[Hospitals Are Back to the Muni Market With Labor Costs Easing.](#)

- **Borrowing this month far outpaces all of last January**
- **Pent-up need for upgrades drives issuance as finances improve**

Hospitals are returning to the municipal-bond market as they aim to pivot from survival to revival.

So far this year, hospitals are tapping the market with more than $1.7 billion to expand and upgrade facilities, according to data compiled by Bloomberg as of Jan. 12. That figure outpaces $390.7 million of issuance by hospitals last January.

It's cheaper to tap the muni market at the moment, with the yield on the 10-year AAA benchmark down 127 basis points since Nov. 1. Financial pressures on hospitals have also started to ease. Staffing costs — by far their heftiest expense — have steadied and operating margins have been improving.

[Continue reading.](#)

Bloomberg Markets

By Lauren Coleman-Lochner

January 12, 2024

[Fitch: Clear Path to Sustained Growth for U.S. Toll Roads](#)

Fitch Ratings-New York-17 January 2024: U.S. toll roads are on a positive trajectory according to Fitch Ratings in its latest peer review for the sector.

Since its previous peer review, Fitch took nine positive rating actions on its rated U.S. toll roads and revised the Rating Outlook on three systems to Stable from Negative and two to Positive from Stable. Additionally, there were no negative rating actions. An overarching theme for the sector across the board has been strong and sustainable traffic.

Toll increases have boosted revenue growth for systems with slower traffic recovery like San Francisco's Bay Area Toll Authority and the Peace Bridge in Buffalo, according to Fitch Director Anne Tricerri. Fitch revised BATA's Outlook on the subordinate lien to Stable from Negative. 'Although BATA's traffic recovery has been disappointing in comparison with the toll road sector overall, revenues are up significantly over the past three years due to rate hikes as authorized by voters under regional measure three,' said Tricerri. Fitch revised Peace Bridge's Rating Outlook to Positive from Stable due to a sizable increase in toll rates. 'Peace Bridge's willingness and ability to increase toll rates over the past two years propelled toll revenue above pre-pandemic levels despite traffic not being fully recovered.'

Fitch has also released an update to the interactive peer study for U.S. toll roads, available in the 'U.S. Toll Roads – 2024 Fitch Analytical Comparative Tool (FACT).' Fitch's 'U.S. Toll Roads Peer Review' is available at 'www.fitchratings.com'.

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S&P U.S. Charter Schools Rating Actions, Fourth-Quarter 2023

View the S&P Rating Actions.

12 Jan, 2024

S&P U.S. Higher Education Rating Actions, Fourth-Quarter 2023

View the S&P Rating Actions.

16 Jan, 2024

S&P U.S. Charter Schools 2024 Outlook: Credit Stability, For Now

Sector view: Stable

U.S. charter schools' credit fundamentals are stable for now, supported by continued healthy demand, generally favorable per-pupil funding, and some cushion provided by still-available federal emergency relief funds. During 2024, we expect schools will focus on managing increased expense pressures and teacher shortages amid dwindling federal emergency support and slower economic growth.

Continue reading.

17 Jan, 2024

The Financial Pain for Cities from Struggling Downtowns.

Nearly four years after the start of the pandemic, downtowns are still short of office workers and foot traffic. That's contributing to significant budget problems in some cities.

In Brief:

- Downtowns across the country continue to be emptier than before the pandemic. The loss of activity is hurting cities' finances.
- Transit agencies are particularly hard hit.
- Cities are looking for ideas for revitalizing downtowns, but no easy solution will work everywhere

Continue reading.

governing.com

by Zina Hutton

Jan. 19, 2024

States, Cities Brace for Higher Wage Costs After Hiring Binge.

- **Increased pay, added benefits to pressure municipal budgets**
- **Total public sector jobs topped pre-pandemic total in December**

State and local governments boosted wages, offered bonuses, advertised hundreds of miles away and sweetened benefits to fill jobs lost to the pandemic. Now analysts say it's time to tally the bill.

Buoyed by tax revenue and federal stimulus funds, municipalities across the US didn't hold back when replenishing their workforce. But all the new hiring will come at some cost as wage pressures mount and concerns about the economy linger.

"Following 21 straight months of positive job growth in the sector, we're watching to see budget impacts of this successful hiring campaign," said Geoff Buswick, managing director and sector lead for state governments at S&P Global Ratings.

Continue reading.

Bloomberg Markets

By Joseph Mysak Jr

January 19, 2024

California Lawmakers Eye More Than $100 Billion of Borrowing.

- **State lawmakers are considering several large bond measures**
- **State debt service ratio already set to rise to 3.2% from 2.8%**

California is on the verge of a potential borrowing boom as Democratic state lawmakers draft more than $100 billion of municipal-bond proposals to fill funding gaps for several key legislative priorities.

The proposals include $15 billion of debt to make the state more resilient to climate change, $14 billion to modernize schools and $10 billion for affordable housing. Governor Gavin Newsom last year approved a $6.38 billion bond measure for voters to consider on the March ballot which would fund roughly 10,000 new mental health and substance abuse treatment slots.

Although California doesn't cap how much money the state can borrow, Newsom's administration has estimated the state can, at most, take on another $26 billion of bonds without pushing the ratio of annual debt costs compared to general fund revenue high enough to cause credit concerns. California's debt-service ratio is already expected to rise to 3.2% by fiscal year 2026-2027 from about 2.8% now, according to estimates from the state's finance department.

"Our expectation is not that they would issue so much debt that it changes their credit rating," said Karen Krop, senior director of US public finance at Fitch Ratings.

California is rated Aa2 by Moodys Investors Service, AA- by S&P Ratings and AA by Fitch. The state had about $78.5 billion of general obligation and lease revenue bond debt outstanding as of June 30 with another $31.6 billion approved but not yet sold, according state figures.

