the last hurricane to strike the state, in October 2005. It killed five people in Florida and caused $20.6 billion of damage, according to a National Hurricane Center report. The state hasn't gone this long without a hurricane in records going back to 1851, NHC data show.

In its last bond sale in 2012, Citizens told investors that it writes policies in areas that "appear to be at the highest risk" of hurricanes and sinkholes, according to offering statements. If a storm produces enough claims to consume reserves, Citizens can ask for a surcharge on property-insurance policies sold statewide, including those from other companies, to repay its bonds. One risk is that regulators don't grant the surcharge.

The exposure to the weather can generate higher yields for investors. In the 2012 tax-exempt sale, 10-year Citizens bonds priced to yield 3.77 percent, or about 1.8 percentage points above benchmark securities, data compiled by Bloomberg show. The bonds carry an A+ grade from

Standard & Poor’s, the fifth-highest level.

Storm Wait

“They tend to trade a little wider based on Florida’s location and the potential that they could get a hurricane or two,” said Paul Brennan, a money manager in Chicago for Nuveen Asset Management LLC, which owns Citizens bonds among its approximately $100 billion of munis. “It’s only a matter of time before they get another hurricane.”

This year, partly because of cooler Atlantic waters, Colorado State University researchers predict seven named storms, compared with the 30-year average of 12, with three reaching hurricane strength of at least 74 miles (119 kilometers) per hour. The season lasts through Nov. 30.

The insurer still needs cash for possible claims, in part because it plans to pay off about $2.6 billion of debt, most of which matures within three years.

Most of the deal will be tax-exempt and fixed-rate, maturing in three to 10 years, Jennifer Montero, the chief financial officer, said in an interview. It will probably price next month, she said.

“This allows us to take advantage of the yield curve and lock in rates at historically low rate levels,” she said.

Risk Reduction

The insurer determines reserve levels based on expected losses from a storm that has a one-in-100 chance of happening.

The lack of storms has drawn competition from other insurers, reducing residents’ reliance on Citizens, which has been trying to move customers off its books to reduce risk.

With storms bypassing the state, the company earned net income of more than $1 billion the past two years, raising its surplus to $7.4 billion at year-end, compared with a deficit of $1.8 billion at the end of 2005, according to financial statements.

The value of property it insures that could be subject to losses has fallen to less than $200 billion, from $518 billion in 2011. The number of policyholders has dropped to 600,000 from a peak of about 1.5 million in 2012 after a string of storms in 2004-2005. It may sink to 450,000 if no storms hit, according to the company.

With less potential for claims, the planned bond sale is about a third smaller than in 2012.

The bonds are “a very acceptable risk,” said Land at Wasmer, Schroeder. The company owns Citizens debt and will consider the new bonds.

Bloomberg

by Darrell Preston

April 15, 2015

Bloomberg Brief Municipal Market Weekly Video - 04/16/15

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

Watch the Video.

April 16, 2015

Muni Mutual Funds See Longest Stretch of Outflows in 15 Months.

U.S. municipal-bond mutual funds suffered net withdrawals for the third straight week, the longest stretch in 15 months, as individual investors raised cash for tax bills.

Investors pulled out about $486 million in the week through April 15, the most since July, according to Lipper US Fund Flows data released Thursday. They've yanked a combined $820 million over the three-week span.

The outflows are curbing returns: Tax-exempt bonds have gained about 0.1 percent this month, compared with 0.2 percent for Treasuries and 0.5 percent for investment-grade corporate securities, Bank of America Merrill Lynch data show.

Muni mutual funds experienced weekly outflows seven times in 2014, as state and local debt gained in each month of the year for the first time in at least 25 years. The last time investors withdrew money for three straight weeks was the stretch through Jan. 8, 2014, at the end of a record wave of outflows that started in 2013 as interest rates rose and Detroit filed for bankruptcy.

If history is any guide, the municipal market will rally to end the month. Tax-exempt debt hasn't declined in April since 2006, Bank of America data show.

Benchmark 10-year yields in the past five years have fallen by 0.22 percentage point on average during April, more than any other month, data compiled by Bloomberg show. Through April 16, they've declined 0.02 percentage point.

Bloomberg

by Brian Chappatta

April 16, 2015

BDA Submits Comment Letter to MSRB Re: Approval to Enhance Post-Trade Data Available on EMMA.

The BDA submitted a comment letter to the MSRB regarding their requested approval from the SEC for a proposal to expand the post-trade data displayed on EMMA.

Amendments to the MSRB's Real-Time Transaction Reporting System (RTRS) would require dealers to indicate trades executed on an alternative trading system and trades involving non-transaction based compensation arrangements, among other changes. You can find our final letter here.

The BDA's letter includes discussion on the following:

- Support for increased transparency
- Concern regarding additional associated reporting costs
- Request for nine-month testing period

04-17-2015

New BDA Chair Steve Genyk Talks About Agenda, Priorities.

WASHINGTON – Bond Dealers of America is stepping up efforts to educate its members on regulatory compliance as well as electronic trading and to get them to meet with more lawmakers and staff on Capitol Hill, said new board chairman Steve Genyk.

Genyk, a managing director and the head of fixed-income capital markets at Janney Montgomery Scott in Philadelphia who became BDA chair on March 1, spoke about the group's agenda and priorities during an interview with The Bond Buyer.

Genyk said the trade group for middle-market dealers has been trying to provide educational resources in recent months to add more value for its more than 50 member firms.

"Joining a trade organization like the BDA is an expense for firms," he said. "We have to constantly strive to provide value to the membership."

BDA has begun some new initiatives to that end, he said.

"We're doing compliance training webinars now, which have been attended through WebEx by a lot of people," Genyk said. "Three-hundred people participated in the due diligence webinar, which is only available to members. The webinar focused on "the evolving need to do due diligence and the regulators' focus on the importance of due diligence," he said.

"We've recently formed an electronic trading and technology committee," Genyk continued. "Electronic trading is something that in the retail world has been pretty prevalent for a while now. It's becoming talked about more and more in the institutional world."

"A lot of our membership really benefits from learning more and becoming more facile with the technology aspects."

Genyk said the committee can help members learn about the alternative trading systems that are operating and how to integrate electronic trading into their firms — something smaller firms may not be familiar with.

Regulators want to encourage use of ATS', but Genyk said they have the potential to alter the market.

"The ATS' will continue to play a role in municipals, particularly as it relates to retail," he said, but added it's not clear what their growing role will mean for the market. "This is an evolving area of the marketplace that many of our members don't know about," he said.

BDA has also started monthly “member fly-ins,” in which member-firm officials come to Washington and meet on Capitol Hill with federal lawmakers and senior staff from the key committees involved in muni-related and other issues.

“This type of work is really, really important because those in Washington who are making rules and regulating our industry, they need to hear from us directly and they need to hear from the practitioners directly,” Genyk said.

The fly-ins “have been really, really well-received by Washington and by membership,” Genyk said.

Two legislative issues that BDA is focusing on are preserving the tax-exemption for municipal bonds and increasing the annual issuance limit for issuers of bank-qualified bonds.

The exemption is “very, very important,” said Genyk. “I think the notion of education around the tax exemption is critical.”

Recently, as part of a member fly-in, George K. Baum & Company executive vice president Guy Yandel participated in a roundtable for the Senate Finance Committee tax-reform working group on community development and infrastructure that included staff from that panel and from the Joint Committee on Taxation. JCT staff had technical follow-up questions. After the roundtable, Yandel and BDA met with staff in lawmakers’ offices and provided more basic information about the importance of the muni exemption, said BDA general counsel and managing director Jessica Giroux, who also participated in the interview.

BDA initiated the Municipal Bonds for America coalition, whose members have conversations weekly and meet in person once a month. The coalition plans to hold more “muni bonds 101 seminars” for congressional staff members, Giroux said.

Last year, the group held a seminar on the House side, and the previous year, it held one on the Senate side. This year, the group wants to hold seminars on both sides of Capitol Hill because there has been a lot of interest in learning about the exemption and tax reform, Giroux said.

“Tax reform isn’t imminent, but it’s more or less on everybody’s radar consistently,” she said.

Bank-Qualified Bonds

BDA also has been pushing for Congress to pass legislation to increase the annual issuance limit for issuers of bank-qualified bonds.

Under current law, banks can buy the bonds of issuers who issue $10 million or less of tax-exempt bonds per year and deduct 80% of their carrying costs, the interest expense they incur from purchasing or carrying an inventory of tax-exempt bonds. The $10 million limit was temporarily increased to $30 million under the American Recovery and Reinvestment Act, but that expired at the end of 2010. Outside of that temporary increase, the bank-qualified limit has not been raised or indexed to inflation.

The bank-qualified bond issue is “right in our members’ wheelhouse” because it pertains to small and medium-sized issuers working with small and medium-sized underwriters, said BDA chief executive officer Mike Nicholas, who was on-hand for the interview as well.

BDA is working with the Independent Community Bankers of America, the Government Finance Officers Association, and other state and local government groups on the bank-qualified bond issue. One of the reasons BDA started its member fly-in program was to have its members talk about the benefits of increasing the bank-qualified limit, Nicholas said.

Bipartisan legislation to increase the bank-qualified limit to $30 million and index it to inflation has been introduced several times in past years in both chambers of Congress, but has not yet been offered in this Congress. It was offered in the House last year. There is still interest in that bill, which was called the Municipal Bond Market Support Act and was sponsored by Rep. Tom Reed, R-N.Y., Rep. Richard Neal, D-Mass., Giroux said.

On the Senate side, Sen. Mike Crapo, R-Idaho, and former Sen. Jeff Bingaman D-N.M., introduced a version of that bill in 2011. Bingaman retired from the Senate in 2013, and BDA and other groups are looking for a new Democratic sponsor of the bill so that it can be bipartisan, said Giroux said. Having bills be bipartisan helps the legislation move faster in Congress and attract more cosponsors, she said.

President Obama proposed increasing the bank-qualified limit to $30 million in his fiscal 2016 budget request. Last year's tax-reform proposal by former House Ways and Means Committee chairman Dave Camp, R-Mich., would have done away with bank-qualified bonds.

On the regulatory side, Genyk said, BDA is focused on what it feels is the disproportionate impact of rules and enforcement actions on small and medium-sized firms.

"You're going to hear that from us over and over again," Genyk said, making the point that while certain costs may be easily absorbed by major Wall Street firms, they are typically a burden for BDA members.

"The simple example is MCDC," Genyk said, referring to the Securities and Exchange Commission's Municipalities Continuing Disclosure Cooperation initiative. Launched about one year ago, the MCDC offered both dealers and issuers a chance to take advantage of lenient settlement terms if they self-reported instances in the previous five years in which the official statements of their bond deals falsely claimed the issuer was in full compliance with its continuing disclosure agreement. The civil penalties for dealers under the initiative were structured based on the sizes of their bond deals, but capped based on the size of the firm. The maximum total voluntary settlement penalty for a dealer was $500,000, but was capped at $100,000 for underwriters who reported less than $20 million of revenue in fiscal year 2013.

A $500,000 settlement for a medium-sized firm is far different monetarily than a $500,000 settlement for one of the "Big Five," Genyk said.

Another example is the cost of overhauling automated systems to comply with new Municipal Securities Rulemaking Board regulations, such as its recently-approved best execution rule.

"That expense is far greater to a small or medium-sized firm than it is to a large firm that has more revenue over which to spread the expense," he said.

MA Rules

Genyk said there is a "lack of uniformity" with how BDA members are interpreting what is or is not permitted under the SEC's municipal advisor registration rule, which was adopted in late 2013. The rule implements the 2010 Dodd-Frank Act's requirement that firms giving bond advice to state and local issuers owe those municipalities a fiduciary duty to put issuers' interests ahead of their own. The roughly 18 months since the rule's adoption have been marked by conversations about what behaviors dealers can engage in without having to register as MAs, something the SEC has said would preclude them from underwriting a bond issue resulting from their advice. Genyk said BDA firms view the boundaries differently.

"I don't think that's anybody's fault," Genyk said. "That's just the nature of a new rule."

Giroux said BDA's membership encompasses a diverse range of business practices and that the irregularity in interpretations of the MA rule has emerged as firms have been reworking their written policies and procedures pursuant to the rule. BDA is doing its best to keep members educated about the rule, Giroux said, but its actual application is up to the firms themselves.

Officials from the SEC's muni office have said repeatedly that they have no concrete plans to issue a third round of guidance on the MA rule, but also have not ruled it out. Giroux said BDA would always consider that helpful.

"We'd love to see additional guidance," she said.

Genyk also talked about his own background and his views on the challenges the muni market faces. Born in Detroit and raised in Ann Arbor, Mich., Genyk went on to earn a bachelor's degree at Wesleyan University in Connecticut. He moved to New York and began a career in corporate finance, initially at Morgan Guaranty Trust Company, now J.P. Morgan, and Shearson Lehman Hutton, which ultimately became Lehman Brothers.

After about three years, Genyk proceeded to earn a master's degree in government administration at the University of Pennsylvania in Philadelphia, inspired by his family's track record of public service. His father worked as a probation and corrections officer in Michigan, Genyk said, while his brother works for the Department of Justice and his mother and sister have each been social workers.

"I come from a family of public servants, literally everybody but me," said Genyk.

Genyk entered the muni world through an internship with the former advisory firm, PG Corbin and Co. while at graduate school, and decided to pursue a career in financial services after graduation. He worked at advisory firm A. H. Williams in Philadelphia for about five years before joining Legg Mason in the same city for more than eight years, rising to become co-head of public finance. After a short stint at Bear Stearns in 2005-2006, Genyk said, he saw the chance to fulfill a personal goal of working in the public sector for the Philadelphia Industrial Development Corporation. After two years in 2008, he joined Janney, following Legg Mason's Timothy Scheve, who had become president and chief executive officer of Janney the previous year.

Moving forward, Genyk said he sees the long-standing low interest-rate environment as posing a challenge for the muni industry.

"Persistently low interest rates are a challenge for the investors out there," Genyk said. "Good for the issuers, a challenge for the investors. A rising interest rate, when that happens, is something the entire industry is going to have to pay attention to."

"Will new money issuance increase as the economy expands?" he asked. Or will we remain sort of mired in the post-Great Recession anti-tax, anti-spend mode?"

Genyk said distressed muni issuers that have made headlines such as Detroit and Puerto Rico are "distractions for the industry" but are also important, particularly because of how widely-held Puerto Rico's bonds are. He said the industry should also be looking at the ongoing issue of pension underfunding, which the SEC has made clear in both enforcement actions against multiple states and in speeches from commissioners, that it is watching very closely.

“We’re cautious.” Genyk said. “We want to continue to stay focused on making sure that the regional middle market firm’s voice is heard in a marketplace that is changing due to the market and due to increased regulation.”

THE BOND BUYER

BY KYLE GLAZIER and NAOMI JAGODA

APR 13, 2015 11:06am ET

NLC: Cities and State Fiscal Structure.

The fiscal systems of cities are defined by the states in which they are located. These systems can create an environment that either allows municipalities to fund their share of resident needs and to thrive economically or constrains the ability of cities to balance budgets and deliver basic services.

Cities and State Fiscal Structures examines how the key components of these systems (fiscal authority, revenue reliance/capacity, state aid and tax and expenditure limitations) are structured across states.

View the Report.

Muni-Bond Insurance Actually Pays Off, Report Says.

The much-maligned bond-insurance industry has one thing going for it: The insurers pay up most of the time.

That’s the conclusion of a new report, planned to be released Thursday, from Kroll Bond Rating Agency. Analysts at Kroll identified 29 cases of insured municipal-bond defaults from 2008 to the present, and said the insurers are paying investors in full and on time in 26 of those cases.

In only three instances, certain bond insurers missed payments or did not pay in full. But those instances are high-profile cases, including Detroit, Jefferson County, Ala., and a struggling monorail system in Las Vegas.

“We believe that these defaults, because they were so highly publicized, have overshadowed a generally favorable record on muni bonds by the guarantors,” said Karen Daly, senior managing director at Kroll, in an interview.

Before the financial crisis, roughly 50 percent of new municipal bonds carried bond insurance, allowing issuers to get lower interest rates because the insurers had high credit ratings. That figure fell precipitously, however, as the insurers faced losses on mortgage-backed securities during the crisis and were downgraded by credit rating firms.

About 6% of new municipal bonds carried insurance last year, according to Thomson Reuters data. Some investors have said that whether a bond carries insurance factors little into their investment decisions.

The Kroll report, however, indicates that bond insurance has value. The firm gives ratings to two affiliates of Assured Guaranty Ltd.AGO -0.61%, as well as National Public Finance Guarantee Corp., a subsidiary of MBIA Inc.MBI -2.05% All are rated double-A-plus, the second highest grade.

"What we're trying to explain to the markets is that the record of bond insurers paying municipal claims is in fact better than perception," Ms. Daly said.