Though the bond measures currently under consideration by the legislature total more than $100 billion, some of the proposals overlap and are likely to be combined while others won't make it on the ballot at all. In fact, despite lawmakers in the last legislative session introducing bills totaling more than $114 billion of borrowing, only one was approved and that was the mental health measure.

"We're not going to put $100 billion worth of bonds on the ballot," said California Senator Ben Allen, a Democrat who who co-sponsored a climate resiliency bond measure currently making its way through the legislature. "We're not gonna see three different climate bonds on the ballot."

An index of California bonds showed yields trading below those of top-rated debt after Newsom earlier this month projected a $37.9 billion deficit in his budget proposal, a gap that is significantly smaller than had been estimated by the state's fiscal analyst. The yield on California general-obligation bond debt due in 10 years stands at 2.3%, compared to 0.7% in 2021, according to Bloomberg BVAL.

When bonds are approved all the debt isn't sold at once. The state treasurer borrows in piecemeal over a number of years as the funds are needed. During the last five fiscal years, the state has sold an average of $7.3 billion of general obligation bonds annually, according Treasurer Fiona Ma's office.

Whenever the tax-exempt debt is sold, it's expected to be greeted with strong demand by wealthy investors looking to shield some of their income from the state's high taxes, according to Dora Lee, director of research at Belle Haven Investments.

"Even though the debt-service ratio is expected to increase, it remains manageable especially when you take into consideration the state's decision to use prior surpluses to pay down pensions and address other long term obligations," Lee said.

Bloomberg Politics

By Maxwell Adler

January 16, 2024

University of California Taps Bond Market for $1.7 Billion.

- **Securities price Jan. 23 and 24, carry Aa2 rating from Moody's**
- **Bonds to fund capital projects, refund previously issued paper**

The University of California will tap the municipal bond market Tuesday as it looks to maximize refunding savings and navigate potential funding deferrals outlined in Governor Gavin Newsom's budget proposal for the next fiscal year.

The university is slated to issue roughly $1.7 billion of general revenue bonds to fund capital projects and refund previously issued paper. According to preliminary bond documents, $1.59 billion of the bonds will be tax-exempt and $145 million will be taxable — however the taxable series will be exempt from taxation in the state of California.

The 2024 bonds carry an Aa2 rating from Moody's Investors Service and double-A ratings from Fitch Ratings and S&P Global Ratings. The sale is being managed by Barclays Plc, Bank of America Securities and Jefferies.

Continue reading.

Bloomberg Markets

By Maxwell Adler

January 22, 2024

Florida to Borrow Billions to Backstop Insurers After Hurricanes.

- **Plans to sell as much as $3.8 billion of municipal bonds**
- **Reflects latest effort by the state amid claim surge, lawsuits**

Florida is planning to borrow as much as $3.8 billion to infuse a state fund that reimburses property insurers for losses when homes are damaged or destroyed by hurricanes.

The Florida State Board of Administration Finance Corporation expects to sell at least $1.5 billion of municipal bonds to raise money for the Florida Hurricane Catastrophe Fund, according to a securities filing dated Jan. 19. It marks the state's latest effort to ensure that it can backstop its increasingly fragile insurance industry, which has been grappling with a surge of claims and lawsuits in recent years.

In June, the Florida Insurance Guaranty Association, which handles the claims of insolvent insurers, sold debt for the first time in three decades to help support insurance claims. The state agency faced higher costs after Hurricane Ian in 2022 and a deluge of lawsuits forced property insurers to close.

Continue reading.

Bloomberg Markets

By Nic Querolo

January 22, 2024

OCC Advises Banks on How to Prepare for Shortening the Standard Securities Settlement Cycle: Troutman Pepper

On January 17, the Office of the Comptroller of the Currency (OCC) issued a bulletin advising banks on how to prepare for the upcoming shortening in the standard securities settlement cycle for most U.S. securities transactions. This is in response to the Securities and Exchange Commission (SEC) adoption of final rules that shorten the standard settlement cycle for most broker-dealer transactions from the second business day after the trade date (T+2) to the first business day after the trade date (T+1). The SEC has approved a similar rule change by the Municipal Securities Rulemaking Board (MSRB) to the settlement cycle for municipal securities, which has shortened the regular-way settlement for municipal securities transactions to T+1. The OCC expects banks to be prepared to meet T+1 standards as of May 28, 2024.

Banks should evaluate their preparedness for the accelerated settlement cycle and employ effective change management processes for all trades related to banks' securities activities. These include activities related to banks' investment and trading portfolios and securities settlement and servicing provided to banks' custody and fiduciary accounts. Banks that offer retail nondeposit investment products through a broker-dealer are also expected to assess the broker-dealer's preparedness for the new settlement time frames.

Continue reading.

Troutman Pepper – Jason L. Langford, Gregory Parisi and Zayne Ridenhour Tweed

January 18 2024

[Tax or Fee? - The Fate of PA Stormwater Charges to be Decided in 2024]

Last year, the Pennsylvania Commonwealth Court held that a stormwater charge from the Borough of West Chester was not a fee for service, but rather an unauthorized local tax in *Borough of West Chester v. Pa. State System of Higher Education and West Chester University of Pa. of the State System of Higher Education*, 291 A.3d 455 (Pa. Cmwlth. 2023). We reported on this decision in MGKF's 2023 Environmental Forecast, and noted that the case would likely be winding its way through the appellate process in 2023.

In early 2023, the Borough promptly appealed the decision to the Pennsylvania Supreme Court, and was joined by several amici curiae, which included municipalities, municipal advocacy organizations, and non-profit environmental groups. Briefs from the Borough and their aligned amici filed in mid-July 2023 argue that the Commonwealth Court's decision was incorrect and should be overturned, because the stormwater fee charged to the University reflected a fee for service rather than a tax, and that the charge was properly established based on impervious surface coverage. The Borough and other proponents of the stormwater charge argue that all properties within a locality benefit from municipal stormwater services and infrastructure, even if the property is not connected to or serviced by that infrastructure. They point to generalized improvements to overall water quality and an alleged "comprehensive" method of managing stormwater and reducing flooding within a locality as among the bases to support a universal stormwater charge. The Borough and several amici argue that if the Commonwealth Court's decision finding stormwater charges to be a tax, rather than a fee, were allowed to stand, local municipalities and authorities will be deprived of a designated funding source for the costs necessary to comply with state and federal laws and regulations involving stormwater.

On the other side of the argument are the Pennsylvania State System of Higher Education and West Chester University, represented by the Pennsylvania Attorney General, and aligned amici, who filed their briefs in mid-October 2023. They argue that the stormwater fee is a classic tax or assessment because the Borough could not show that the university received a concrete, direct, or discrete benefit that can be traced to the stormwater charges. In fact, the only evidence the Borough presented was that monies collected were used to promote generalized benefits of improved stormwater and reduced flooding, benefits that are shared equally by every property owner and resident within a locality. The university and aligned amici also argued that even if the stormwater charge was not declared a tax and considered a fee, the charges imposed were nevertheless inappropriate and illegal because the high value of the charges was not "reasonably proportional" to any benefits provided by the Borough from their stormwater infrastructure systems. They argue that the Borough failed to analyze or consider the actual expected costs of maintaining or operating any portion of the stormwater infrastructure system that is associated with any particular property, including any of the university's properties in the Borough. The university and aligned amici also pointed to the fact that before the Borough's enactment of the stormwater charge, funds for stormwater projects were paid from the Borough's general fund, supplied by local tax dollars.

The fate of stormwater charges in the Commonwealth of Pennsylvania will be decided in 2024, as oral argument and a decision from the Pennsylvania Supreme Court is expected this year. The resolution of the *Borough of West Chester* case will have far-reaching implications on how local municipalities and authorities will fund stormwater projects, maintenance, and operations in the future.

Manko Gold Katcher & Fox – Diana A. Silva, Danielle N. Bagwell and Michael Nines, P.E., LEED AP

January 18 2024

State of Washington: Fitch New Issue Report

Key Rating Drivers Revenue Framework — 'aaa' Revenue performance over time has exceeded U.S. GDP growth, and Fitch expects this to continue to support strong growth prospects. The state has complete independent control over taxation, with an unlimited legal ability to raise operating revenues as needed. Expenditure Framework — 'aa' Washington possesses ample expenditure flexibility, with statutory commitments, broad responsibility for education and infrastructure spending offset by low carrying costs. Washington also benefits from the broad expense-cutting authority common to most U.S. states. Long-Term Liability Burden — 'aaa' The combined burden of debt and net pension liabilities is low as a percentage of personal income but above the median for U.S. states. Debt ratios incorporate the funding of substantial capital needs, particularly for transportation, but are offset by a moderate net pension liability and an expanding economic resource base. Operating Performance — 'aa' Washington maintains very strong gap-closing capacity and budget flexibility with solid reserves. The state has prudently built up its fiscal reserves in times of economic recovery and expansion despite spending pressures linked to education and other pressing needs.

ACCESS REPORT

Fri 19 Jan, 2024

The Future of Municipal Bonds Is Seldom This Bright — But the Window Is Shrinking.

Muni yields will remain attractive, until the Fed turns dovish.

Higher bond yields and expectations that the Federal Reserve will maintain or cut its benchmark interest rate this year have created a window of opportunity for institutional investors in the municipal bond market.

Muni yields reached 4.72 percent in October — the highest they had been in more than a decade — and have since fallen to 3.91 percent. Still, munis, for now, have relatively attractive yields.

"There needs to be a little sense of urgency with regards to this. Since the end of the third quarter and the beginning of the fourth quarter last year, we have been talking to clients about that sense of urgency. It's not a market timing call necessarily, and people can confuse that," Robert DiMella, executive managing director at MacKay Shields, said.

Continue reading.

Institutional Investor

by Michael Thrasher

January 19, 2024

What All Municipal Bond Issuers Should Know About Cybersecurity Risk Disclosure in 2024.

Over the last fifteen years, the Securities and Exchange Commission (SEC) has increased its focus on inadequate disclosure relating to governmental debt issues. Although municipal bond issuers are largely exempt from federal requirements for securities, they are required to comply with the antifraud provisions of the Securities Act of 1933 and Rule 10b-5 of the Securities Exchange Act of 1934 (the Exchange Act). These laws prohibit the making of material misstatements, or omissions of material facts if those facts are necessary to avoid a misleading statement. Issuers who fail to comply with disclosure requirements may be subject to regulatory actions and/or monetary fines. Primary market disclosure practices for municipal securities have developed as a result of these antifraud provisions and the regulatory actions brought by the SEC.

Cybersecurity Risk Disclosure

With a drastic increase in cyberattacks impacting municipal governments and the increased scrutiny on cybersecurity by rating agencies, cybersecurity risk disclosure has become increasingly more important for municipal bond issuers. There is no official guidance from the SEC about what municipal bond issuers should disclose about cybersecurity risks. The SEC has indicated that many principles applicable to the registered market provide guidance and can be applied to the municipal market.