In its report, Kroll defined a default as an instance where an issuer missed a principal or interest payment, and did not include draws on reserve funds or breaches of certain financial covenants.

Kroll said "partial payment" was made by Financial Guaranty Insurance Co., or FGIC, and Syncora Guarantee Inc. in Jefferson County, by FGIC in Detroit and by Ambac Assurance Corp. in connection with the Las Vegas monorail project. Other insurers, however, made full payments in the Detroit and Jefferson County situations.

THE WALL STREET JOURNAL

By MIKE CHERNEY

Apr 16, 2015

Fed Is Expected to Shift on Muni Bonds.

WASHINGTON—In a change of heart, the Federal Reserve will allow big U.S. banks to use some municipal bonds to meet new rules aimed at ensuring they have enough cash during a financial-market meltdown, according to people familiar with the matter.

The Fed and two other bank regulators had excluded debt issued by cities and states when approving liquidity rules in September, part of their post-2008 efforts to fortify banks against market turmoil.

But the Fed's decision is only a partial victory for the banks, state officials and lawmakers who had pushed for the change. The other two regulators, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corp., currently don't plan to follow the Fed, people with knowledge of those agencies said.

At issue is the treatment of municipal debt under the new liquidity requirements, which call for large banks to hold enough "high-quality liquid assets" to fund their operations for 30 days. The Fed plans to issue a proposal to let some municipal bonds qualify as safe assets.

OCC officials have indicated they aren't convinced municipal bonds can be traded easily enough to be included in the rule. The FDIC's position is unclear, but its portion of the rule affects only a few banks.

The change being crafted by the Fed has been sought by big banks such as Citigroup Inc. and Wells Fargo & Co., as well as state and local officials and top lawmakers in Congress including Sen. Charles Schumer (D., N.Y.). They warned that excluding all municipal-debt securities from the liquidity rules could eventually prompt banks to retreat from the $3.7 trillion market and force governments to scale back spending on roads, schools and other infrastructure projects financed with the bonds.

Those arguments largely fell on deaf ears at the OCC, where officials are privately dismissive of including the bonds in the rule, according to people familiar with the conversations. Representatives for the OCC and the FDIC declined to comment.

FDIC Chairman Martin Gruenberg at a September Senate hearing expressed some openness to considering including certain munis “based on supporting research or thoughts from the Fed,” he told Mr. Schumer.

Michael Decker, a managing director at the Securities Industry and Financial Markets Association, a Wall Street trade group, said it welcomes any action to recognize “the inherent liquidity of municipal securities as bank investments.”

Spokesman for Citigroup and Wells Fargo declined to comment.

Fed officials have long expressed more willingness to consider adding munis to the new rules. Fed governor Daniel Tarullo, at the same September Senate hearing, said he expected the central bank to reconsider the issue in response to evidence that some state and local debt is frequently traded and may be “comparable to that of the very liquid corporate bonds” that qualify as high-quality liquid assets.

The plan under discussion falls short of including all investment-grade municipal bonds, for which states and banks had pushed. The exact criteria for which kinds of municipal bonds would count under the rule hasn’t been set. A key focus of the criteria will be the ability of a bank to sell the bonds in a fairly short time frame, according to one of the people.

In addition, the bonds are expected to be treated on par with investment-grade corporate debt, meaning banks would only be able to count 50% of their face value when counting them as part of their funding buffers. Municipal officials and banks had pushed for an 85% credit.

The market for municipal debt is vast, with roughly 60,000 borrowers and 1.2 million individual bonds. Only a relatively small number of the bonds—from large states and cities such as California and New York—are frequently traded, according to industry experts. That is partly because the features of the market, including the tax-exempt status of most securities, encourage most investors to hold their bonds until maturity.

Banks underwrite bonds on behalf of states and localities, and also buy the securities as investments and to sell to their clients. They play an increasingly important role in the market, with banks having nearly doubled their ownership of municipal securities over the past decade, to more than 12% of the total amount outstanding, according to Fed data.

The full impact of just the Fed making such a change is unclear. The Fed’s version of the liquidity rule applies to bank holding companies with $250 billion or more in assets. A less-severe version of the requirements applies to bank-holding companies with between $50 billion and $250 billion in assets. For instance, those holding companies need only a 21-day funding buffer. But for some of the largest banks, like Citigroup and Wells Fargo, their national bank units are subject to the OCC’s rule, which would still exclude munis.

Smaller banks in the $50 billion to $250 billion asset range would be in the clear under the Fed’s contemplated change, however, because only the Fed’s rule applies to them.

To date, banks have by and large continued to hold lots of municipal bonds despite their exclusion from the rule, in part because they are seen as less risky than corporate debt and are priced competitively to other types of debt, according to officials at two large banks. If interest rates rise this year, they expect banks to begin to pare their holdings.

Some lawmakers aren’t waiting for the regulators to act. Rep. Luke Messer (R., Indiana) is preparing to introduce legislation as early as next week requiring regulators to alter the rule to include municipal bonds.

THE WALL STREET JOURNAL

By ANDREW ACKERMAN And VICTORIA MCGRANE

April 16, 2015 8:56 p.m. ET

Write to Andrew Ackerman at andrew.ackerman@wsj.com and Victoria McGrane at victoria.mcgrane@wsj.com

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Calpers Raises Pension Plan Funding in California by 6 Percent.

(Reuters) – The largest U.S. public pension fund announced on Tuesday that the state of California and its schools will increase funding of employee pension funds by 6 percent starting July 1.

The California Public Employees’ Retirement System, or Calpers, said the increases were driven by payroll growth, salary increases and retirees living longer.

The state of California must increase its contribution by $487 million to $4.7 billion. Schools must increase their contributions by $111 million to $1.3 billion.

The state pension plan is roughly 72 percent funded, while the school plan is about 86 percent funded, as of last June. That represents an approximate 6 percent increase for both plans over the previous fiscal year.

“As the fund matures, and the retired population grows, it’s important that the rates reflect the changing demographics of our members,” Richard Costigan, chair of the finance and administration committee, said in a statement.

The growing cost of public pensions is a key issue for state and local governments across the nation as guaranteed payments to retired employees have often forced cuts in spending on public services.

In California, where the city of San Bernardino is in municipal bankruptcy and the city of Stockton recently emerged from Chapter 9 protection, the issue of pension contributions has been particularly contentious. Both cities proposed to keep contributions to Calpers untouched while cutting debts to bondholders.

Calpers has $300 billion in total assets and the pension fund was roughly 77 percent funded as of last June.

(This story corrects 6 percent increase to plan funding, not contribution rates; adds fourth paragraph about plan funding)

By REUTERS
APRIL 14, 2015, 5:37 P.M. E.D.T.

(Reporting by Robin Respaut in San Francisco; Editing by Jonathan Oatis and Lisa Shumaker)

Fed May Allow Banks to Use Muni Bonds to Meet Liquidity Rules: WSJ.

(Reuters) – The U.S. Federal Reserve may allow big banks to use some municipal bonds to meet new liquidity rules that ensure they have enough cash during a credit crunch, the Wall Street Journal reported, citing people familiar with the matter.

The Fed had excluded debt issued by cities and states when it approved liquidity rules for large banks in September, part of a global effort to make banks such as JPMorgan Chase and Citigroup more resilient in a financial crisis.

Fed officials had at that time said they did not think the rule would have significant implications for the $3.7 trillion municipal bond market. The Fed had also said it planned to propose allowing certain high-liquid municipal securities to count as a sellable asset at a later date, after further review.

U.S. cities and states have been urging the Fed, the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) to classify muni bonds as highly liquid if they are investment grade and have demonstrated reliable liquidity during times of economic stress.

However, the plan under discussion falls short of including all investment-grade municipal bonds, the Journal said.

The exact criteria for the kind of municipal bonds that would count under the rule has not been set, but a key focus will be the ability of a bank to sell the bonds in a fairly short time frame, the newspaper said.

The other regulators – the OCC and the FDIC, do not plan to follow the Fed, the newspaper said.

Reuters could not immediately reach the regulators for comment outside regular U.S. business hours.

The U.S. municipal bond market grew to $3.652 trillion during the fourth quarter, with banks picking up $41.1 billion, up from the prior quarter's $34.5 billion, according to data released by the Fed in March.

By REUTERS
APRIL 17, 2015, 12:04 A.M. E.D.T.

(Reporting by Supriya Kurane in Bengaluru; Editing by Anupama Dwivedi)

Kansas Lays Groundwork for $1 Billion Pension Bond Sale.

(Reuters) – Kansas has begun a search for underwriters to sell $1 billion of taxable pension bonds that won final approval this week, the state's Development Finance Authority said on Friday.

A bill signed into law Wednesday by Governor Sam Brownback authorizes 30-year bonds backed by annual state appropriations and limits the bond interest rate to 5 percent.

Potential underwriting firms have a May 1 deadline to reply to a request for qualifications for the deal.

The authority said no decision has been made on the timing or the structure for the bond sale.

Proceeds from the bond sale would flow to the Kansas Public Employee Retirement System, boosting its funded ratio to 66 percent from 60.7 percent and lowering the unfunded liability to $6.28 billion from $7.26 billion, according to a legislative report on the bill.

Kansas sold $500 million of insured pension bonds through the authority in 2004 with interest rates topping out at 5.5 percent for bonds due in 2034.

States and local governments have sold about $105 billion of taxable pension bonds since 1986, according to a July 2014 report by the Center for Retirement Research at Boston College. The practice, which relies on the assumption that invested proceeds will result in higher returns than the interest cost on the bonds, has come under scrutiny particularly in the wake of Detroit's $1.4 billion issuance that was tied in part to soured interest-rate swaps that helped drive the city to file the biggest-ever municipal bankruptcy in 2013.

By REUTERS
APRIL 17, 2015, 2:40 P.M. E.D.T.

(Reporting by Karen Pierog; Editing by Leslie Adler)

GFOA Submits Tax Reform Comments to Senate Finance Committee.

This week, the GFOA joined with the National League of Cities, U.S. Conference of Mayors, National Association of Counties, and International City/County Management Association in providing comments to the Senate Finance Committee. Priorities highlighted in the joint comment letter include preservation of the tax exemption on municipal bond interest and the federal tax deduction for state and local taxes, as well as recommendations to the committee to approve the Marketplace Fairness Act and oppose legislation that would preempt state and local government taxing authority, such as the Wireless Tax Fairness Act and the Digital Goods and Services Tax Fairness Act. The joint comments were submitted in response to the committee's request for recommendations on overhauling the federal tax code that was issued in March 2015.

GFOA will continue to be engaged in the ongoing congressional discussions on comprehensive tax reform and to provide regular updates on the latest developments related to this effort. Members who are interested in engaging in the effort to preserve the tax exemption are encouraged to visit and review the information and materials on our Federal Tax Exemption Resource Center page.

Tuesday, April 14, 2015

Shortage of Treasuries Stresses Repo Market.

A shortage of high-quality bonds is disrupting the $2.6 trillion U.S. repurchase agreement market, the Wall Street Journal reports. These short-term loans, also known as repos, provide liquidity in the financial system, and the shortages “are amplifying price swings in government bonds and related debt markets at a time when many investors are reshuffling their portfolios around new interest-rate expectations, following a period of low volatility.” The impact has been manageable, according to traders quoted in the article, but “the broad concern is that scarcity in repos will pressure rates and could complicate efforts by the Federal Reserve to lift interest rates when the time comes.”

The GFOA best practice, Monitoring the Value of Securities in Repurchase Agreements, points out that an important factor in managing the risk of default in repurchase transactions is the valuation of the purchased securities. For the term of the repo agreement, it is common practice for the counterparty to deliver purchased securities to the investor in a total value amount (market value plus accrued interest) that is equal to the investor’s investment plus a margin percentage. The margin percentage, typically 102% for Treasury and GSE securities, protects the investor from a decline in the price of the purchased securities during the time the repo transaction is in effect. The value of the securities must be monitored frequently to insure the market value remains at least equal to the invested amount plus margin percentage in case of default of the counterparty. If the value of the purchased securities falls below the invested amount plus margin percentage, then the counterparty is required to deliver additional securities to the investor upon their request. The frequency of the valuation depends on several factors:

- The maturity of the purchased securities, since longer maturities have greater price volatility;
- The security types, since certain securities have greater price volatility;
- Market volatility; and,
- The margin percentage that is required by the investor; the lower the margin percentage, the more frequent the valuation of the purchased securities.

Because the investor may need to liquidate the purchased securities in the secondary market in the event the counterparty defaults on the repurchase agreement transaction, GFOA recommends that government entities establish a policy and procedure for monitoring the value of the purchased securities in a repo transaction to insure that it does not drop below the value of the repo investment plus any required margin percentage. For maximum protection, government entities should value the purchased securities in their repo transactions to their current market price evert dat. At a minimum, the purchased securities should be valued weekly, whenever there is a major increase in rates or market volatility is high; or whenever a coupon and/or principal payment on the purchased securities is wired back to the counterparty.

For more information on repos, see the GFOA best practice, Establishing a Policy for Repurchase Agreements, which defines the kinds of repos, outlines the benefits and risks of using them, and suggests strategies for mitigating the risk.

GFOA

Tuesday, April 14, 2015

SEC Still Greatly Underestimating Burden of Complying with Rule 15c2-12, SIFMA Says.

The SEC’s revised estimates of the compliance burden imposed by its main disclosure rule still contain “gross inaccuracies,” according to a March 27 letter the Securities Industry and Financial Markets Association sent to the SEC.

The letter was a response to updated SEC estimates about the amount of time required for market participants to comply with Rule 15c2-12. The rule requires dealers to review issuers' official statements before underwriting municipal bonds, and to reasonably determine that the issuer has contracted to disclose annual financial and operating information, as well as material event notices, on the Municipal Securities Rulemaking Board's EMMA website.

"We continue to be seriously concerned about the gross inaccuracies in the current notice and the original notice of the SEC's time estimates for compliance with the rule and the failure of the SEC to estimate the rule's primary disclosure compliance burdens, as separate and distinct from its secondary market compliance burdens," the letter stated.

"These estimates continue to seriously and materially underestimate the time burden of the rule on broker dealers," SIFMA said of the commission's latest numbers, "which peg the dealer compliance burden as 10 hours per year per firm to determine that an issuer has entered into a continuing disclosure agreement. In a competitive offering," a Bond Buyer article reported. "SIFMA estimates firms spend on average six man-hours on each offering they bid."

Tuesday, April 14, 2015

MSRB Seeks SEC Approval to Implement Cornerstone Conduct Rule for Municipal Advisors.

Alexandria, VA – With the filing today of a key rule proposal with the Securities and Exchange Commission (SEC), the Municipal Securities Rulemaking Board (MSRB) took a significant step toward fulfilling its Congressional mandate to address concerns that a regulatory gap had allowed unaccountable and unqualified individuals to advise state and local governments on multibillion-dollar municipal finance deals. MSRB Rule G-42 would establish core standards of conduct for municipal advisors, provide guidance on the obligations and prohibitions that accompany their federal fiduciary duty to state and local governments, and clarify their duties of care and fair dealing to all clients.

"The MSRB believes this rule will further Congress' intent to build a framework of federal oversight for the advice state and local governments count on when considering municipal securities transactions and financial products," said MSRB Executive Director Lynnette Kelly. The Dodd-Frank Wall Street Reform and Consumer Protection Act charged the MSRB with developing a comprehensive package of rules and professional qualification standards for municipal advisors, many of whom were previously unregulated at the federal level.

"The MSRB carefully considered input from across the municipal market and the public to develop a core set of duties tailored to the unique nature of the relationship between a trusted advisor and a state or local government issuer," Kelly said. "Much like existing regulatory regimes for other financial professionals, the MSRB's rule would prohibit particular activities and ensure clients get the information they need to make informed decisions about hiring financial professionals and evaluating their recommendations."

The rule 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. The rule includes a ban on engaging in principal transactions with a municipal entity client that are directly related to the transaction for which the municipal advisor is providing advice. Other provisions of the rule apply to municipal advisors in their work with both municipal entity clients and obligated person clients. These provisions include requirements to document the advisory relationship, provide written disclosure of conflicts of interest, and conduct reasonable diligence to support the suitability of recommendations, among other duties. Read an executive summary of key provisions of the rule.

In 2014, the MSRB twice sought industry and public feedback on draft versions of the rule. Today's SEC filing describes the regulatory justification for each provision of the final proposal and includes detailed written responses to all of the substantive issues raised by commenters. The SEC is expected to publish the MSRB's proposal in the Federal Register and invite additional public comment before considering whether to approve the new rule.

"MSRB Rule G-42 is deliberately designed to accommodate the diversity of municipal advisors and their clients while still creating strong protections against the types of conduct that can expose state and local government issuers and other borrowers to unnecessary risks and costly consequences," Kelly said. "The MSRB intends Rule G-42 to serve as the cornerstone of the MSRB's developing regulatory framework for municipal advisors and to support our overall mission of promoting market integrity."