1. On July 26, 2023, the SEC adopted a new rule to enhance and standardize disclosures regarding cybersecurity risk management, strategy, governance, and incidents by public companies that are subject to the reporting requirements of the Exchange Act (the "Final Rule"). In summary, the Final Rule requires: disclosure of material cybersecurity incidents within four (4) business days of the company's determination that the cybersecurity incident is material;
2. new annual disclosures regarding the company's cybersecurity risk management and strategy, including with respect to the company's processes for managing cybersecurity threats and whether risks from cybersecurity threats have materially affected the company; and
3. new annual disclosures regarding the company's cybersecurity governance, including with respect to oversight by the board and management.

Best Practices for Municipal Bond Issuers

Although municipal bond issuers are not required to comply with the Final Rule, it provides guidance to municipal bond issuers in preparing cybersecurity risk disclosure. Such issuers should consider the following points for inclusion in their disclosures:

1. Cybersecurity attacks, if material;
2. Existence and description of policies and procedures for cybersecurity risk management;
3. In the absence of a formal policy, develop a framework related to cybersecurity preparedness to institute centralized responsibilities and a transparent strategy on how to proceed if cybersecurity incidents occur;
4. How and when the policies are reassessed to ensure the practices are up to date;
5. Note the risks unique to the particular infrastructure and how to best protect the issuer's financial condition, operations, reputation and relationships;
6. Existence of cybersecurity insurance, what it covers and the deductible.

Pullman & Comley, LLC

by Jessica Grossarth Kennedy

January 18, 2024

Struggling Midwest College Strikes Deal With Bondholders.

- **Lake Erie College entered forbearance deal with bondholders**
- **Agreement marks the latest sign of stress in higher education**

Lake Erie College, a small private school in Ohio, entered into a forbearance agreement with bondholders after the school didn't meet certain covenants it agreed to as part of a debt sale.

The Painesville, Ohio-based institution, which has just over 700 undergraduate students, is the latest small college to see its financial struggles extend into the muni-bond market. It sold about $30 million of debt in 2019 in part to finance a barn and other projects at its 86-acre equestrian center.

Lake Erie College didn't meet a required debt service coverage ratio, which is considered an event of default, according to a regulatory filing dated Jan. 15. The school also only had seven days of cash-on-hand in fiscal 2023, while it was required to have 25 days as part of the bond deal.

The school disclosed in the filing that it entered into a forbearance agreement with the trustee for bondholders, U.S. Bank. As part of forbearance agreements, investors agree not to take certain actions against borrowers, such as demanding immediate repayment on debt if they have that right. That gives stressed borrowers more time to shore up their finances, though the terms of this specific agreement haven't yet been disclosed.

A spokesperson for the trustee, U.S. Bank, declined to comment. A spokesperson for the college did not respond to an email and phone call requesting comment.

The college is the latest to encounter stress in higher education as rising costs and competition puts pressure on smaller colleges.

Fitch Ratings said it expects pressure to intensify for smaller, less selective institutions in 2024, given demographic trends and eroding sentiment on college affordability, according to a December note.

Lake Erie College, located about 30 miles from Cleveland, was founded in the mid-19th century as a seminary for women providing a "thorough and complete female education," according to its website. It became co-educational in 1985.

Virtually all of the debt that it issued more than four years ago is still outstanding, according to data compiled by Bloomberg. The bonds were sold through the Public Finance Authority, which issues municipal debt for riskier projects around the US.

Part of the proceeds were used for a barn, arena and other facilities at the school's equestrian center, which hosts the college's equine studies department and has space for more than 90 horses.

A spokesperson for Nuveen — the largest holder of the school's debt, according to data compiled by Bloomberg — didn't reply to a email or phone call requesting comment.

Bloomberg Markets

By Amanda Albright and Nic Querolo

January 16, 2024

— With assistance from Jim Sims

Oppenheimer Hires UBS's Coolidge to Lead Growth of Muni Business.

- **Elizabeth Coolidge took helm of national public finance unit**
- **Coolidge previously led public finance in the Midwest at UBS**

Oppenheimer & Co. is beefing up its presence in the municipal bond market with a trio of new hires led by muni veteran Elizabeth Coolidge, who is seeking to expand the firm's business from smaller issuers to bigger, more traditional state and local clients.

New York-based Oppenheimer on Tuesday announced that Coolidge, who previously ran Midwest public finance for UBS Group AG for over six years, will lead its national municipal practice from Chicago, according to a statement. Oppenheimer has brought on Liberty Ziegahn and Madison Maher, also formerly at UBS, as part of its public finance expansion.

The moves are among a string of recent hires by smaller investment banking firms and underwriters amid a shakeup among the industry's behemoths. UBS in October said it would no longer underwrite muni bond sales sold via negotiation, which account for the majority of state and local bond deals. Meanwhile, Citigroup Inc. is exiting the muni business.

Coolidge, a nearly 30-year veteran of the muni industry, aims to elevate Oppenheimer's public finance team with experience in public-private partnerships and structured products as she pitches bigger, more frequent state and local issuers. Such expertise may come in handy as these government bodies look for ways to finance deals after federal pandemic aid that filled their coffers dries up.

"Among the goals is to connect our bankers who have traditionally worked on non-rated, project finance and public-private partnerships and to take that expertise and amplify that to bring these ideas to our traditional muni issuers," Coolidge said on Tuesday in an interview. "My top goal is to execute novel debt solutions for our clients across the country."

Coolidge was among the bankers who led Chicago's first social bond sale and tender offer in early 2023.

When some institutions have announced plans to eliminate public finance units, "Oppenheimer is strengthening its commitment to this market," according to its statement. The practice is currently focused on school districts, senior housing, utilities and smaller general obligation issuers as well as project-based and non-rated deals.

Coolidge said she is looking to add bankers with successful track records and to elevate Oppenheimer's position with certain issuers to senior manager from co-manager.

Bloomberg Markets

By Shruti Singh

January 16, 2024

[Proposed Rule Change To Amend MSRB Rule G-12 To Promote the Completion of Allocations, Confirmations, and Affirmations by the End of Trade Date: SIFMA Comment Letter]

SUMMARY

SIFMA provided comments to the U.S. Securities and Exchange Commission (SEC) on the Municipal Securities Rulemaking Board's (MSRB) filing. SIFMA applauds the MSRB's goal to modernize its rule book and align municipal securities settlement with regular-way settlement on T+1 for equities and corporate bonds under Exchange Act Rule 15c6-1, as amended.

Read the SIFMA Comment Letter.

MSRB Announces Members of 2024 Advisory Groups.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today announced the members of its advisory groups. In all, 30 experienced market professionals will share their municipal market and regulatory perspectives while serving on the Compliance Advisory Group (CAG) and Municipal Fund Securities Advisory Group (MFSAG).

For the seventh consecutive year, CAG will inform the MSRB's compliance initiatives by providing feedback on compliance resources and tools to enhance dealers' and municipal advisors' understanding of MSRB rules and areas where compliance clarification and assistance may be warranted. "We are fortunate that such a diverse class of municipal market participants have volunteered their time and expertise to help inform the MSRB's important work," said Liz Sweeney, Board member and FY 2024 CAG Chair. "It is especially helpful that issues of particular interest and concern to small firms can be effectively communicated to the MSRB by hearing directly from CAG's small firm representatives, in addition to the MSRB's other outreach and engagement channels with smaller regulated entities."

Reinstated in FY 2024 following a gap year, MFSAG will provide input on industry practices, guidance and investor education related to 529 savings plans and Achieving a Better Life Experience Act of 2014 (ABLE) programs. "For MFSAG, we are pleased to welcome market participants operating within the 529 and ABLE spaces to lend their experience and perspectives on current market practices — such thoughtful discussions will inform the MSRB's work as it explores regulatory efforts within this market," said David Belton, Board member and FY 2024 MFSAG Chair.

Continue reading.

Date: January 18, 2024

Contact: Bruce Hall, Director, Communications
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MSRB Announces Discussion Topics for Quarterly Board Meeting.

Washington, DC – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) will meet on January 24-25, 2024, holding the second meeting of fiscal year 2024 to advance its FY 2022-2025 Strategic Plan.

Annual Rate Card

The Board will discuss comments received in response to the MSRB's 2024 rate card filing with the SEC, establishing market activity fees and the municipal advisor fee for the 2024 calendar year. The MSRB's new rate card process annually adjusts rates assessed on regulated entities to ensure a timelier return of any excess revenue (i.e., surplus) to regulated entities and to better manage the organization's reserve funds.

Market Regulation

The Board will consider whether to modernize MSRB Rule G-27, on dealer supervision, to reflect changing work patterns since the COVID-19 pandemic and to further harmonize MSRB dealer supervisory requirements with FINRA supervisory rules.

The Board also will receive an update on industry input on its request for comment on draft amendments to MSRB Rule G-12(c) to consolidate existing guidance on certain inter-dealer confirmations requirements into a single streamlined rule provision.

Additionally, the Board will continue its discussions on a potential pre-trade market transparency initiative.

Date: January 17, 2024

Contact: Bruce Hall, Director, Communications
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MSRB Publishes 2023 Annual Report and Audited Financial Statements.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today published its annual report for the 2023 fiscal year. The report summarizes the MSRB's key accomplishments over the past year and provides detailed information about its core operations and financial position. Congress established the MSRB with the mission to protect investors, issuers and the public interest by serving as the principal regulator of the $4 trillion municipal securities market.

"The value the MSRB delivers to the municipal securities market rests on the independence and expertise that are the defining features of our SRO model," said MSRB Chair Meredith Hathorn and MSRB CEO Mark Kim in their letter to stakeholders. Noting that MSRB Board members are municipal market experts whose knowledge and perspectives are essential to ensuring that the MSRB's rules are necessary, fair and balanced, Hathorn and Kim added: "The MSRB also delivers value to the market through our market transparency products and services… and by consistently engaging with market stakeholders as we advance key initiatives."

Highlights from the report include:

Modernizing Market Regulation

- Advancing a rule proposal to shorten the timeframe for trades to be reported to the MSRB;
- Facilitating the transition to T+1 settlement for municipal securities transactions in coordination with other financial regulators;
- Creating a new rule establishing the core standards of conduct for solicitor municipal advisors; and
- Enhancing compliance by advancing the codification or retirement of approximately 20% of the MSRB's body of interpretive guidance since launching the rulebook modernization initiative in 2021.

Enhancing Market Transparency through Technology and Data

- Releasing user-driven enhancements to the EMMA platform to improve the accuracy and quality of the information available on EMMA and to provide additional market transparency for market participants, such as adding an hourly municipal yield curve and retiring individual user accounts to give issuers greater control of their information.
- Launching a new structured data lab in the MSRB's innovation sandbox, EMMA Labs, to educate municipal market participants about structured data. The lab defines key concepts and terms, provides informative case studies from municipal issuers and demonstrates a possible application of structured data in a future state version of EMMA.

Advancing the Public Trust

- Implementing a new rate card model, which takes into account both actual and projected market activity to adjust rates assessed on regulated entities each year. The rate card model provides greater transparency into the rate-setting process as well as greater accountability to the regulated entities that pay those fees by automatically returning any operating surplus in one year in the form of lower rates the following year.
- Issuing a request for information to consider the perspectives of small firms operating in the municipal securities market to better inform our market regulation and market transparency priorities.

The annual report includes audited annual financial statements for the fiscal year that ended September 30, 2023, ensuring transparency and accountability to the public around how the MSRB advances its mission.

Read the report.