For up-to-date information on the MSRB's development of a regulatory framework for municipal advisors, visit the Resources for Municipal Advisors section of the MSRB's website.

Date: April 15, 2015

Contact: Jennifer A. Galloway, Chief Communications Officer
(703) 797-6600
jgalloway@msrb.org

- CDFI Fund Opens Application Period for FY 2015 CDFI Bond Guarantee Program.
- NASACT-NAST LGIP Workgroup Responds to GASB's Questions on Fees and Gates.
- SIFMA Unveils Model Document for Sophisticated Investors.
- The Muni Advisor Business: A Story of Explosive Growth and Change.
- Small Banks Finally Get Real Shot at Municipal Finance.
- BDA Submits Comment Letter: FINRA Proposal to Expand TRACE Dissemination to Additional Securitized Products.
- *Eminence Investors, L.L.L.P. v. Bank of New York Mellon* – Court of Appeals holds that putative class action against indenture trustee brought by holder of bonds issued by public financing authority fell within scope of Class Action Fairness Act's (CAFA) securities exception, and thus was not removable to federal court, where all of bondholder's claims were based on alleged duties that arose from bonds and indenture, and bondholder was clearly asserting its rights as holder of bonds rather than as purchaser of bonds.
- *Montgomery County v. Fraternal Order of Police* – Court of Special Appeals upholds County's right to spend County funds to campaign in favor of ballot referendum to eliminate effects bargaining for County police officers.
- And finally, mother attending son's little-league game sues town after she trips on what she herself admitted was a "divot" that was "only under two inches but I don't really remember." "Mom, your sleazy personal injury lawyer is embarrassing me!"

LIABILITY - RHODE ISLAND

[Carlson v. Town of South Kingstown]

Supreme Court of Rhode Island - April 8, 2015 - A.3d - 2015 WL 1573367

Baseball game spectator who stepped in hole at park and broke her leg brought negligence action against town. The Superior Court entered summary judgment in favor of town, and spectator appealed.

The Supreme Court of Rhode Island held that:

- The Recreational Use Statute applied to bar spectator's personal injury claims against town;
- There was no evidence that town was aware of the particular hole that spectator stepped in, or that spectator was facing that particular peril, for purposes of the exception to landowner immunity under the Recreational Use Statute for the willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity after discovering the user's peril; and
- Neither spectator's payment of a fee to baseball league on her son's behalf, not her payment of taxes to town which used part of its budget to maintain park constituted an admission fee under the Recreational Use Statute, such that town's statutory immunity from liability for spectator's injuries did not apply.

CONTRACTS - RHODE ISLAND

[HK & S Const. Holding Corp. v. Dible]

Supreme Court of Rhode Island - April 7, 2015 - A.3d - 2015 WL 1541949

Low bidder on public construction project brought action against town, town officials, town's consultant, and consultant's technical leader arising out of the award of the contract to a contractor that submitted a higher bid, and asserting claims including wrongful denial of a municipal contract award, intentional interference with prospective contractual relations, and violations of procedural and substantive due process and equal protection under both the federal and state constitutions. The action was removed to federal court and, after dismissal of the federal constitutional claims, remanded. After remand, the Superior Court awarded summary judgment to defendants. Low bidder appealed.

The Supreme Court of Rhode Island held that bid submitted by low bidder was non-responsive, and thus town had discretion to award the contract to contractor that submitted higher bid.

Town's request for proposal (RFP) unambiguously required bidders to identify subcontractors and provide a company profile as part of the bid and warned that failure to submit required documents before the bid deadline could render a bid non-responsive, bid instructions did not indicate that any information could be submitted after the bid deadline, and low bidder did not dispute that it failed to provide the subcontractor information and company profile with its original bid.

BANKRUPTCY - NEW YORK

[In re 300 Washington Street LLC]

United States Bankruptcy Court, E.D. New York - March 31, 2015 - B.R. - 2015 WL 1540795

City of Syracuse sought dismissal of the chapter 11 case of 300 Washington Street LLC (Debtor) or, alternatively, relief from the automatic stay so that the City could foreclose against the Debtor's asset, a vacant building in downtown Syracuse, New York (the "Property"), on account of delinquent real estate tax indebtedness. Also at issue was Debtor's objection to allowance of the City's filed proofs of claim and the ability of the City to make a Bankruptcy Code § 1111(b) election on account of its largest claim.

The Bankruptcy Court held that:

- Found in favor of the Debtor on the issues of dismissal and stay relief;
- Disallowed the City's claim for ad valorem taxes in excess of the City's $595,000 appraised value of the Property;
- Determined that the City could not elect to treat its claim for ad valorem taxes as fully secured pursuant to § 1111(b); and
- Overruled the Debtor's objection as to the City's claims that do not constitute ad valorem real property taxes, without prejudice to the right of the Debtor to seek disallowance or reduction of said claims on other grounds.

LIABILITY - NEW YORK

Turturro v. City of New York

Supreme Court, Appellate Division, Second Department, New York - April 1, 2015 - N.Y.S.3d - 2015 N.Y. Slip Op. 02754

Mother, on behalf of child who was struck by speeding automobile while riding his bicycle on city street, brought personal injury action against driver, owner of automobile, and city. After jury reached verdict on liability, apportioned fault, and awarded damages, the Supreme Court, Kings County, denied defendants' motions to set aside the verdict on issue of liability, and mother stipulated to reductions in award of future medical expenses and pain and suffering, in order to avoid a new trial. Driver, owner, and city appealed.

The Supreme Court, Appellate Division, held that:

- City's duty to keep its roads and highways in a reasonably safe condition was proprietary in nature, and thus mother did not need to prove existence of special duty owed to child by city;
- City did not conduct adequate studies of speeding that allegedly existed on city street, and thus was not entitled to immunity based on its highway planning decisions;
- Weight of evidence supported jury's conclusion that city was a proximate cause of accident and jury's apportionment of fault between city and driver;
- Interrogatories submitted to the jury did not create substantial confusion for the jury, warranting a new trial;
- Damages of $6,000,000 for past pain and suffering and $15,000,000 for future pain and suffering deviated materially from what would be reasonable under the circumstances;
- There was no proof of loss of services, as required to award mother damages for loss of services; and
- Expert testimony supported an award of damages of $11,500,000 for future medical expenses and $3,000,000 for future lost earnings.

LIABILITY - MARYLAND

Espina v. Jackson

Court of Appeals of Maryland - March 30, 2015 - A.3d - 2015 WL 1412658

Estate and family of shooting victim filed survival and wrongful death actions against police officer and county, stemming from incident in which victim was fatally shot by officer, and claim on behalf of victim's son for a violation of his constitutional rights arising out of his treatment and arrest following shooting.

Following jury trial, the Circuit Court entered judgment in favor of family and estate after reducing verdict against county from $11,505,000 to $405,000, but leaving verdict against officer in place. All parties appealed. The Court of Special Appeals affirmed judgment in part and reduced award entered against county to $400,000. Estate and family filed petition for certiorari, which was granted.

The Court of Appeals held that:

- Alleged constitutional violations constituted torts under Local Government Tort Claims Act (LGTCA);
- As a matter of first impression, LGTCA damages cap did not violate constitutional provision governing relief for injury to person or property;
- Wrongful death claims were derivative of survivorship claims, such that claims were properly aggregated; and
- Claim asserted by son was not derivative of wrongful death and survivorship claims.

Alleged constitutional violations of due process clause asserted by estate and family of shooting victim constituted torts under Local Government Tort Claims Act (LGTCA), such that damages cap under LGTCA was applicable to survivorship and wrongful death action filed by estate and family against police officer and county, stemming from incident in which victim was fatally shot by officer. There was no exception in LGTCA for any category of torts, and including estate's claims within scope of LGTCA damages cap was consistent with legislature's goal of limiting civil liability of local governments.

Damages cap under Local Government Tort Claims Act (LGTCA) was reasonable, and therefore application of cap to constitutional tort claims filed by shooting victim's estate and family in survivorship and wrongful death action against police officer and county, arising from incident in which officer fatally shot victim, did not violate constitutional provision protecting rights to a remedy for injury to one's person or property and to access to the courts. Neither estate's cause of action nor right to bring case in the courts was affected by LGTCA, and cap was not so unduly low so as to equate with cutting off all remedy.

ELECTIONS - MARYLAND

Montgomery County v. Fraternal Order of Police

Court of Special Appeals of Maryland - April 3, 2015 - A.3d - 2015 WL 1508677

Fraternal order of police officers brought declaratory judgment action against county and individual county employees, alleging county improperly used county funds to campaign for passage of local ballot question. The Circuit Court entered judgment in favor of association. County appealed.

The Court of Special Appeals held that:

- County's political activity in support of ballot referendum was non-partisan, permissible government speech;
- A charter county's traditional authority to budget and appropriate money necessarily includes the authority to spend that money to advance a non-partisan governmental purpose;
- State campaign finance laws requiring that campaign finance activity, including activity regarding a ballot issue, be conducted through a duly-registered political committee, do not apply to campaign finance activity of local governments; and
- County executive and director of county's office of public information did not become a political committee, as would be required to adhere to campaign finance and reporting laws, by using county funds to support a county campaign in support of ballot referendum.

LIABILITY - FLORIDA

Limones v. School Dist. of Lee County

Supreme Court of Florida - April 2, 2015 - So.3d - 2015 WL 1472236

Parents of high school student brought action against county school board for negligence, alleging that it breached a common law and statutory duty when it failed to apply an automated external defibrillator (AED) on student after his collapse while playing soccer. The Circuit Court entered summary judgment in favor of school board. Parents appealed. The District Court of Appeal affirmed. Parents sought further review, which was granted.

The Supreme Court of Florida held that:

- District Court of Appeals' decision directly conflicted with Supreme Court decision and thus conflict jurisdiction existed;
- School board owed student a duty to act with reasonable care to take appropriate post-injury efforts to avoid or mitigate further aggravation of injury;
- Jury rather than court was required to determine whether actions of school board's employees breached duty; and
- School board was not immune from suit under the Cardiac Arrest Survival Act.

PENSIONS - CALIFORNIA

Barboza v. California Ass'n of Professional Firefighters

United States Court of Appeals, Ninth Circuit - April 7, 2015 - Fed.Appx. - 2015 WL 1530411

Appeals Court holds that District Court did not err when it granted summary judgment to long-term disability plan administrators on firefighter's claim that they breached their fiduciary duties by failing to file Internal Revenue Service (IRS) Form 990. The court found that firefighter had not provided any evidence that the Plan administrators violated the "prudent man standard of care," when they did not file Form 990 on the advice of their legal counsel and accountant.

The Appeals Court also held that the District Court erred when it failed to consider firefighter's argument that the Plan administrators breached their fiduciary duties by failing to maintain adequate reserves to maintain the Plan's solvency. The issue was remanded to the District Court to determine whether there was a triable issue of fact as to whether the Plan administrator's discharged their fiduciary duties by relying on the advice of their actuary when they structured the Plan's reserves.

BONDS - CALIFORNIA

[Eminence Investors, L.L.L.P. v. Bank of New York Mellon]

United States Court of Appeals, Ninth Circuit - April 2, 2015 - F.3d - 2015 WL 1475055

Holder of bonds issued by public financing authority brought putative class action against successor to indenture trustee in state court, asserting claims for breach of fiduciary duties, negligence, unjust enrichment, and violation of California's unfair business practices statutes. After removal, the United States District Court remanded. Defendant appealed.

The Court of Appeals held that action fell within scope of Class Action Fairness Act's (CAFA) securities exception, and thus was not removable to federal court, where all of bondholder's claims were based on alleged duties that arose from bonds and indenture, and bondholder was clearly asserting its rights as holder of bonds rather than as purchaser of bonds.

TAX - FLORIDA

[Stranburg v. Panama Commons L.P.]

District Court of Appeal of Florida, First District - April 8, 2015 - So.3d - 2015 WL 1546080

Nonprofit Florida limited partnership ("Panama") constructed a ninety-two-unit affordable housing project in Panama City. The Bay County Property Appraiser granted the project a full tax exemption for the 2012 tax year under section 196.1978. Panama then renewed its exemption for the 2013 tax year by filing a timely application. After Panama filed its application, the Legislature passed legislation eliminating the tax exemption for affordable housing property owned by limited partnerships retroactively to the 2013 tax roll.

Panama then challenged the property appraiser's decision in Circuit Court, claiming the retroactive repeal of the tax exemption for limited partnerships was unconstitutional. The Circuit Court held for Panama and County appealed.

The Court of Appeal affirmed. By setting January 1 as the date on which the taxable or tax exempt status of real property is to be determined, the Legislature had created a constitutionally protected expectation that the substantive law in effect on that date will be used to make the determination.

The court rejected the contention that the tax exemption could not vest until the property appraiser ruled on appellee's application, which occurred after the repeal of the tax exemption.

TAX - MONTANA

[Prairie County, Mont. v. U.S.]

United States Court of Appeals, Federal Circuit - April 6, 2015 - F.3d - 2015 WL 1515897

Counties brought suit against United States to recover monies that they claimed were owed to them under Payment in Lieu of Taxes Act (PILT) to compensate them for loss of tax revenue from tax-exempt federal property located in counties. The United States Court of Federal Claims dismissed complaint, and counties appealed.

The Court of Appeals held that United States' liability for payments to counties under PILT was limited to amounts appropriated by Congress.

TAX - MISSISSIPPI

SASS Muni-V, LLC v. DeSoto County

Supreme Court of Mississippi - April 2, 2015 - So.3d - 2015 WL 1485013

Tax sale purchaser brought action against city, county, and various corporate defendants, asking the court to declare tax sale void and to order a refund of the purchase price. The Chancery Court dismissed with regard to all defendants based on purchaser's lack of standing and caveat emptor. Purchaser appealed.

The Supreme Court of Mississippi held that:

- Tax-sale purchaser had standing to contest the validity of the sale under the notice statutes, and
- Doctrine of caveat emptor did not apply to bar tax sale purchaser from attempting to void its purchase and obtain a refund based on alleged defects in the sale.

Tax-sale purchaser had standing to contest the validity of the sale under the notice statutes, even if purchaser was not entitled to notice of the expiration of the redemption period under the tax-sale statutes. Chancery clerk's failure to comply with notice requirements rendered tax sale void, not simply voidable by property owner, commencement of a cause of action was not even necessary to set aside the sale, and purchaser obtained an actionable interest in the property as a statutory lienholder.

Doctrine of caveat emptor did not apply to bar tax sale purchaser from attempting to void its purchase and obtain a refund based on alleged defects in the sale, as refund of the purchase price was specifically allowed by statute when a tax sale is void for lack of notice.

Small Banks Finally Get Real Shot at Municipal Finance.

Community banks are getting an unexpected shot to compete against Wall Street firms in the area of municipal finance.

Local governments have historically relied on selling bonds to finance operations. The process is cumbersome, but is typically cheaper than borrowing from a bank, even after accounting for legal and underwriting costs.

Low interest rates, combined with rising costs of taking bond issues public, are making traditional loans a more tempting option for many local governments. As a result, smaller banks, many of which already hold municipal deposits, are seizing on an opportunity to bulk up the other side of the balance sheet.

Loans have become “competitive with interest rates obtainable in the capital markets,” said Daniel Malpezzi, a lawyer at McNees, Wallace and Nurick in Harrisburg, Pa., adding that an increasingly large segment of local government borrowing has moved away from the bond market.

Banks are eager to take the new business, given the sterling performance of most municipal loans. Banks that have made a business providing deposit and treasury management services to municipalities have proven to be especially well-placed to reap a windfall, though plenty of others seem to be lining up to get in on the game.

Robin Russell, a lawyer at Andrews Kurth in Houston, is set to give a webinar this week on lending to municipalities. Through last Thursday, 36 banks had signed up for the session, which is sponsored by the Texas Bankers Association. While that number might not seem overly impressive, it is up from 11 participants in last year’s webinar, Russell said.

“That tells me there’s interest,” Russell said.

Despite bankers’ complaints, the long stretch of artificially low interest rates has been crucial to the growth of bank lending to local governments, municipal finance experts said.

Municipal lending has been growing steadily in Texas the past five years, Russell said, linking the surge directly to low rates. “With tax-affected interest rates on commercial debt at all-time lows, the rate on low-risk tax-free municipal obligations is competitive and attractive to investors and lenders,” she said.

Comprehensive statistics on banks’ municipal lending are difficult to obtain. Local governments, which are required to make bond issues public, are not required to disclose bank loans.

Individual banks do not always break out their lending to local governments, though the Federal Deposit Insurance Corp. keeps an industry-wide account of loans to “states and political subdivisions in the U.S.” Its numbers indicate a steady increase in municipal lending, rising from $66.5 billion in 2010 to $131.4 billion last year.