Date: January 16, 2024

Contact: Bruce Hall, Director, Communications
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- GASB Proposes Guidance on Disclosure of Certain Risks.
- MSRB Files to Shorten Timeframe for Trade Reporting to One Minute.
- Correctly Calculating Net Investment in Capital Assets: GFOA Webinar

- *Senior Care Living VI, LLC v. Preston Hollow Capital, LLC* – Court of Appeals holds – *inter alia* – that trustee's notice of intent to accelerate debt incurred under bond agreements to finance construction of assisted-living facility, including parenthetical "(subject to further election and notice to you)," was not clear and unequivocal, and thus, subsequent notice of acceleration of debt was ineffective.
- *Planning and Conservation League v. Department of Water Resources* – Court of Appeal approves Department of Water Resources' action to validate amendments to long-term contracts with local government contractors receiving water through State Water Project, extending contract terms, expanding facilities listed as eligible for revenue bond financing, and making other changes to contracts' financial provisions.
- And Finally, Leave No Meth Behind! is brought to us this week by *Unruh v. City of Wichita*, in which, "Wichita police forcefully apprehended Jason Unruh after he led them on a nighttime car chase down city streets in a pouring rain. The pursuit ended when his vehicle spun out of control, hopped a curb, and came to rest over a sidewalk. He pulled himself out through the driver's side window holding a bag of methamphetamine and tumbled to the ground. He ignored commands to stop, and officers subdued him as he scooped up drugs that spilled onto the wet pavement." Please welcome BCB's new Director of Special Activities, Mr. Jason Unruh. (Well, once he's released.)

WATER LAW - CALIFORNIA

Planning and Conservation League v. Department of Water Resources

Court of Appeal, Third District, California - January 5, 2024 - Cal.Rptr.3d - 2024 WL 62607

Department of Water Resources filed action to validate amendments to long-term contracts with local government contractors receiving water through State Water Project, extending contract terms, expanding facilities listed as eligible for revenue bond financing, and making other changes to contracts' financial provisions.

Conservation groups and public agencies answered, some asserting affirmative defenses and contesting validation and others supporting validation. Conservation groups and other entities filed two separate actions for writs of mandate and for declaratory and injunctive relief challenging approval of amendments under California Environmental Quality Act (CEQA), Sacramento-San Joaquin Delta Reform Act, and public trust doctrine. Contractors intervened.

In coordinated proceeding, the Superior Court, Sacramento County, entered judgment in Department's favor in all three cases. Parties opposing validation appealed. Appeals were consolidated.

The Court of Appeal held that:

- Baseline for evaluation of environmental effects of proposed contract amendments was environmental setting under current contract conditions;
- Amendments were not part of larger project, such that they were properly studied in their own environmental impact report (EIR);
- CEQA did not require Department to consider environmental impacts of all potential projects which could be funded using revenue bonds issued under amendments;
- EIR adequately examined range of reasonable project alternatives;
- Amendments did not constitute "covered action" under Delta Reform Act;
- Sufficient evidence supported conclusion that amendments would not impact public trust resources; and

- Department complied with statute requiring it to present amendments to legislative committees.

Baseline for evaluation by Department of Water Resources of whether proposed amendments to long-term contracts with local government agencies that received water through State Water Project would have significant environmental effects under California Environmental Quality Act (CEQA) was environmental setting under current contract conditions, not hypothetical environmental setting if contracts were not in place.

Proposed amendments to long-term contracts between Department of Water Resources and local government agencies receiving water through State Water Project were not part of larger project to build new water conveyance for Sacramento-San Joaquin Delta, and thus, Department's environmental review of proposed contract amendments alone did not constitute improper piecemealing of single project in violation of California Environmental Quality Act (CEQA), even though legislative oversight materials indicated relationship between contract amendments and financing of proposed conveyance project; amendments served independent purpose from conveyance, namely fixing financing problems with State Water Project, and amendment was only small step towards conveyance, which faced significant other hurdles.

Existing State Water Project operations were part of baseline for environmental review of proposed amendments extending terms of and changing financing for long-term contracts with local government agencies that received water through Project, and thus, in environmental impact report (EIR) for proposed contract amendments, Department of Water Resources was not required to consider environmental impacts of extended period of existing operations; amendments would continue existing operations without change.

Links between proposed amendments to duration and financing provisions of long-term contracts with local government agencies receiving water through State Water Project and potential future projects involving existing State Water Project facilities, such as possible use of revenue bonds issued under amendments to repair aqueduct and reinforce dam, were too attenuated for California Environmental Quality Act (CEQA) to require Department of Water Resources, when assessing environmental impacts of proposed contract amendments, to forecast impacts of all such potential projects; amendments did not commit Department to, authorize revenue bonds for, or cause potential projects, and government funding mechanisms with no commitment to specific projects were specifically excluded from CEQA review.

In environmental impact report (EIR) regarding proposed amendments to terms and financial provisions of long-term contracts with local government agencies receiving water through State Water Project, project alternative of excluding amendment to revenue bond provisions was substantially similar to alternatives that Department of Water Resources, as lead agency, discussed in detail, and thus, California Environmental Quality Act (CEQA) Guideline governing discussion of range of reasonable alternatives did not require Department to discuss exclusion of revenue bond amendment in detail, where exclusion of revenue bond amendment could be understood from specifics of no-project alternative and alternative that only extended terms of contracts.

Decision of Department of Water Resources, in environmental impact report (EIR) for proposed amendments to terms and financing provisions of long-term contracts with local government agencies receiving water through State Water Project, to reject project alternatives to reduce water amounts that agencies would receive under contracts and to implement new water conservation management provisions did not constitute failure to analyze range of reasonable project alternatives, as required by California Environmental Quality Act (CEQA); EIR for proposed contract amendments had limited objective of addressing financial issues with existing contracts, and Department would have needed to add objectives to EIR to develop alternatives regarding water reductions or conservation measures.