A quick check of local governments in northern Virginia showed that at least two jurisdictions used bank loans in recent years. In its Comprehensive Annual Financial Report for fiscal 2014, Fairfax County reported borrowing $25 million from TD Bank in December 2013 to refurbish county-owned buildings. Similarly, in its fiscal 2014 report, the neighboring city of Alexandria reported an $18.7 bank loan.

Such loans present an opportunity for banks to deepen ties to local governments, though banks that were already major players have chalked up the greatest gains.

At Carter Bank and Trust in Martinsville, Va., municipal lending jumped 25% in 2014 from a year earlier, to $332 million. Century Bancorp in Somerville, Mass., had nearly $41 million in municipal loans at Dec. 31; it didn’t report any municipal loans as late at 2011.

Huntington Bancshares in Columbus, Ohio, has a specialty lending unit, Huntington Public Capital, to focus exclusively on government lending. The yields might not be as high as loans to private-sector businesses, but there are few, if any, problems with the loans, Dave Schamer, the $66 billion-asset company’s managing director of government banking, said.

Because of their strong performance, “we don’t have to set aside as much capital” for government loans, Schamer said. “Our book is very clean. I can’t remember the last problem. … We love the space.”

Huntington, which has been lending money to local governments in its Midwestern footprint for decades, “double downed” in the space at a time other banks were abandoning it, Schamer said. “We see it as an opportunity to show our commitment to the communities we serve,” he said, adding that public finance “is knitted into the fabric of who Huntington is.”

Barry Sloane, $3.6 billion-asset Century’s president and chief executive, said his bank was the largest municipal banker in Massachusetts, holding deposits for 200 of the commonwealth’s 351 towns and cities. According to the FDIC, Century’s municipal deposits totaled $1.1 billion at the end of 2014, comprising nearly 49% of its $2.3 billion deposit book.

Given such dominance, Century’s entry into local government lending was relatively easy, Sloane said. “In a lot of cases, we just walked across the hall” to a different official’s office, he said.

“We can’t do $40 million [deals], but we can do $5 million,” Sloane said. “We’ll do the little deals, and we’ll consider bigger ones.”

Sterling Bancorp in Montebello, N.Y., is following a path markedly similar to Century’s, taking its municipal lending from zero in 2011 to $33 million on Dec. 31, according to FDIC data. The $7.4 billion-asset company is looking to accelerate that growth, hiring a team of five veteran government lenders last month.

“We feel strongly that the sizable public finance market presents a significant opportunity for growth,” Jim Peoples, Sterling’s chief banking officer, said in a release announcing the newly hired bankers.

AMERICAN BANKER

by JOHN REOSTI

APR 13, 2015 3:14pm ET

Are California Teacher Pensions Distributed Fairly?

California teacher pensions vary widely depending on when teachers begin their careers and how long they teach. Teachers who spend their entire careers in the plan receive large pensions. However, teachers who join the plan at relatively young ages and spend less than full careers in the classroom accumulate few retirement benefits, and those benefits are often worth less than the value of the teachers’ required plan contributions. As policymakers address the California teacher pension plan’s funding problems, they should consider altering the plan’s benefit formula to more equitably distribute pension benefits across the workforce.

Read the report.

The Urban Institute

Richard W. Johnson, Benjamin G. Southgate

April 06, 2015

[Reforming Government Pensions to Better Distribute Benefits.]

Efforts to reform the retirement plans provided to state and local government employees are gaining momentum across the country. Yet, the debate has focused almost exclusively on the financial problems of public pension plans, drowning out a broader discussion of how well these plans serve government employees, employers, and taxpayers. This report identifies promising reform options that could more fairly distribute retirement benefits across the public-sector workforce and help governments recruit and retain productive employees. Options include revising the plan benefit formula, offering alternative plan designs, and extending Social Security coverage to all state and local government employees.

Read the report.

The Urban Institute

Richard W. Johnson

April 06, 2015

Could a Cash Balance Plan Benefit Illinois Public School Teachers?

Financial problems have led to significant pension cuts for Illinois public school teachers. An alternative approach would be to replace the existing traditional defined benefit plan with a cash balance plan, which combines features of 401(k)-type plans and traditional pensions. Our simulations show that 72 percent of Illinois public school teachers hired before 2011—and 56 percent of those with five or more years of completed service—would fare better in the simulated cash balance plan than the existing plan, even though the cash balance plan would be no more costly to taxpayers.

Read the report.

The Urban Insitute

Richard W. Johnson, Benjamin G. Southgate

April 06, 2015

Five Ways to Improve the Distribution of Government Pension Benefits.

Recent public pension reforms have focused on cutting benefits and raising required employee contributions to close plan funding gaps. This approach usually makes government employment less attractive to younger employees who expect to spend less than a full career in public service. Alternative approaches could distribute benefits more equally across the workforce and appeal to both younger, shorter-term employees and older, longer-term employees. This brief identifies five such options, including revising the plan benefit formula, offering alternative plan designs, and extending Social Security coverage to all state and local government employees.

[Read the Brief.]

The Urban Institute

Richard W. Johnson

April 06, 2015

[Puerto Rico, Investors Enlist Ex-IMF Officials.]

The Puerto Rico government and the hedge funds that own its bonds are turning to former International Monetary Fund officials to help resolve a growing debt crisis that may require a restructuring more akin to Greece than a troubled city like Detroit.

The move comes as Puerto Rico is in talks with the funds and other investors to borrow up to about $3 billion in new bonds to replenish its nearly empty coffers. The commonwealth has more than $70 billion in debt, including that of its agencies such as the Puerto Rico Electric Power Authority, or Prepa, which is in restructuring talks with creditors ahead of a Wednesday deadline to extend some payments.

The development reflects the junk-rated commonwealth's unusual status as neither a U.S. state nor a sovereign nation, unable to permit its municipal entities to access U.S. bankruptcy protections.

Puerto Rico has retained Anne Krueger, the IMF's former first deputy managing director, as a consultant, while a committee representing the hedge funds is in talks about an engagement with Claudio Loser, the former director of the IMF's Western Hemisphere department, said people familiar with the matter.

The involvement of IMF veterans highlights how market perception of Puerto Rico—a former darling of the $3.7 trillion municipal-bond market—has changed. The IMF serves as the lender of last resort to emerging-market countries, something some investors say Puerto Rico increasingly resembles.

Peter Hayes, head of BlackRock Inc.'s municipal-bonds group, said Puerto Rico is beyond simple fixes and it will be difficult for the island to escape restructuring. "The problem is they're running out of time," he said.

A federal judge in February blocked a local law that would have created a restructuring process for Prepa and other public authorities, and a U.S. House committee is considering a bill that would permit the commonwealth to allow those agencies access to the same Chapter 9 protections granted Detroit.

Investors have faced months of uncertainty from Puerto Rico, where the government is struggling with a weak economy, declining population and high unemployment. Its bonds are widely held around the U.S. because they are exempt from federal, state and local taxes and often provide higher yields than other munis.

As a U.S. commonwealth, the island also doesn't qualify for IMF aid, but the excessive borrowing, inconsistent financial reporting and low tax collection that landed Puerto Rico in hot water are common in the developing countries that IMF economists deal with. Like a lot of those countries, Puerto Rico is wrestling with how to make politically contentious budget cuts and tax increases without strangling already-weak economic growth.

Puerto Rico’s government has relatively low levels of debt by international standards, and tackling the deficit is manageable, said Charles Blitzer, a former assistant director of the IMF’s monetary and capital-markets department and now principal at Blitzer Consulting.

“This is doable without great pain,” he said. “In fact, countries that have adjusted have found growth rates actually increase. I’m hopeful that the hiring of ex-IMF people by Puerto Rico signals their willingness to adjust their budgetary problems credibly and rapidly.”

The hedge funds that own much of Puerto Rico’s bonds are looking for tips from the IMF playbook on how to use the promise of new loans to coax governments into financial overhaul and, if that fails, how to negotiate with a sovereign in default, people familiar with the matter said.

Early this year, the bondholder group including Brigade Capital Management LP, Centerbridge Partners LP, Davidson Kempner Capital Management, Fir Tree Partners and Monarch Alternative Capital sent the island’s financial authorities a list of terms to include in the coming bond sale. The proposed covenants are meant to prod Puerto Rico into budget cuts and better financial disclosure, while ranking holders of the new bond above other creditors if there is a default, the people familiar with the matter said.

When Puerto Rico borrowed $3.5 billion in bond markets a year ago hoping to get financial breathing room, hedge funds bought more than half of the deal. The firms snapped up the bond for its attractive 8.7% yield but also because they hoped a successful financing would lift the prices of other Puerto Rico bonds they owned.

Since then, Puerto Rico has struggled to deliver a promised tax overhaul and bond prices have fallen. The price of the 2014 bond touched record lows below 80 cents on the dollar last month after three legislators proposed removing constitutional protections for bondholders.

Melba Acosta, president of the island’s Government Development Bank, has said that the bank and the administration oppose such legislation.

The tax-overhaul plan has also received an uneasy response, facing resistance from “many quarters of the Puerto Rico economy” and its passage remains uncertain, according to Janney Capital Markets. Ms. Acosta said it would fight tax evasion and contained exemptions aimed at protecting low-wage workers.

Puerto Rico’s hedge-fund creditors want more than promises of reform before they buy more bonds. The group has asked Ms. Acosta to include clauses that would raise the interest rate of the bond if the government fails to hit budget targets and would require timely standardized financial reports, the people familiar with the matter said.

“This financing explicitly seeks to bridge Puerto Rico to economic health,” Mr. Loser said in an email. “The Commonwealth needs to commit to developing a comprehensive plan that balances the budget with timely and transparent financial reporting.”

THE WALL STREET JOURNAL

By MATT WIRZ And AARON KURILOFF

April 12, 2015 6:37 p.m. ET

Write to Matt Wirz at matthieu.wirz@wsj.com and Aaron Kuriloff at aaron.kuriloff@wsj.com

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New York's Leaky Public Pension Funds.

The New York City comptroller, Scott Stringer, went public last week with news that some financial reporters found blindingly obvious, but still should get the rest of the public steaming mad. It is that billions of dollars have been leaking out of the city's five public-employee pension funds, in payment for Wall Street money management that wasn't worth it.

Mr. Stringer's office did an analysis of the funds over the last 10 years, and found that managers' high fees and failure to reach performance goals had eaten away $2.5 billion of the pension systems' value. If you take the funds' gains since 2004, and subtract the fees, the analysis said, you end up basically at zero.

To be more precise: The analysis found that over the 10 years, the managers of "private" asset classes, such as hedge funds and real estate, fell $2.6 billion short of target benchmarks after fees were accounted for. Over the same period, managers of public asset classes, like stocks and bonds, slightly exceeded their benchmarks. "However, those managers gobbled up more than 95 percent of the value added — over $2 billion — leaving almost no extra return for the funds," Mr. Stringer's office said.

It's commonly known that active investment management is expensive, that Wall Street wolves always take their bite, and that they can make bad bets as often as good ones. But it seems fair to ask why it has to be this way with this giant pool of taxpayer money, a pension system of nearly $160 billion that is supposedly run by the best minds the city can find, for the benefit of 715,000 retired cops, firefighters, teachers and others.

Even nonexperts can grasp a primal personal-finance principle: buy low-cost funds linked to the overall performance of the stock market, be patient and don't try to outsmart the market or pay someone an arm and a leg to do it for you. That a succession of city comptrollers and fund trustees — who, it should be noted, once included Mr. Stringer, a trustee in his old job as Manhattan borough president — would never have thought of this before and found ways to reduce the damage done by excessive fees, is incredible.

Mr. Stringer told The Times that the problem stems from bad decisions and overlooked data. Relevant information about fees lay buried deep in footnotes of financial reports that no previous comptroller's office had ever bothered to extract or publicize. Which leads the obvious next question: Mr. Stringer announced the bad results, but did not name names or firms behind them. He says he will do so in coming months, as his office does what it says is a tedious, complicated job of dissecting reports and correlating dollars with performance.

He should keep that promise. Transparency and accountability is unusual in the murky world of public pensions, which have seen their share of criminality and abuse. Now that Mr. Stringer has taken up the cause, his next task is to offer ways to better protect taxpayer funds. At the very least, the city should drive a harder bargain with Wall Street, and cultivate in-house investing expertise over high-priced outside management. And it should give city pensioners a clear, honest, easy-t--understand accounting of where the money goes, and to whom.

THE NEW YORK TIMES

By THE EDITORIAL BOARD

APRIL 13, 2015

Citi Tops Underwriter Rankings; PFM Leads the FA List.

Citi maintained its position as the top muni underwriter in the first quarter, just beating out Bank of America Merrill Lynch, according to data from Thomson Reuters.

First Quarter Rankings

Citi closed the quarter with a par amount of $12.92 billion in 128 deals, good for 12.5% of the market. BAML earned $12.90 billion in 117 deals, to garner a 12.4% market share. JPMorgan finished third with $12.45 billion in 103 deals for 12% market share. Rounding out the top five were Morgan Stanley and Barclays Capital.

JPMorgan saw improvement year over year, after finishing the first quarter of 2014 with $5.842 billion in 55 deals, for 9.7% of the market.

“We got off to a slow start in 2014, mainly due to the light volumes in the first half,” said Jamison Feheley, head of banking, public finance at J.P. Morgan. “However, we had a big fourth quarter last year and that has carried into 2015. That said, we have benefited from increased new issue volume so far this year. Clients are still being cautious with new money projects, but we’re seeing refinancing business doing very well. Refundings are the primary reason why we’re seeing high volumes, as clients are taking advantage of the lower interest rate environment to achieve savings.”

Morgan Stanley moved up two spots from the first quarter of 2014, while Barclays remained in the fifth spot. RBC Capital Markets fell two spots into the sixth spot this quarter. RBC was involved in more deals than any other company on the list, with 206, just edging out Stifel Nicolaus, which worked on 202 deals this quarter.

Rounding out the top ten are Wells Fargo, Raymond James, Stifel and Piper Jaffray. The gap between number one and number ten is quiet large at roughly $9.39 billion.

PFM Leads Advisors

Public Financial Management ranked first in all financial advisor categories; financial advisor, FA $10 million and under, FA for negotiated deals, FA for competitive deals and FA number of issues. The Philadelphia based firm finished the first quarter advising on 235 sales with a value of $15.28 billion, for a market share of 18.2%.

“It’s always gratifying to retain the leadership position PFM has held for many years,” said John Bonow, chief executive officer and managing director for the PFM Group. “However, we believe that our ongoing dedication to serving the client’s interests with our market and pricing resources is what has enabled PFM to stay here. Governments and nonprofits are looking for an advisor they can trust, and we believe they find that at PFM.”

Bonow also said that with interest rates remaining low, many of PFM’s clients have proactively refinanced outstanding debt for savings and when appropriate they have also financed new capital needs.

"PFM helps our clients analyze the range of project funding alternatives without bias, and the economics of the current bond market are often compelling," said Bonow.

FirstSouthwest finished in second place, advising on 197 sales with a value of $8.58 billion, a market share of 10.3%. Public Resources Advisory Group advised issuers on 32 sales with a value of $6.84 billion, which is good for 8.2% of the market. Swap Financial LLC and Piper Jaffray finished the quarter numbers four and five respectively.

Negotiated Underwriting

JPMorgan vaulted up the rankings in negotiated under writing from year to date. After being fifth with only 6.8% market share and $3.10 billion in par amount in the first quarter of 2014, JPMorgan ranked first in first quartet of this year with $10.52 billion in par amount, good for 12.8% of the market.

"We are very focused in the negotiated market, but also in the competitive market as well," said Feheley. "The competitive market hasn't grown as much this year given the market volatility so we've seen more issuers taking advantage of the flexibility in the negotiated market."

Citi dropped from first to second, with $9.91 billion in par amount, for a 12.1% market share. Morgan Stanley also made a significant jump year over year in the negotiated field, jumping from ninth to third. Morgan Stanley finished the quarter with $8.49 billion in par amount, which is good for 10.4% of the market. BAML and Barclays rounded out the top five.

Competitive Underwriting

BAML earned the top spot for competitive underwriting, with a par amount of $4.88 billion and a market share of 22.5%, leaving a wide gap between themselves and the rest of the pack.

Citi finished second with $3.01 billion and 13.9% of the market, Morgan Stanley finished third with $2.38 billion and 11%, JPMorgan was fourth with $1.94 billion and 8.9%. Robert W Baird with $1.92 and 8.8% ranked fifth.

CoManager Rankings

Wells Fargo ranked first in the comanager rankings, in what was a very tight race. Wells finished the first quarter with $3.966 billion of par amount, followed by BAML with $3.760 billion, Raymond James with $3.407 billion, Piper Jaffray with $3.348 billion and Morgan Stanley with $3.290 billion. RBC Capital Markets finished the first quarter with 237 deals, 58 deals ahead of No. 2 Raymond James.

Wells Fargo finished 2014 in the top spot for comanagers; jumping from eighth a year earlier.

$10 Million and Under

Robert W Baird & Co. Inc., ranked first for overall book runners in deals $10 million and under and competitive deals $10 million and under, as they owned 9.1% and 13.5% of the market, respectively, and the most deals with 143 and 77.

RBC Capital Markets lead the way for negotiated deals $10 million and under with 12.2% of the market and 96 deals. Stifel was second with 10.9% and 88 deals.

California Dreaming

Three of the top five issuers in the first quarter of 2015 hail from the state of California. Leading the way is the Regents of the University of California, who had four issues totaling $2.850 billion. Second was the state of California, which had a single del for $1.945 billion. The Michigan Finance Authority finished third, with eight issues totaling $1.725 billion. The Golden State Tobacco Securitization Corp. made its one issue count, as it totaled $1.692 billion. Rounding out the top five was the Texas Transportation Commission, with four issues totaling $1.608 billion.

THE BOND BUYER

by Aaron Weitzman

APR 6, 2015 3:01pm ET

S&P Methodology: Not-For-Profit Public and Private Colleges and Universities.

1. Standard & Poor's Ratings Services is requesting comments on proposed changes to its methodology for assigning stand-alone credit profiles (SACPs), issuer credit ratings (ICRs), and issue credit ratings to not-for-profit public and private colleges and universities globally.

2. The request for comment (RFC) proposes changes that are intended to provide additional transparency to help market participants better understand our approach in assigning ratings to not-for-profit public and private colleges and universities globally, to enhance the forward-looking nature of these ratings, and to enable better comparison between these ratings and ratings in other sectors and asset classes.

3. If adopted, these criteria will supersede "Approaches To Rating U.K. Universities Amid Growing Credit Diversity," published March 28, 2003. These criteria would also partially supersede the "Higher Education" criteria, published June 19, 2007. Specifically, the sections "Private College and University Credit Ratings", "Management and Governance", "Debt", and "Rating Public Colleges and Universities" would be superseded by these criteria. This methodology is related to our criteria article: "Principles Of Credit Ratings", published on Feb. 16, 2011.

4. All terms followed by an asterisk (*) are defined in the glossary in Appendix.

Continue reading.

08-Apr-2015

Morgan Stanley Fined $675K Over Muni Interest.

WASHINGTON – Two divisions of Morgan Stanley have been censured and ordered to pay $675,000 to settle Financial Industry Regulatory Authority charges that they misrepresented municipal bond interest paid to customers as tax-exempt, when it should have been taxable.

Morgan Stanley Smith Barney and Morgan Stanley & Co. agreed to the penalties April 1 without admitting or denying FINRA's charges that they violated a slew of Municipal Securities Rulemaking

Rules from July 2009 through December 2013.

“The settlement involves a very small fraction of the firm’s interest payments on municipal bonds during the relevant period,” said Morgan Stanley spokeswoman Christine Jockle. “The firm addressed the tax issues with the [Internal Revenue Service] without impact to its customers. The firm cooperated fully with FINRA and revised its procedures to prevent recurrence of such issues. FINRA did not allege any willful or fraudulent behavior.”

During the examination period, FINRA said, the firm paid out to customers at least $880,000 dollars of interest that the customers believed was tax-exempt from muni bonds held by the companies in customer accounts. In fact, FINRA found, the firm was “short” on its positions and the interest they were paying was actually taxable.

Short positions occur when a firm sells bonds that it does not own at the time. A dealer who executes a short sale must then go to the market and subsequently purchase the securities from a third party in order to make delivery on the transaction. When a short position corresponds to a customer’s “long” position, the dealer makes a substitute interest payment to the customer. But because only interest from municipal issuers is tax-exempt, interest generated from a short position is taxable.

“During the relevant period, Morgan Stanley generated or held more than 1,500 short positions in tax-exempt municipal securities that corresponded to long positions in customer accounts,” FINRA found. “The short positions resulted primarily from trading and operational errors. ln these instances, Morgan Stanley paid the interest to the customer and the interest was taxable.”

Most of the short positions resulted from trading errors that occurred at the firm’s retail branches, FINRA said. When an error occurred in connection with a customer’s municipal bond order, the resulting short position was first moved to a branch error account and then, if not covered by the branch, eventually moved to a centralized error account maintained by the firm’s muni desk.

FINRA examiners found that the firm knew as early as 2006 that its short positions were not being covered quickly enough, with some positions remaining short for months or even years. Morgan Stanley’s capital markets division, which was responsible for covering short positions, was not made aware of how the firm was characterizing interest payments, FINRA found.

The firm’s tax reporting department, which was responsible for issuing 1099 forms on interest income, and its income processing department responsible for how interest was coded on the 1099s, were not aware that the short positions existed.

FINRA alleged that because of these issues, Morgan Stanley’s automated system calculating interest owed to customers was not taking into account whether interest paid to customers who held munis should be designated as taxable when the interest was being paid by Morgan Stanley rather than by a municipal issuer.

When FINRA examiners discovered the problems in 2013, Morgan Stanley agreed to pay a settlement to the IRS to prevent customers from having to file amended tax returns.

The alleged conduct resulted in violations of MSRB rules G-27 on supervision, G-17 on fair dealing, and G-8 on books and records, FINRA said. The firm failed to maintain a supervisory system reasonably designed to prevent rule violations, misstated the nature of interest payments to at least 1,500 customers, and created and distributed inaccurate account statements.

Morgan Stanley Smith Barney agreed to a censure and fine of $675,000, of which $124,406.93 was paid jointly with Morgan Stanley & Co. The latter division was censured along with its share of the fine.

THE BOND BUYER

BY KYLE GLAZIER

APR 10, 2015 12:01pm ET

S&P Live Webcast and Q&A: RFC on Proposed Criteria for Not-For-Profit Public and Private Colleges and Universities.

Tuesday, April 21, 2015, at 1:00 PM EDT

Please join Standard & Poor's Ratings Services on Tuesday, April 21, 2015, at 1:00 p.m. Eastern Time for a live Webcast and Q&A on the recently released Request for Comment regarding proposed changes to the methodology for assigning stand-alone credit profiles (SACPs), issuer credit ratings (ICRs), and issue credit ratings to not-for-profit public and private colleges and universities globally.

Register for the complimentary webcast here.

S&P's Public Finance Podcast (Proposed Criteria for Rating Not-For-Profit Public and Private Colleges and Universities)

In this week's Extra Credit, Director Bianca Gaytan-Burrell discusses our request for comment for rating not-for-profit public and private colleges and universities.

Listen to the Podcast.

Apr 09, 2015

Municipal Issuer Brief: Challenging Start to Week Ends with Positive Tone.

Read the Brief.

Municipal Market Analytics | Apr. 6

The Muni Advisor Business: A Story of Explosive Growth and Change.

WASHINGTON — The municipal advisory business has exploded over the past 30 years, as economic, regulatory, and technological developments have combined to create a bigger business that is increasingly dominated by firms focused mostly on MA services.

While financial advisors have worked with municipal issuers for many years, the business transformed enormously during the three decades leading up to the Securities and Exchange Commission's adoption of its final MA registration rule in 2013.

That rule, and the associated MA regulations written by the Municipal Securities Rulemaking Board, implement provisions of the 2010 Dodd Frank Act that for the first time subjected MAs to federal regulation and imposed a fiduciary duty on them to put the interests of their state and local government clients ahead of their own.

But while MA regulation represents a pivotal time in the history of the financial advisory business, radical changes were already well underway before the financial crisis that led to Dodd Frank.

According to data from Thomson Reuters, only $9.7 billion of long-term bonds were issued with a financial advisor in 1980. By the end of 1985, when deals were rushed to market to beat implementation of the taxexempt bond restrictions in the Tax Reform Act of 1986, that number had jumped almost nine fold to $86.3 billion.

Following a drop in the years after tax reform and the stock market crash of 1987, the par value of bond deals with advisors continued to trend sharply up after 1991. It was $104.8 billion in 2000, $257.9 billion in 2005, and $331.8 billion in 2010.

In 1980, issuers had advisors on only 21.4% of the total par value of bonds issued. Last year, 81.8% of the par value of bond deals had FAs.

Practitioners with longtime experience in the field said the explosive growth of FAs has been spurred by economic issues, technological changes, and shifts in issuer attitudes.

"The cost of doing a bond issue has shrunk significantly," said Keith Curry, a former managing director with nondealer MA giant Public Financial Management. Curry, who is now a member of the Newport Beach, Calif. city council and a visiting professor at Concordia University in Irvine, said that technological advancements such as the Internet totally "changed the game" so that some of the broker dealers that dominated the business 30 years ago lost their grip on the business.

"It was certainly a business dominated by Wall Street investment banks," Curry said.

Changes in Rankings

The annual FA rankings by par value of bonds reflect a shift in the balance of financial advisors, away from traditional New York based giants and towards firms that are either totally dedicated to, or place great emphasis on, municipal advisory services as a key part of their businesses. While firms like PFM and FirstSouthwest have had strong positions within the advisory industry going back to 1980, others have vaulted into the top 10 with the declining position of underwriter-first firms.

Wall Street and foreign financial service giants had a strong showing in the 1980 top ten by par value of bonds, with Swiss-based dealer UBS Securities taking a close second behind Dallas-based FirstSouthwest. Merrill Lynch, JP Morgan Securities, Wells Fargo & Co., and Citi were also among top 10 financial advisors. Goldman Sachs and RBC Capital markets joined the top 10 list at various times over the next several years.

That dynamic began to shift in the late 1980s, a development some sources attributed partly to large banks streamlining their operations in response to a two-year financial downturn following the Black Monday stock market crash on Oct. 19, 1987.

By the mid-1990s, PFM and Public Resources Advisory Group two non-dealer advisors had established themselves as the perennial industry leaders. From 1999 onward those firms joined FirstSouthwest, a dealer firm that has always had a large advisory business, to form the top three FAs by par value of bonds.

Robert Lamb, partner and president at Fairfield, N.J.based Lamont Financial Services Corp., also said technology was a major transformative influence as the advent of accessible pricing services reduced the data resources advantage long enjoyed by dealer firms.

“We’re able to look at most of the same data that the underwriters do,” Lamb said.

John White, the chairman of PFM who has more than 40 years of muni industry experience, said that for many years issuers saw no reason to spend money on a financial advisor because they believed that their underwriter would offer them any advice they needed. More specialized advisory practices had to actively persuade issuers of the benefits of having an FA on the deal.

“It took a while for that to get accepted,” White said. “Now you almost have an institutionalized presence of an FA in the deal.”

Many market participants have said that the role of advisors could become even more institutionalized by the MA rule because of an exemption that allows underwriters and others to provide unfettered advice to a municipality as long as the issuer retains and certifies that it will rely on its own independent registered municipal advisor, or IRMA. The IRMA exemption is emerging as a key way for underwriters to protect themselves from having to register as MAs and losing their ability to underwrite bonds as a result.

Compared to 30 years ago, many issuers are now more aware of the conflict of interest inherent when a financial advisor also intends to underwrite the bonds they advise on a conflict that became apparent in the debates surrounding the MSRB’s Rule G23.

Prior to 2011, Rule G23 on activities of financial advisors allowed dealers to advise a state or local government to issue bonds and then formally resign that role to become underwriter of the bonds. The rule was revised to prohibit that practice.

Robert Doty, a lawyer and former financial advisor who now runs his own litigation consulting firm AGFS in Annapolis, Md., said that one common practice for decades was for a dealer to pitch its services as an FA and not even mention underwriting, even though the firm’s overwhelming focus was to eventually underwrite the bonds.

“There were geographic regions where few firms said, ‘We’re an underwriter,'” Doty said. “They always said, ‘We’re an FA.'”

He said the MSRB deserves credit for changing the practice.

Complexity and Size of Deals

Several sources said that the mounting complexity and size of muni financings over the years pushed more issuers to seek financial advisors skilled in those kinds of deals. Relatively straightforward general obligation and project revenue bonds were joined by complex municipal derivatives and other more sophisticated structures, leading to the rise of swap advisors in 1990s.

Peter Shapiro, managing director at South Orange, N.J-based Swap Financial, an MA as well as a registered swap advisor, said that firms like his were formed to cater to issuers doing complex swap deals. But the firm has broadened its reach as the interest rates swap business as declined.

“Since the financial crisis, firms like ours have been called upon to advise our clients not just on swaps, but on bonds,” Shapiro said.

Shapiro said these advisors have extra credibility on certain deals, such as those that feature some portion of taxable debt.

“There’s a need for some additional expertise,” Shapiro said.

Shapiro said his own firm has also moved into providing advice to major endowments like those maintained by large universities.

“That’s a growing client base for us,” he said.

Michael Bartolotta, vice chairman at FirstSouthwest, said that issuers increasingly began to rely on advisors because deals became larger and more complicated. A larger transaction could justify the added cost of an MA on the deal, he said.

“I think it’s complexity of product, Bartolotta said. “I think it’s the sheer size of the transaction.”

White said that during the 1990s more issuers also began to use advisors to help them with the investment of their bond proceeds, which became more complex and important after the 1986 Tax Reform Act required municipalities to track the investment income earned on muni proceeds and rebate to the federal government amounts earned in excess of the yield on the bonds.

Doty said the advent of MA regulation, which applies equally to dealer and non-dealer firms as long as they give bond advice to municipalities as advisors, is “a pivotal time” in the municipal market. The latest regulatory developments have the potential to make a huge positive difference in the industry, but execution by the regulators will be key in making that happen, he said.

“I hope in my lifetime to see this go into effect,” Doty said of the MSRB MA regulatory framework that is still evolving, as well as SEC and Financial Industry Regulatory Authority enforcement. “It’s going to be up to the regulators to bring these unruly advisors along.”

While he stressed that many “really good, conscientious” MAs exist among both dealer and non-dealer MAs, Doty said there are also many incompetent or unqualified FAs that may have to fold their tents soon after the MSRB’s qualifications exam comes out and regulation is effective. Issuers often look to their advisors to lead the transaction team, and some of them are not qualified to do it, he said.

“Often times, one of the least competent members of the team is in charge,” he said.

Doty also is concerned about the “contingent fee” payment model for MAs. Hourly and fixed-afee structures have been used by numerous firms since the 1990s, Doty said, but contingent fee structures in which the advisor gets paid based on the closing of a deal is a serious conflict of interest. The advisor is incentivized to close the deal, especially after putting many months of work into it. Doty said that issuers should be: aware of that conflict; offered alternative fee structures; and be given the right to choose a different fee structure if they want one.

There is a huge need for MA services in the future, Doty said. “There are so many issuers that need competent advice from competent advisors,” he said.

Some of the provisions of Dodd Frank intended to protect issuers are still taking shape as the MSRB works to finalize its MA rules, especially its proposed Rule G42, which will govern the core conduct of muni advisors. MSRB chair Kym Arnone has said repeatedly that completion of the board's muni advisor rulemaking is a top priority. The SEC must also approve those rules.

THE BOND BUYER

by Kyle Glazier

APR 6, 2015 12:58pm ET

CDFA - BNY Mellon Webcast: Connecting CRA to Development Finance Projects.

April 14, 2015
@ 1:00 pm Eastern

Topic: Connecting CRA to Development Finance Projects

The Community Reinvestment Act, enacted by Congress in 1977, encourages banks to support the credit needs of minorities and low- and moderate-income neighborhoods. The program has infused trillions of dollars into these communities and support thousands of community development projects across the nation. How can economic development organizations be an active CRA partner with their local banks? During this installment of the CDFA // BNY Mellon Development Finance Webcast Series, our expert panel will discuss the role of CRA in forwarding development finance initiatives and explore how these investments are being creatively leveraged across the country.

Speakers:

Rena Nakashima, Moderator
The Bank of New York Mellon

Laura Choi
Federal Reserve Bank of San Francisco

Sharon Canavan
U.S. Department of the Treasury

David Black
U.S. Department of the Treasury

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

REGISTER.

CDFI Fund Opens Application Period for FY 2015 CDFI Bond Guarantee

[Program.]

The U.S. Department of the Treasury's Community Development Financial Institutions Fund (CDFI Fund) today opened the fiscal year (FY) 2015 application period for the CDFI Bond Guarantee Program. Application materials are available on the CDFI Fund's website in anticipation of the publication of the Notice of Guarantee Authority (NOGA) in the Federal Register later this week. The NOGA makes up to $750 million in bond guarantee authority available to eligible Community Development Financial Institutions (CDFIs) in FY 2015.

Through the CDFI Bond Guarantee Program, selected certified CDFIs or their designees will issue bonds that are guaranteed by the Federal government and use the bond proceeds to extend capital for community development financing and for long-term community investments. Authorized uses of the loans financed through bond proceeds may include a variety of financial activities, such as supporting commercial facilities that promote revitalization, community stability, and job creation/retention; housing that is principally affordable to low-income people; businesses that provide jobs for low-income people or are owned by low-income people; and community or economic development in low-income and underserved rural areas.