In environmental impact report (EIR) issued by Department of Water Resources for proposed amendments extending terms and changing financial provisions of long-term contracts with local government agencies receiving water through State Water Project, no-project alternative was based on plausible, fact-based forecast that agencies would each elect to extend their existing contracts pursuant to evergreen clause, rather than prediction that some or all agencies would fail to extend contracts, and thus, EIR satisfied California Environmental Quality Act (CEQA) requirement of analyzing no-project alternative; State Water Project had long history and played critical role in distributing water to many residents and much farmland, making it unlikely that agencies would terminate contracts.

Additional analysis provided by Department of Water Resources, in final environmental impact report (EIR) for proposed amendments to long-term contracts with local government agencies receiving water through State Water Project, explaining its rejection of project alternative that would reduce amounts of water local agencies would receive under existing contracts did not constitute significant new information requiring Department to recirculate EIR for additional public comment before certifying it; additional analysis in final EIR was only meant to clarify rejection of alternative in response to public comments misunderstanding calculation and delivery of State Water Project water under existing contracts, and did not disclose new environmental impact or increase in severity of an impact.

Proposed amendments to long-term contracts with local government agencies receiving water through State Water Project, which extended terms of existing contracts and expanded ability of Department of Water Resources to use revenue bonds to finance betterments for State Water Project facilities and build new facilities, did not occur in Sacramento-San Joaquin Delta or change developed uses of State Water Project, and thus, amendments did not constitute “covered action” subject to certification requirements of Sacramento-San Joaquin Delta Reform Act; facilities were not located in Delta, term extensions did not expand State Water Project’s existing operations, and financing amendments were not equivalent to future projects that would use revenue bond funds raised as result of amendments.

Sufficient evidence supported conclusion of Department of Water Resources that no public trust resource would be impacted by proposed amendments extending terms and changing financial provisions of long-term contracts with local government agencies receiving water through State Water Project, such that Department’s approval of contract amendments did not violate public trust doctrine; State Water Resources Control Board or its predecessor had granted water rights to Department for State Water Project decades previously and amended such rights several times, contracts at issue were executed decades prior and allowed local agencies to extend their contractual interests indefinitely, and any use of preexisting financing mechanism that amendments broadened was speculative.

Public trust doctrine did not impose general duty of ongoing supervision on Department of Water Resources as to water rights with which it operated State Water Project, and thus, Department had no duty to weigh public trust interests or consider additional protections to those interests when considering proposed amendments extending terms and changing financing provisions of long-term contracts with local government agencies receiving water through State Water Project, where amendments had no impact on public trust uses, as they merely extended longstanding arrangements under State Water Project and bore only attenuated relationships to any projects that might be funded in future using revenue raised under amendments.

The statute requiring the Department of Water Resources to make a presentation to certain legislative committees at an informational hearing at least 60 days before the approval of a renewal or extension of a long-term water supply contract does not contemplate that the contract is in its final form when it is presented to the committees; the goal of the statute is to provide high-level oversight into the renewal or extension of State Water Project long-term contracts, but not to insert such oversight into the details of finalizing the renewal or extension by requiring an additional hearing as to any changes made following the committee hearing.

Granting request by Department of Water Resources for validation of proposed amendments to long-term contracts with local government agencies receiving water through State Water Project would not confer absolute power on Department to assume unbounded contracts; validation action was statutorily limited to contracts in the nature of, or directly relating to, revenue bonds issued by Department under State Water Project, and Department acted within its general contracting authority under State Water Project in approving and executing amendments.

PUBLIC UTILITIES - CALIFORNIA

Sierra Telephone Company, Inc. v. Reynolds

United States District Court, E.D. California - November 27, 2023 - F.Supp.3d - 2023 WL 8190262

Telephone service provider that participated in subsidy program for small, rural, independent telephone companies that provided local telephone service in rural and remote areas of California, internet service provider (ISP), and their parent company, brought action against commissioners of the California Public Utilities Commission (CPUC), in their official capacities, challenging application of CPUC’s broadband imputation policy, which imputed the revenues of ISPs to affiliate telephone service providers, in calculation of provider’s subsidies under the program, as an unconstitutional taking, preempted by the Federal Communications Commission’s (FCC) Restoring Internet Freedom Order, and in violation of the Dormant Commerce Clause.

Plaintiffs moved for a preliminary injunction and defendants moved to dismiss for failure to state a claim.

The District Court held that:

- Johnson Act did not preclude district court from exercising subject matter jurisdiction over plaintiffs’ action;
- Plaintiffs failed to state a takings claim;
- Plaintiffs failed to state a per se takings claim;
- FCC’s order did not preempt CPUC’s ratemaking decisions;
- Claim preclusion did not bar preemption claim;
- Issue preclusion did not bar preemption claim; and
- Plaintiffs failed to state a claim for violation of the Dormant Commerce Clause.

Johnson Act, which deprived federal courts of jurisdiction over suits challenging an order affecting rates chargeable by a public utility that were based solely on diversity of citizenship or repugnance of the order to the Federal Constitution, did not preclude district court from exercising subject matter jurisdiction over action brought by telephone service provider that participated in subsidy program for small, rural, independent telephone companies that provided local telephone service in rural and remote areas of California, internet service provider (ISP), and their parent company, challenging California Public Utilities Commission’s (CPUC) imputation of ISP’s revenues to telephone provider in calculation of provider’s subsidies, as an unconstitutional taking, preempted by the Federal Communications Commission’s (FCC) Restoring Internet Freedom Order, and in violation of the Dormant Commerce Clause; plaintiffs’ preemption claim was not solely constitutional.