For FY 2015, the Secretary of the Treasury may guarantee bond issues having a minimum size of $100 million each, up to an aggregate total of $750 million. Multiple CDFIs may pool together in a single $100 million bond issuance provided that each eligible CDFI participates at a minimum of $10 million.

New this application round, the CDFI Fund will review Guarantee Applications submitted by Qualified Issuers that propose to use alternative financing structures. The FY 2015 NOGA describes how an Affiliate of a Controlling CDFI may apply for CDFI certification for the sole purpose of participating as an Eligible CDFI in the CDFI Bond Guarantee Program. The NOGA describes each CDFI certification criterion and how it applies to the Affiliate/Controlling CDFI proposal.

Read more.

Consensus Building Around New CA Infrastructure Financing Authority.

For years, in the absence of redevelopment, it has been difficult to get infrastructure project proponents, local governments, and investors to agree on much besides this: Since the state's popular economic development tool was dismantled in 2011, experts have been unsure how California communities were going to make tens of billions of dollars of needed investments in the state's aging infrastructure.

In a first-of-its-kind meeting last week co-hosted by the Bay Area Council Economic Institute and the California Economic Summit, a group of more than a hundred infrastructure financing professionals discussed just how quickly that may be about to change.

Only a few months after a broad new local authority known as Enhanced Infrastructure Financing Districts became law, there was general consensus among experts that this new tool would provide communities with a robust alternative to redevelopment—one they can begin using right away.

"This is no longer an abstraction; it's a tool we can use now, one whose principles are being used all around the world," said Mark Pisano, a senior fellow at USC's Sol Price School of Public Policy, who also serves as one of the co-leads of the Summit Infrastructure Action Team, a group that helped craft the legislation. Pisano pointed to the $25 billion Crossrail Project in London as an example of a major new infrastructure investment that is using a model akin to an EIFD, with the project managed by multiple jurisdictions and funded with a mix of public, private, and local resources.

Presenters in the meeting explored how a range of California infrastructure projects could also take advantage of this new authority—from the $4 billion extension of BART into Silicon Valley and the $1 billion restoration of the Los Angeles River to major upgrades of the Long Beach Civic Center.

Continue reading.

APRIL 06, 2015 BY JUSTIN EWERS

CA Land-Secured Financing Current Topics and Practices Seminar.

California Debt and Investment Advisory Commission

May 1, 2015
Hilton Concord, Concord, CA

Community facilities districts (CFDs) and assessment districts (ADs) continue to provide public agencies resources to finance public facilities and services. They have filled the void in public financing for these purposes left by Proposition 13. This intermediate course provides public officials with an understanding of these financial structures and an update on current topics and practices related to their use and administration.

For more information and to register, click here.

Puerto Rico Power Bonds Rally as Creditors Seek to Repair System.

Bonds of Puerto Rico's struggling power utility rallied to the highest in more than year as the agency and its creditors hammer out proposals to repair its finances.

Some debt of the junk-rated authority, called Prepa, gained after creditors last week submitted a $2 billion plan that would help diversify fuel sources to stabilize energy costs. Prepa expects to release its own proposal in the next two months, Lisa Donahue, the agency's chief restructuring officer, told Reorg Research in an April 8 article.

Prepa bonds maturing in July 2040 traded Friday at an average price of 66.19 cents on the dollar, the highest since March 2014, data compiled by Bloomberg show.

"It's a good sign that bondholders are giving legitimate proposals that, at the surface, look reasonable," said Dan Toboja, senior vice president of municipal-bond trading in Chicago at Ziegler, a broker-dealer. "That starts to look better for the underlying value of the bonds."

Prepa, banks, investors and insurance companies are negotiating contracts to extend loans and give the agency time to create a turnaround plan. Those agreements end April 15.

The utility faces a $415.6 million principal and interest payment to bondholders July 1, according to

New York-based NewOak Capital LLC. Prepa has $236.4 million in reserve, according to a filing by its bond trustee on the Electronic Municipal Market Access website.

Environmental Hiccup

Donahue expects the utility and creditors will agree to a plan enabling the agency to repay its obligations. She has said the fuel diversification offer wouldn't meet environmental standards.

"I am optimistic that Prepa and the forbearing creditors will ultimately reach an agreement," she said via e-mail Friday. "Any such plan will need to provide for a capital structure that allows Prepa to pay all such debts and honor other obligations as they come due in accordance with the plan."

Investors are committed to providing capital to upgrade Prepa, Stephen Spencer, a managing director at Los Angeles-based Houlihan Lokey, adviser to bondholders, said in an e-mail Friday.

"We continue to believe the situation can be resolved consensually and productively with continued payment of Prepa's debt and interest obligations as they come due and will do everything in our power to reach that outcome — for the benefit of Prepa, its many stakeholders and the island," he said.

Bloomberg

by Michelle Kaske

April 10, 2015

Fitch: California Water Restrictions May Sink Utility Revenue.

Fitch Ratings-New York-08 April 2015: The governor's executive order to reduce California's water usage will lead to lower revenues for the state's utilities and could pressure a few ratings, Fitch Ratings says. The order is the latest sign that the current drought and minimal 2014 snowpack have reached a severity that will test drought preparedness and water supply planning statewide. However, widespread downgrades are unlikely, as many California utilities can mitigate this risk by decoupling revenues from sales.

California Governor Jerry Brown signed an executive order last week that aims to cut the state's overall water usage by 25% from 2013 levels over the coming nine months. Fitch expects water sales to decline by 10% to 15% in fiscal 2015, based on reporting from rated issuers. We expect it to fall further in fiscal 2016 due to the governor's order. Drought and the mandated conservation requirements will have a negative impact on the revenues of many utilities, though the impact will vary widely.

The impact of the governor's order on budgets will vary and depend mostly on the way the regulatory framework is implemented. The California Department of Water Resources (which has the mandate) has not generally taken a one-size fits all approach to conservation enforcement. Top-down conservation orders that ignore local supply conditions could force water utilities with stronger supplies to conserve more than they actually need to, reducing the value of investments in supply reliability, storage, water recycling and groundwater management. Fitch believes the state is likely to take a more balanced approach. However, rulemaking is ongoing, and use restrictions could have negative impact on credit quality if they fail to consider local supply conditions as well as local use levels.

The impact on credit quality will depend heavily on utilities’ rate-setting decisions. As utilities generally have the ability to offset revenue losses with rate adjustments and their expenses are generally fixed, California water rates will rise. Some utilities have structural rate design features that smooth revenue declines when water sales drop. The city of Santa Cruz, for instance, has implemented aggressive drought rate structures designed to raise prices and stabilize revenues as sales volumes fall. Others such as the Eastern Municipal Water District in Riverside County have significant fixed meter charges and water budget-based rate structures in which tier sizes can be adjusted to reflect drought stresses and supply availability. Even in the absence of self-stabilizing rate structures, Fitch believes most utilities will raise rates as needed to maintain solid financial performance. Where policymakers hesitate to make necessary adjustments, rating changes could occur.

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Fitch: Model Shows Fast Rate Rise Would Hurt U.S. Public Finance .

Fitch Ratings-New York-06 April 2015: U.S. Federal Reserve (the Fed) rates are likely to begin to rise in mid 2015 and to tighten gradually, Fitch Ratings says. We expect the average policy rate for 2016 to be 1.6%. However, we created an interest rate shock scenario impact to gauge how faster rate increases and a decline in the economy would impact state, local, and transportation infrastructure issuers. In the interest rate shock scenario, we assumed inflation to peak at 4.5% in

2016, forcing the Fed to raise its annual target sharply to 4.0% in 2016. We also assumed 0% real U.S. GDP growth, unemployment rising steadily to 7.0% in 2016, and the yield on 10-year Treasuries to reach 5.5%.

Under this interest rate shock scenario we would expect most state budgets to weather the interest rate changes. However, the lack of growth and rise in unemployment would trigger declines in income and consumer spending, which would reduce sales tax revenues. In 2014, sales taxes were approximately 28% total state and local tax revenues according to the U.S. Census Bureau. We also believe a spike in interest rates would cause a decline in the stock markets that would reduce capital gains tax collections in wealthier states and reduce state and local employee pension plan assets. Under this interest rate shock scenario, we would expect some level of federal intervention and states could exercise some of their flexibility in funding services.

Since funding is an important source for local governments, tightening state funding without changes to other program funding would be detrimental. However, the largest funding for most local governments is property taxes. Zero growth combined with increases in borrowing costs would likely hurt property values and their associated taxes. Many local governments are still recovering from the funding declines during (and after) the Great Recession. An interest rate shock in 2016 would lead to rating pressures on local governments with fund balances that are still recovering.

The impact on many transportation projects would be felt in declining transportation volumes. Seaport, airport, and road volumes are all tied directly to GDP changes. So, stalling US GDP would have a significant impact. The rise in unemployment would also have a broad impact. The larger international gateway airports would fare better than smaller leisure and secondary hub airports. Import volumes at ports would decline as spending falls. Export volume could also decline if the turbulence in the US economy spread to other economies. The impact of lower toll road volume could be offset by the pricing power many authorities have.

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NASACT-NAST LGIP Workgroup Responds to GASB's Questions on Fees and Gates.

Read the comment letter.

BDA Submits Comment Letter: FINRA Proposal to Expand TRACE Dissemination to Additional Securitized Products.

Today, BDA submitted a comment letter to FINRA in response to its request for comment on a proposal to expand dissemination of TRACE data to include an additional group of securitized products. The BDA's letter can be accessed here.

Proposal Executive Summary:

FINRA is soliciting comment on a proposal to expand dissemination of TRACE data to include "additional Securitized Products" defined as CMOs, CMBSs, and CDOs. FINRA is also proposing to reduce the reporting time frame for these "additional Securitized Products" from end-of-day to 45 minutes and, after nine months, to 15 minutes after the transaction. FINRA also is proposing to simplify the reporting requirement for pre-issuance CMOs.

FINRA proposes to amend Rule 6730 to change the reporting time frame for transactions in CMOs that are executed before the issuance of the security to no later than two business days prior to the first settlement date of the security. Under current Rule 6730, firms generally must report CMO transactions that are executed prior to the issuance of a security on the earlier of the business day that the security is assigned a CUSIP, or the date of issuance of the security.

FINRA is proposing a two-tiered approach for dissemination of transaction information.

- For transactions of $1M or less FINRA proposes requiring real-time price dissemination

For transactions of $1M or more FINRA proposes:

- Weekly and monthly dissemination of aggregate transaction information when 5 or more transactions occur in any given week of a month
- Monthly dissemination of aggregate transaction information when 5 or more transactions occur in a given month but 5 trades do not occur in any single week.

BDA's letter focuses on the following topics and questions:

- The unique operational challenges that exist in these more complex securities and how a 15 minute reporting time frame will increase operational and regulatory challenges, especially for smaller dealers.
- The letter requests a market-based rationale that justifies the proposal's $1m real-time dissemination threshold, noting that the proposed limit may not strike the proper balance between transparency, liquidity, and retail investor pricing.
- The letter requests a further amendment to Rule 6730 to reduce the reporting time frame to 1 day prior to the first settlement day as opposed to the proposal's 2 day prior to the first settlement day proposed amendment.

- The letter notes that due to the activity of some non-dealer financial institutions in these markets there is not a level playing field from a regulatory reporting standpoint.

04-09-15

Path to Finalizing R.I. Pension Deal Still Faces Hurdles.

PROVIDENCE, R.I. — Before a deal can be finalized to resolve years of legal wrangling over Rhode Island's landmark public pension system overhaul, a court, lawmakers and the plaintiffs must sign off on it.

Last week the state struck a deal with most of the public sector unions and retiree coalitions suing over higher retirement ages and cuts to cost-of-living increases. Lawmakers restructured the pension system in 2011 to save $4 billion over 20 years — an effort that has been used as a model by other states.

Here is a look at what happens next in the pension saga, and what led up to the proposed settlement.

—

NECESSARY APPROVALS

The plaintiffs must amend their complaints to proceed as a class action for approving the settlement, and all of the class members must be notified about the proposed resolution. They are entitled to object.

The Superior Court judge presiding over the case will determine whether the settlement proposal is fair, and whether the court should approve it.

Separately, the settlement terms have to be approved by the General Assembly.

The pension reform was done legislatively so the terms have to be incorporated into the law. Leading lawmakers support settling, but others say they're reluctant to change the original pension reform law.

The litigation could continue if lawmakers take no action or enact legislation that is different than the terms.

—

THE SETTLEMENT TERMS

The settlement provides for cost-of-living increases and one-time stipends for retirees. The cap for calculating the benefits would increase for some retirees, and the calculation would be based on a new formula using both the performance of investments and the Consumer Price Index.

Employees would be allowed to retire earlier if they meet set requirements.

Most of the public sector unions and retirees voted to accept the terms, which means that about 59,000 past and present state employees would be affected by the deal.

Unions representing municipal police, Cranston police and Cranston fire, which collectively represent about 800 people, did not. Their lawsuits are continuing and will be addressed by the court after the settlement is implemented.

The total cost of the settlement is about $300 million. It preserves 90 percent of the savings from the pension reform.

The shortfall in the pension fund would increase from $4.6 billion to nearly $4.9 billion.

—

THE PATH TO A SETTLEMENT

The state agreed to a tentative settlement last year with the unions and retirees that pulled back on some of the changes but preserved most of the overhaul. Ultimately it was rejected after police union members voted it down.

Judge Sarah Taft-Carter ruled in February that the trial would begin April 20, despite both sides asking for more time to prepare.

With the trial date looming, many plaintiffs were receptive to the settlement proposal because they had begun to believe they would lose at trial.

Gov. Gina Raimondo, the architect of the pension reform, said the state has a strong case, but it's better to settle now and provide certainty for public employees, municipalities and the state.

The settlement doesn't prevent future lawmakers from changing the pension system again, but Treasurer Seth Magaziner said he doesn't think another major reform will be necessary.

In light of the settlement with most plaintiffs, the judge vacated the trial date. The parties have until May 18 to implement the settlement.

By THE ASSOCIATED PRESS

APRIL 7, 2015

Does the Public Benefit From Private Infrastructure Investment?

Read the discussion.

THE NEW YORK TIMES

APRIL 8, 2015

Emanuel's Second Term: Chicago's Grim Fiscal Challenges.

(Reuters) – Ballooning pension payments, difficult negotiations with labor unions and threatened state funding cuts are some of the challenges facing Rahm Emanuel, who won a second term as

Chicago’s mayor on Tuesday.

The third biggest U.S. city is teetering at the edge of a fiscal precipice brought on by years of insufficient pension contributions, high debt issuance and a reliance on nonrecurring revenue to plug budget holes.

As a result, rating agency Moody’s Investors Service has dropped Chicago’s general obligation credit rating six notches since 2010 to Baa2, two notches above junk. The only big U.S. city with a lower Moody’s rating is Detroit, which exited bankruptcy in December.

Here are the grim details of Chicago’s financial problems:

– Chicago’s total bond debt, including general obligation and water, sewer and airport revenue bonds, was $21.4 billion at the end of 2014, 60 percent more than in 2004.

– The city’s biggest liability is its pensions. It ended fiscal 2013 with an unfunded liability of $19.2 billion in its four retirement funds, leaving them only funded 37 percent, well below the 80 percent level considered healthy. In addition, the city’s unfunded liability for retiree healthcare was nearly $1 billion.

– Chicago last summer projected its contribution to its four pension funds, which totaled $478.3 million this year, will spike to $1.1 billion next year and steadily climb to $1.638 billion in 2020. At that level it would represent 46 percent of the city’s current operating budget. A looming $550 million increase is due to a 2010 Illinois law that requires higher payments to public safety worker pensions to reach 90 percent funding by 2040.

– An Illinois Supreme Court ruling is due soon on a union challenge to the constitutionality of public pension reforms. If it goes against the state, the ruling could unravel a 2014 law that cut benefits for two of Chicago’s four pension funds, increasing the unfunded liability in the city’s municipal and laborers’ retirement funds by $900 million.

– Chicago’s ratings could be downgraded if the reform law is tossed out. If its ratings continue to fall, the city could be forced to fund payments nearly equal to its operating budget of $3.53 billion. A default on bank letters of credit and other liquidity facilities could potentially force the city to repay nearly $3 billion of debt, the city said in a January court filing. It may also have to make $300 million in payments to banks for debt-related contracts linked to the city’s ratings. If the ratings are cut to junk then that would also substantially boost borrowing costs for future Chicago bond issues.

– Under Illinois Republican Governor Bruce Rauner’s proposed fiscal 2016 state budget, Chicago would lose about $135 million in state revenue sharing and the Chicago Transit Authority, which the mayor controls, would lose $130 million.

– The Chicago Board of Education, also under mayoral control, is mired in its own fiscal crisis, projecting a $1.11 billion deficit in its budget for the fiscal year that begins July 1. The school system ended fiscal 2014 with a $9.5 billion unfunded pension liability and a funding ratio of 51.5 percent, down from nearly 80 percent in fiscal 2008. A three-year contract with the Chicago Teachers Union expires June 30.

By REUTERS

APRIL 8, 2015

(Reporting by Karen Pierog; Editing by Megan Davies and Martin Howell)

Questioning the Seaworthiness of Bond Funds.

Investors have embraced bond mutual funds and exchange-traded funds as sound and solid places to keep their money. But that growing popularity rings alarm bells with some regulators, who worry that these same vehicles could become sources of instability in a future market crisis.

The Federal Reserve, in a February report on monetary conditions, suggests that individual investors may have gotten the misleading impression that mutual funds and E.T.F.s trade more readily than the bond markets themselves, and the consequences could be quite serious.

"These funds now hold a much higher fraction of the available stock of relatively less liquid assets — such as high-yield corporate debt, bank loans and international debt — than they did before the financial crisis," the Fed said in the report. And as the funds expand, they may pose a threat, it said: "Their growth heightens the potential for a forced sale in the underlying markets if some event were to trigger large volumes of redemptions."

The Fed is essentially asking how smoothly bond E.T.F. shares will trade when markets are in turmoil, as they will surely be one day. It is also concerned that, if people start to panic, traditional fixed-income mutual funds will have trouble raising the cash they need to cover redemptions.

In the report, the Fed didn't answer its own questions. But it clearly intends to keep monitoring these parts of the market carefully. For one thing, the Fed has raised these issues previously. So has a 2014 report from the International Monetary Fund as well as a 2013 report by the Treasury's Office of Financial Research.

These concerns have been fueled, in part, by the rapid expansion of bond E.T.F.s, which were introduced only a dozen years ago. By the end of January, they held assets of just over $308 billion, up from $57 billion in 2008. In contrast, fixed-income mutual funds, a fixture of the marketplace for decades, held about $3.5 trillion in assets at the end of January, up from about $3.2 trillion at the end of 2013.

It's no wonder that mutual funds and E.T.F.s have become so popular: In almost every year since the 2008 financial crisis, bond E.T.F.s and mutual funds have performed well. Average bond E.T.F. returns, for example, hit 9.3 percent in 2009 and stayed strong through 2012, according to Morningstar. They moved slightly into the red in 2013, but rebounded to 4.5 percent last year and gained just over 1 percent in the first quarter of this year. Average bond mutual funds, which gained 17.7 percent in 2009, have trailed E.T.F.s a bit since then; the average bond fund gained 4.4 percent last year, and just under 1 percent in the first quarter.

But although the funds have prospered, regulators are concerned about the nature of the underlying bond market, which is far less liquid and transparent than the robust market for stocks in the United States.

"Bonds are like houses," said Dave Nadig, chief investment officer at the analytical website ETF.com. Like houses, he said, they are unique, some don't sell quickly or easily, and reliable price quotes can be hard to come by. By Mr. Nadig's estimate, there are more than 150,000 individual debt instruments outstanding. Of those, only a few thousand trade as frequently as once a day.

As a result, he said, establishing perfectly accurate market prices for fixed-income securities with the frequency that many retail investors expect is impossible. "How would you propose the market determine a fair price for a Krispy Kreme bond that hasn't traded in four days?"

Industry pricing services gather estimates of what that Krispy Kreme bond would actually fetch if it were sold. But those values may or may not be obtainable in the real world on a normal day, much less during a panic.

Another worrisome fact of life in today's bond market is that many large financial institutions, wary of tighter risk standards imposed after 2008, are unwilling to hold a large inventory of bonds. This makes the overall market much less liquid than it was not long ago.

The mutual fund and E.T.F. industry, on the other hand, is worried that regulatory concerns will give rise to wrongheaded regulations that will damage the retail market and deprive investors of popular, useful products.

For example, in a report in late February, the Investment Company Institute, an industry trade group, said that all but 5 percent of the assets in long-term bond mutual funds were held by households, typically in retirement accounts, and that history has shown that "retirement savers don't flee in hard financial times."

Moreover, statistics provided by institute economists show that the share of total bond market assets held by these funds is lower than the regulatory worries might suggest.

As of 2014, according to the institute, bond mutual funds, whose assets dwarf those of bond E.T.F.s, owned about 10 percent of the total supply of Treasury and government bonds and 26 percent of the supply of municipal bonds. In the high-yield bond market and some sections of the international bond market, already thinly traded and likely to be more troublesome in a future crisis, mutual funds hold about 22 percent of high-yield bonds and less than 1 percent of international bonds.

Still, one significant problem is that the interaction between the funds and the underlying fixed-income markets can be quite complex. When it comes to E.T.F.s, for example, not even the regulators are in agreement about the liquidity risks they pose.

Academic research is inconclusive, with two Fed studies reaching opposite conclusions. Recently, Michael S. Piwowar, a member of the Securities and Exchange Commission, told a fund industry conference that he thought some regulatory worries about E.T.F.s were "misinformed," "unsubstantiated" and "overblown."

IT'S easy to see how even regulators could be fuzzy about how much liquidity there is in the E.T.F. market. The first question they meet is, "Which E.T.F. market?"

That's because there are actually two markets — the primary market occupied by big institutions, and the secondary market where retail investors trade.

This, briefly, is how it works. In the primary market, only big institutions (called "authorized participants") can do some important kinds of business with the E.T.F. sponsor. They can redeem shares to get a prorated portion of the fund's assets, or they can deliver a fresh supply of those assets to the sponsor in exchange for a stack of newly created E.T.F. shares.

Continue reading the main storyContinue reading the main storyContinue reading the main story
"Authorized participants are the linchpin of the E.T.F. ecosystem," said Ben Johnson, an analyst at Morningstar. "They intervene to create and redeem shares to keep market prices in line with underlying values."

Imagine, for example, that a bond E.T.F.'s shares trade in the secondary market for $9 but their net asset value — that is, the value of the underlying bonds — is actually $10 a share. In such a case, authorized participants could buy the shares in the secondary market and redeem them in the primary market for full value, pocketing a dollar profit per share. Their purchases in the secondary market would, in time, drive up the price of those discounted shares.

One dilemma noted by Mr. Johnson is that if panic selling were underway for whatever reason, the authorized participants who were expected to buy E.T.F. shares in the secondary market and exchange them for bonds from the underlying portfolio would instantly sell the bonds to lock in their profit. As a consequence, he said, no matter how well the primary market works, it cannot fully insulate the underlying bond market from the impact of panicky secondary-market selling. That has regulators worried.

Investment industry representatives say that the E.T.F. markets have performed well under difficult circumstances. Rochelle Antoniewicz, senior economist with the Investment Company Institute, cites “an ideal test case” that arose in the summer of 2013, when investors feared the Fed would raise rates sooner than expected. Fixed-income E.T.F.s continued to trade smoothly, she said.

Individual investors may not be aware of these issues, though they should be, Mr. Nadig of ETF.com said.

“It is important for investors to understand all of the aspects of liquidity for their E.T.F.s,” he said. They should know what the long-term volume of secondary market trading in their fund’s shares has been, because E.T.F.s with skimpy daily trading volume are especially vulnerable to large price gaps in turbulent times.

Investors also need to understand the risks of holding E.T.F.s that, in turn, invest in less liquid assets like high-yield debt and foreign bonds. No amount of secondary market trading will prevent the E.T.F.s from losing money when the value of that underlying asset falls — and the less liquid the asset, the steeper its decline could be when the market falls.

Finally, investors need to know that the second-by-second prices quoted for their fixed-income E.T.F. shares, and the daily prices reported for their bond mutual funds, typically do not entirely reflect purchases and sales in the underlying bond markets.

Deeper solutions may not be forthcoming soon. Matthew Hougan, the president of ETF.com, who calls himself an “eternal optimist,” said he hoped that today’s regulatory worries about liquidity would “in the end, be refocused on reforming the bond market” to make prices more reliable and trading more visible.

But Mr. Nadig, his ETF.com colleague, said he found that unlikely. Bond prices “ultimately have to be set by market participants,” he said. “If they’re not willing to do that, then no amount of regulatory hand-wringing” can solve the basic liquidity problem.

That problem may not be evident every day. But bond E.T.F. and mutual fund investors may want to remember that, by the time any serious pricing and liquidity problems do arise, it may be too late for them to worry.

THE NEW YORK TIMES

By DIANA B. HENRIQUES

APRIL 11, 2015

[JPMorgan Tripling Muni Holdings Signals Banks' Demand Unquenched.]

Banks led by JPMorgan Chase & Co. and Wells Fargo & Co. are boosting municipal-debt holdings to a record even as regulators say the securities aren't liquid enough to help during a credit crisis.

U.S. lenders owned $452 billion of munis as of Dec. 31, double their ownership at the end of the recession in June 2009, according to the latest Federal Reserve data. The demand has helped push yields on city and state bonds close to the lowest since the 1960s, reducing financing costs for schools, roads and water systems.

JPMorgan and Wells Fargo have roughly tripled muni holdings since 2009. Banks have reasons to stock up even though regulators decided in September that munis aren't easy to sell quickly in a cash crunch. The bonds offer higher yields than some alternatives, and banks deem them liquid enough to sell down the road as the economy strengthens and lending picks up. Buying municipalities' obligations may also foster business relationships.

"They know which cities they should be worried about and which ones they can be comfortable with," said Marty Mosby, an analyst at Vining Sparks, a broker-dealer in Memphis, Tennessee. "And it provides a liquid asset that they can get in and out of as we have stronger loan demand."

Lobby Effort

Banks own about 13 percent of munis, making them the third-largest holder after households and mutual funds. U.S. lenders added about $33 billion in 2014, helping drive a 9.8 percent gain last year for the securities. It was the best performance since 2011, Bank of America Merrill Lynch data show.

Issuers and analysts have said the liquidity rule, formulated by the Fed, the Federal Deposit Insurance Corp. and the Office of the Comptroller of the Currency, risks raising borrowing costs in the $3.6 trillion municipal market.

The September measure was among steps regulators introduced to avert a repeat of the 2008 financial crisis. It requires lenders to hold enough assets that are considered high quality – – such as Treasuries and highly rated corporate bonds — to withstand a 30-day squeeze.

JPMorgan, the largest U.S. bank by assets, boosted municipal holdings to $40.6 billion at year-end, up $3.2 billion from a year earlier and almost triple the level in December 2009, bank filings show. Brian Marchiony, a spokesman in New York, declined to comment on the holdings.

Wells Fargo, the most valuable U.S. bank by market capitalization, held about $47 billion as of Dec. 31, more than triple the December 2009 figure.

Ancel Martinez, a spokesman in San Francisco, declined to comment.

Relative Value

Bank of America Corp., the second-biggest lender by assets, increased holdings by $3.6 billion in 2014 to end the year with $9.5 billion, the most since December 2009, bank documents show.

"We don't comment on our portfolio," said Jerry Dubrowski, a spokesman in Charlotte, North Carolina.

Banks are buying munis for their relative value, said Alan Schankel, a managing director of fixed-income strategy at Janney Capital Markets in Philadelphia.

Interest rates on 30-year tax-exempt debt have averaged about 0.2 percentage point above Treasuries for the past five years, data compiled by Bloomberg show. Before the recession, investors typically accepted lower yields on munis than Treasuries because of munis' tax-free interest.

Benchmark munis maturing in three decades yield about 2.9 percent, equivalent to a 4.8 percent taxable yield for top earners. That compares with about 2.55 percent on 30-year Treasuries.

Tax Lift

"A high-quality municipal bond will give them a much better after-tax return than an agency or a Treasury or a high-grade corporate," Schankel said. "So it's a compelling argument to include munis."

U.S. localities can also claim a better track record for repayment than companies. From 1970 to 2013, an average of 0.08 percent of investment-grade munis sold a decade or more earlier defaulted, compared with 2.87 percent for similarly rated company bonds, according to Moody's Investors Service.

Not all banks are adding. Citigroup Inc. held less than it did at the end of 2009. Mark Costiglio, a spokesman for New York-based Citigroup, declined to comment.

U.S. lenders may curtail buying as consumers' appetite for borrowing increases, Mosby said.

"If loan demand was to pick up, if it was to get much stronger, then you would see some pullback of the demand that you've seen in recent years," Mosby said.

Purchasing debt from a state or city may also create opportunities to provide banking services, said Joseph Rosenblum, director of muni credit in New York at AllianceBernstein Holding LP, which manages about $32 billion of munis.

"Some of it has to do with enhancing relationships," Rosenblum said. "So you buy the bond — now you're the trustee bank, or you're the depository bank."

Bloomberg

by Michelle Kaske

April 7, 2015

Municipal Bond Market Credit Analyst Survey.

Municipal Bond Market Monthly

Janney Fixed Income Strategy

April 6, 2015

Municipal Bond Market Credit Analyst Survey – First Annual

• The most important issue/trend facing the municipal bond market is currently Public Pensions (funding levels, POBs). 86% of municipal credit analysts polled included the category in their top five, according to our survey results.
• Over half (61%) of analysts surveyed believe state and local government credit quality has recovered from the Great Recession. But, a total of 39% think they have not recovered in one form or another: (22%) not recovered, (8%) are undecided and (9%) answered “Not Yet”.
• 57% of analysts polled have a “very” or “somewhat” favorable opinion of ratings from Moody’s and Fitch. Kroll’s total favorability was only 7%. 66% of analysts surveyed have an unfavorable, undecided or “do not consider” Kroll ratings.
• We collected responses from 162 municipal bond credit analysts during our survey. Over half of the replies (63%) were from buy-side analysts. The majority describe themselves as Generalists (59%) or as analysts who specialize in Tax-Backed (30%) bonds.
• California was upgraded by Fitch; Connecticut’s outlook was lowered by S&P; Louisiana’s outlook was lowered by S&P; and Puerto Rico was downgraded by all three rating agencies.

Read the Survey.

Here’s the Top Concern for Many Municipal Bond Market Analysts.

Public pensions are one of the top issues confronting the municipal bond market, according to the vast majority of credit analysts responding to a survey released on Monday.

The survey asked 162 municipal bond credit analysts to name the five most important issues or trends currently facing the market. Of the respondents, 86 percent included matters related to pensions, such as funding levels and pension obligation bonds, on their top five list.

The second most-noted topic was Puerto Rico, which 50 percent of the analysts included as one of their top five issues or trends. The island commonwealth is currently mired in a debt crisis.

Tom Kozlik, a sell-side municipal credit analyst at the Philadelphia-based financial services firm Janney Montgomery Scott, LLC, conducted the survey.

While he emphasized that he was not speaking for all of the respondents, Kozlik said that, for him, public pensions are a key source of concern.

“It’s 2015, we’re multiple years out of the recession and there are still several state and local governments that are experiencing structural imbalances and their pension funding levels are still inadequate, or I’d say very inadequate,” Kozlik said during an interview on Tuesday.

Following the onset of the Great Recession in late 2007, contributions to public pension plans in cities and states around the U.S. saw declines. As a credit analyst, Kozlik said he is looking ahead, considering how the already lagging levels of pension funding in some jurisdictions would affect their finances when another economic downturn hits.

“They’re dragging down credit quality for several state and local governments now,” he said, referring to pension funding levels. “It’s going to be even worse after the next recession.”

As for whether the quality of state and local government credit has recovered from the Great Recession, 61 percent of analysts responding to the survey said “yes,” while 22 percent said “no.” Another 17 percent were either undecided or said some variation of “not yet.”

The survey was conducted between March 20 and March 31. Of the municipal bond credit analysts that responded, 59 percent identified themselves as generalists and 63 percent said they were on the buy-side of the market.

The other issues and trends that the analysts most commonly included on their top five lists were: infrastructure (44 percent), the proliferation of chapter 9 municipal bankruptcies (38 percent) and disclosure (35 percent).

Kozlik said that a common reason analysts pay attention to infrastructure is that deferring maintenance or new projects can affect the creditworthiness of a state or local government.

As for disclosure, he said there tends to be broad agreement among municipal credit analysts that governments should issue information about their finances more regularly. He noted that companies release quarterly financial reports. Municipalities, he said, might not issue financial statements until a year, or 18 months, after the close of a fiscal year.

Another survey result that Kozlik found interesting had to do with ratings agencies. Over half of the surveyed analysts expressed a neutral or favorable view of Fitch, Moody's and Standard & Poor's.

But the results were distinctly different when they were asked about Kroll Bond Rating Agency, a relative upstart established in 2010. Sixty-six percent of analysts either don't consider, or have an "unfavorable" or "undecided" opinion of Kroll's municipal bond ratings.

Government Executive

By Bill Lucia April 7, 2015

Successful Investing in Charter Schools Part II: Evolution of the Sector.

Successful Investing in Charter Schools Part II: Evolution of the Sector

Complimentary Web Seminar

April 22, 2015
12 pm ET/9 am PT

Click here to Register.

Last year, Orrick and the Bond Buyer presented an overview of the charter school facilities bond sector, highlighting transaction fundamentals, sector-level research data, and credit and structure trends.

This year, in Part II of the series, the webinar continues the dialogue by assembling a roster of experienced market participants and policy leaders to present current trends and analysis on the evolution of this fast-growing high yield market sector.

The featured speaker, Nina Rees, President and CEO of the National Alliance for Public Charter Schools, will provide insights regarding the national charter school facilities policy agenda and look ahead to trends affecting the growth of the sector in general. In addition, panelists will review legal and credit issues and trends.

Who Should Attend?

- State and Local Education Finance Officers
- Charter School Leaders, CFOs and Finance Directors
- Institutional Investors seeking High-Yield Opportunities
- Investment Analysts
- Education-Focused Investment Bankers

S&P Request for Comment: Not-for-Profit Public and Private Colleges and Universities Rating Methodology.

1. Standard & Poor's Ratings Services is requesting comments on proposed changes to its methodology for assigning stand-alone credit profiles (SACPs), issuer credit ratings (ICRs), and issue credit ratings to not-for-profit public and private colleges and universities globally.

2. The request for comment (RFC) proposes changes that are intended to provide additional transparency to help market participants better understand our approach in assigning ratings to not-for-profit public and private colleges and universities globally, to enhance the forward-looking nature of these ratings, and to enable better comparison between these ratings and ratings in other sectors and asset classes.

3. If adopted, these criteria will supersede "Approaches To Rating U.K. Universities Amid Growing Credit Diversity," published March 28, 2003. These criteria would also partially supersede the "Higher Education" criteria, published June 19, 2007. Specifically, the sections "Private College and University Credit Ratings", "Management and Governance", "Debt", and "Rating Public Colleges and Universities" would be superseded by these criteria. This methodology is related to our criteria article: "Principles Of Credit Ratings", published on Feb. 16, 2011.

Continue reading.

08-Apr-2015

SIFMA Unveils Model Document for Sophisticated Investors.

WASHINGTON — A group has developed a model document that will standardize the information that investors provide to dealers to affirm they are sophisticated municipal market professionals that need less regulatory protection than retail investors.

The document was written by the Securities Industry and Financial Markets Association to resolve the concerns of some dealer about how they would get more detailed information from investors that are SMMPs to comply with best execution and other Municipal Securities Rulemaking Board rules.

"The SMMP modified dealer obligations cover more than just assessing suitability for institutional customers," said SIFMA managing director and associate general counsel David Cohen. "They now include suitability, time of trade disclosure, best execution, and pricing obligations for certain agency transactions."

Cohen said SIFMA chose Tuesday to release the model document because April 7 is exactly eight months from Dec. 7 when, it will be needed to comply with the amendments the Municipal Securities Rulemaking Board made to its Rule D-15 on SMMPs to make the affirmations more expansive.

The amendments require institutional investors or individuals with assets of at least $50 million to provide to dealers more detailed affirmations that they do not need extra protections under the MSRB's best execution and other rules. The best execution rule, for example, does not apply to SMMPs.

Until the amendments take effect on Dec. 7, existing SMMP affirmations that satisfy the institutional investor exemption in the Financial Industry Regulatory Authority's suitability rule will continue to work for MSRB purposes.

Under the modified Rule D-15, approved by the Securities and Exchange Commission late last year, dealers seeking to treat a customer as an SMMP that gets less regulatory protection must determine the customer is an institutional investor or has $50 million of assets, and must further get that customer to indicate that it is using its own judgment to evaluate the dealer's recommendations, the quality of its executions, and pricing.

The current D-15 on SMMPs requires less detailed information and says only that the customer is independently evaluating the dealer's recommendations.

The model document is a single page that contains the language of the modified D-15 and asks customers to sign an agreement that they will be considered an SMMP for all muni transactions. The rule allows dealers to get affirmations from SMMPs verbally and does not explicitly require they obtain an affirmation letter.

But Cohen said dealer firms will have to take notes detailing the conversations and keep those as records. The affirmation letter in the model document would be evidence that the dealer established that the customer is an SMMP without having to talk about it and file away notes.

"This facilitates that recordkeeping," Cohen said.

The implementation of the best execution rule, which requires dealers to use "reasonable diligence" to seek the best prices for their customers and the more expansive requirements of D-15, were contentious because dealers said getting the new affirmations and reprogramming their automated trading systems would be costly.

More recently, some market participants have worried that money managers' lawyers may not let them affirm they are SMMPs because that may be seen as an abrogation of the policies and procedures they already have in place to clients, as those clients' fiduciaries. And if money managers don't affirm they are SMMPs, then dealers may not want to trade with them because of the additional regulatory burdens.

The new model document is available for download on SIFMA's website.

THE BOND BUYER

BY KYLE GLAZIER

APR 7, 2015 3:13pm ET

- [SIFMA Develops Model Sophisticated Municipal Market Professional Affirmation for Institutional Customers.]
- [Bond Insurance Penetration Climbs to 5.8% in Q1.]
- [A Tale of Two Cities: How Municipal M&A Saves Taxpayers, Prevents Budget Shortfalls.]
- [Green-Bond Guidelines Show 'Incremental Progress']
- [2015 Municipal Finance Conference – Call for Papers.]
- *[Protect Our Benefits v. City and County of San Francisco]* – Court of Appeal holds that City charter amendment conditioning the payment of supplemental COLA on the retirement fund being "fully funded" based on the market value of the assets for the previous year could not be constitutionally applied to employees who retired after effective date of initiative establishing the supplemental COLA.
- *[110 Wyman, LLC v. City of Minneapolis]* – Court of Appeal holds that statutorily-imposed "reasonably related" special services standard, rather than common law special-benefit standard, applied to landowners' challenge to charges imposed on property owners in special service district in city's downtown.
- And finally, [Officer Down!] is brought to us this week by *Vaughn v. City of Carbondale*, in which Officer Jeffrey Vaughn made the somewhat-less-than-ultimate sacrifice when he reached into his squad car for the radio and bumped his head on the door frame. Laugh all you want, but your editor has involuntarily encountered more than his share of police car door frames and can personally attest that they'll leave a mark.

PENSIONS - CALIFORNIA

Protect Our Benefits v. City and County of San Francisco

Court of Appeal, First District, Division 5, California - March 27, 2015 - Cal.Rptr.3d - 2015 WL 1404952

Since 1996, retired employees of the City and County of San Francisco (the City) have been eligible to receive a supplemental cost of living allowance (supplemental COLA) as part of their pension benefits when the retirement fund's earnings from the previous year exceeded projected earnings.

On November 8, 2011, City voters passed Proposition C, an initiative measure that, among other things, amended the Charter of the City and County of San Francisco to condition the payment of the supplemental COLA on the retirement fund being "fully funded" based on the market value of the assets for the previous year.

Protect Our Benefits (POB), a political action committee representing the interests of retired City employees, appealel from a superior court order denying its petition for writ of mandate seeking to invalidate this amendment as an impairment of a vested contractual pension right under the contract clauses of the federal and state Constitutions.

The Court of Appeal held that:

- City charter amendment could not be constitutionally applied to employees who retired after effective date of initiative establishing supplemental COLA;
- City charter amendment could be constitutionally applied to employees who retired before effective date of initiative establishing supplemental COLA; and
- City obtained adequate actuarial reports supporting the amendment.

Under the contract clauses of the federal and state constitutions, city charter amendment conditioning retired city employees' supplemental cost of living allowance (COLA) on the retirement fund being "fully funded," based on the market value of the assets for the previous year, could not be constitutionally applied to employees who retired after effective date of the initiative establishing the supplemental COLA, where no comparable advantage was offered to pensioners or employees in return.

City charter amendment conditioning retired city employees' supplemental cost of living allowance (COLA) on the retirement fund being "fully funded," based on the market value of the assets for the previous year, did not violate the contract clauses of the federal and state constitutions as applied to employees who retired before effective date of the initiative establishing the supplemental COLA, even though no comparable advantage was offered to pensioners or employees in return, since employees who retired earlier did not have the same vested rights as employees who retired after the COLA was in effect.

ZONING - GEORGIA

Southern States-Bartow County, Inc. v. Riverwood Farm Property Owners Ass'n, Inc.

Court of Appeals of Georgia - March 25, 2015 - S.E.2d - 2015 WL 1315545

Property owners near site of proposed landfill brought action against landfill developer and county for declaratory and injunctive relief and later amended complaint to allege anticipatory nuisance and racketeering. The Superior Court entered partial summary judgment in favor of owners and denied motion to dismiss anticipatory nuisance claim, but dismissed racketeering and punitive damages claims. Developer appealed, and the Supreme Court transferred matter.

The Court of Appeals held that:

- Developer's vested right to operate landfill lapsed;
- Partial summary judgment had to be vacated for decision on developer's constitutional challenge to ordinance; and
- Factual issue precluded summary judgment on whether developer applied for new permit and waived vested rights.

Landfill developer did not commence non-conforming use by obtaining zoning compliance letter from county, and, thus, its vested right to operate landfill lapsed pursuant to ordinance prohibiting non-conforming use for which a vested right was acquired unless the use was commenced within one year of adoption of ordinance; commencing the non-conforming use required start of operating an actual landfill on the property and involved something more than submitting paperwork.

ZONING - GEORGIA

Golden Isles Outdoor, LLC v. Lamar Co., LLC

Court of Appeals of Georgia - March 24, 2015 - S.E.2d - 2015 WL 1296635

Applicant sought permit to convert poster billboard to digital billboard, after applicant's business competitor sought to obtain last two available permits for digital billboards. Zoning administrator approved applicant's request, and granted only one of competitor's applications. Competitor appealed. City's zoning board of appeals (ZBA) rescinded applicant's permit after concluding that governing ordinance prohibited digital billboards on collector streets such as one where applicant's billboard was located. Applicant appealed. The Superior Court, in action in which competitor intervened, reversed ZBA's decision. Competitor sought discretionary review.

The Court of Appeals held that "arterial roadway," as used in municipal ordinance which permitted digital billboards only along four lane or more arterial roadways, did not encompass collector streets.

"Arterial roadway," as used in municipal ordinance which permitted digital billboards only along four lane or more arterial roadways, did not encompass collector streets, despite ordinance's general cross-reference to section of ordinance regulating separate use signs, of which digital billboards were a type, and indicating that separate use signs were permitted only on sites which abutted a street classified as a collector or arterial roadway. Restriction's cross reference could more reasonably be read to clarify that placement of digital billboards on arterial roadways, as defined in street classification map, had to comply with terms and conditions of separate use signs generally.

BENEFITS - ILLINOIS

Vaughn v. City of Carbondale

Appellate Court of Illinois, Fifth District - March 25, 2015 - N.E.3d - 2015 IL App (5th) 140122

Police officer, whose line-of-duty disability pension benefits had been terminated by city, sought permanent injunction to prevent city from terminating employer-provided health insurance coverage for police officer and his wife. The Circuit Court denied police officer's complaint. Police officer appealed.

The Appellate Court held that:

- Police officer, who struck top of his head on door frame of squad car, suffered catastrophic injury, and
- Officer's work-related injury occurred as a result of his response to what he reasonably believed was an emergency.

City police officer's work-related injury, which arose from striking top of his head on door frame of squad car while responding to dispatch over police radio, occurred as a result of his response to what he reasonably believed was an emergency, and thus officer was entitled under Public Safety Employee Benefits Act to continued health insurance coverage, even though circumstances surrounding injury fell within anticipated daily events, where officer had duty to respond to dispatch calls in timely manner, and he could not have known whether call was an emergency until he responded.

CONTRACTS - INDIANA

Peoples State Bank v. Benton Tp. of Monroe County

Court of Appeals of Indiana - March 25, 2015 - N.E.3d - 2015 WL 1361228

In 2011, Benton Township Trustee Heather Cohee secured a loan from Peoples State Bank to purchase a fire truck. She acted without a prior appropriation of funds by Benton Township or compliance with statutory procedures allowing taxpayers an opportunity to remonstrate.

Benton Township did not pay the promissory note installments as they came due. Cohee resigned amidst allegations of financial improprieties unrelated to the fire truck acquisition. On January 28, 2012, the Indiana State Board of Accounts issued its Independent Accountant's Report based upon a review of Benton Township records. The report contained the conclusion that the fire truck purchase was made "with proceeds of a loan that was not properly approved by the Township Board." (App.307.) The report further indicated that neither the Trustee nor the Township Board had signed the promissory note.

The Bank seized Benton Township checking account funds and applied those funds in setoff to sums due under the promissory note. On December 21, 2012, the Bank and Benton Township entered into a Partial Settlement & Dispute Resolution Agreement. Pursuant to the terms of the agreement, Benton Township surrendered the fire truck, and the Bank sold it for $212,866.00 and applied the funds to the outstanding loan. The Bank restored the funds it had previously taken as an offset, except for $30,000, which was by agreement applied to the loan. Benton Township also made a $37,529.48 payment .

After the sale proceeds and payments were applied, the Bank sought $102,273.90 in principal and interest, plus attorney's fees and costs of $45,757.65. On May 8, 2013, the Bank filed a complaint against Benton Township. Benton Township answered the complaint, denying that the Bank was entitled to any additional recovery.

The Court of Appeals held that the promissory note at issue was not a proper basis for a grant of equitable relief.

First, the matter involved the unauthorized expenditure of taxpayer funds. Second, the circumstances were such that the Bank was obliged to seek out information of public record and failed to do so. Indeed, the Bank prepared a promissory note for execution by a part-time township employee rather than the Benton Township Trustee. Finally, Benton Township did not retain property for which it refused to pay, and the parties essentially addressed the equities surrounding the surrender by entering into a partial settlement. Although the loan was invalid, the township nevertheless mitigated the Bank's damages by surrendering the fire truck and paying cash of $67,529.48. This was not a situation involving "extreme unfairness" such that equity should step in against a governmental entity. Therefore, equitable remedies are not available to permit the Bank's collection in full upon its faulty promissory note.

SPECIAL PURPOSE DISTRICTS - MINNESOTA

110 Wyman, LLC v. City of Minneapolis

Court of Appeals of Minnesota - March 30, 2015 - N.W.2d - 2015 WL 1401612

Property owners in city's downtown special services district challenged service charges for special services provided by the city. The District Court granted city's motion for summary judgment. Property owners appealed.

The Court of Appeals held that special-benefit standard did not apply to service charges imposed on property owners under special services districts statute.

Statutorily-imposed “reasonably related” special services standard, rather than common law special-benefit standard, applied to landowners’ challenge to charges imposed on property owners in special service district in city’s downtown, for special services provided. Services provided, including security, marketing and promotion, graffiti removal, landscaping, and administrative services, were too difficult to measure in terms of benefit to the properties served, as required by special-benefit standard.

Under “reasonably related” standard in statute authorizing city’s governing body to create a special service district by ordinance, propriety of service charges imposed was to be measured by charges’ proportion to city’s cost of providing such services, rather than by special-benefit standard, which required that the amount of charges could not exceed the benefit to the property assessed.

LIABILITY - NEBRASKA

Maclovi-Sierra v. City of Omaha

Supreme Court of Nebraska - March 27, 2015 - N.W.2d - 290 Neb. 443

Pedestrian filed suit against city for injuries received when he was struck by suspect driving stolen pickup truck allegedly being pursued by city law enforcement officers. The District Court dismissed complaint, and pedestrian appealed.

The Supreme Court of Nebraska held that:

- Police officer was not in “vehicular pursuit” of suspect at time suspect lost control of truck while exiting interstate and struck pedestrian, within meaning of Political Subdivisions Tort Claims Act;
- Although second police officer and sergeant might have initiated vehicular pursuit when suspect entered interstate, pursuit was terminated at time that suspect exited interstate and struck pedestrian; and
- Actions of suspect after any arguable vehicular pursuit was terminated were sole proximate cause of pedestrian’s injuries.

IMMUNITY - NEW JERSEY

Parsons v. Mullica Tp. Bd. of Educ.

Superior Court of New Jersey, Appellate Division - March 30, 2015 - A.3d - 2015 WL 1400996

Student, by her parents, brought negligence action against township board of education and nurse, who was employed by board and who conducted a screening test for visual acuity on student, arising out of delay in notification to student’s parents of student’s failure in vision testing, alleging that delay proximately caused the loss of sight in student’s right eye. Board and nurse moved for summary judgment. The Superior Court denied motion. Defendants appealed.

The Superior Court, Appellate Division, held that:

- Health screening of student for visual acuity by school nurse was a “physical examination,” as could support finding that nurse and board of education were immune from student’s negligence action under the Tort Claims Act;
- Provision of the Tort Claims Act immunizing the failure of a public entity or public employee to

make an adequate physical examination includes the failure to provide adequate notification of the examination results; and
- Such provision immunizes ministerial as well as discretionary acts.