Telephone service provider that participated in subsidy program for small, rural, independent telephone companies that provided local telephone service in rural and remote areas of California, internet service provider (ISP), and their parent company, did not sufficiently allege that telephone service provider had a property interest in the subsidies, in support of their claim challenging California Public Utilities Commission’s (CPUC) imputation of ISP’s revenues to telephone service provider in calculation of provider’s subsidies, pursuant to broadband imputation policy, as an unconstitutional taking; complaint did not include factual allegations that participation in the subsidy program was mandatory or that CPUC was compelling telephone service provider’s participation in the program.

California Public Utilities Commission’s (CPUC) ratemaking decision for telephone provider that participated in subsidy program for small, rural, independent telephone companies that provided local telephone service in rural and remote areas of California, which imputed revenues of affiliate internet service provider (ISP) to telephone provider in calculation of provider’s subsidies, and concluded that telephone provider required a 5.98% rate of return on regulated investments to cover its costs of capital, was not unfair or unreasonable, and thus did not constitute an unconstitutional taking; ISP used telephone provider’s infrastructure to deliver broadband services, and the CPUC rate design accounted for ISP’s usage of and benefit derived from the subsidized infrastructure, balancing interests of the providers, other carriers contributing to the subsidy program, and the public.

Telephone and internet service providers, and their parent company, did not sufficiently allege that California Public Utilities Commission’s (CPUC) ratemaking decision for telephone provider, which imputed revenues of internet provider to telephone provider in calculation of subsidies under government program for small, rural, independent telephone providers, pursuant to its broadband imputation policy, and concluded that telephone provider required a 5.98% rate of return on regulated investments to cover its costs of capital, was unreasonable in light of prior CPUC decision which determined that telephone provider required a 9.22% rate of return, in support of their takings claim; plaintiffs did not allege that 9.22% remained the minimal rate of return for operations or include factual allegations regarding impacts of broadband imputation policy on telephone provider’s ability to achieve a sufficient rate of return to draw investment and cover costs.

Telephone and internet service providers, and their parent company, did not sufficiently allege that California Public Utilities Commission’s (CPUC) ratemaking decision for telephone provider, which imputed revenues of internet provider to telephone provider in calculation of subsidies under government program for small, rural, independent telephone providers, pursuant to its broadband imputation policy, and concluded that telephone provider required a 5.98% rate of return on regulated investments to cover its costs of capital, was unreasonable because it did not allow telephone provider to earn a return on the value of property equal to the return being made in the same general part of the counties in which it operated, in support of takings claim; plaintiffs did not allege facts that compared telephone provider’s rate of return to other rates of return in the same territory.

California Public Utilities Commission (CPUC) did not compel telephone service provider that participated in subsidy program for small, rural, independent telephone companies that provided local telephone service in rural and remote areas of California to operate a loss by conflating its financials with affiliate internet service provider's (ISP) financials, in its ratemaking decision, which imputed revenues of ISP to telephone provider in calculation of provider's subsidies, and concluded that telephone provider required a 5.98% rate of return on regulated investments to cover its costs of capital, and thus CPUC's decision did not result in an unconstitutional taking; CPUC did not compel telephone provider to look to its affiliate internet provider to recover its losses or compel telephone provider to participate in the subsidy program.

Claim asserted by telephone and internet service providers, and their parent company, challenging California Public Utilities Commission's (CPUC) imputation of internet provider's revenues to affiliate telephone provider in calculation of provider's subsidies under government program for small, rural, independent telephone providers, as a unconstitutional taking, which incorporated all 65 preceding paragraphs in the complaint without distinction, was an improper shotgun pleading that did not give proper notice to either the CPUC Commissioners or the district court; if specific paragraphs supported the claim and plaintiffs intended to rely on them, those paragraphs, not the wholesale incorporation of every paragraph, should have been specifically incorporated by reference.

Telephone service provider that participated in subsidy program for small, rural, independent telephone companies that provided local telephone service in rural areas of California, internet service provider (ISP), and their parent company, did not allege that California Public Utilities Commission's (CPUC) ratemaking decision for telephone provider, which imputed ISP's revenues to telephone provider in calculation of provider's subsidies, pursuant to its broadband imputation policy, directly appropriated ISP's private property or ousted it from its domain, that CPUC required a permanent physical invasion of ISP's property, or that ISP was the owner of real property which had been called upon to leave its property economically idle, and thus failed to state a per se takings claim under one of the traditional theories.

Telephone service provider that participated in subsidy program for small, rural, independent telephone companies that provided local telephone service in rural areas of California, internet service provider (ISP), and their parent company, did not sufficiently allege that California Public Utilities Commission's (CPUC) ratemaking decision for telephone provider, which imputed ISP's revenues to telephone provider in calculation of provider's subsidies, pursuant to its broadband imputation policy, indirectly mandated a transfer of ISP's profits to telephone provider to fulfill telephone provider's revenue requirement on an annual basis, in support of their per se takings claim; plaintiffs failed to allege how imputing ISP's profits in telephone provider's rate design mandated a transfer of property.

Federal Communications Commission's (FCC) decision in its Restoring Internet Freedom Order to stop classifying broadband services as "telecommunications services" subject to regulation pursuant to Title II of Communications Act, and to instead reclassify them as "information services" not subject to regulation under Title I, did not preempt California Public Utilities Commission's (CPUC) imputation of internet service provider's (ISP) revenues to affiliate telephone service provider, in calculation of provider's subsides under statute establishing subsidy program for small, rural, independent telephone companies that provided local telephone service in rural areas of California; FCC's Order was merely a policy preference for a "light-touch" broadband regulatory approach, and CPUC's broadband imputation did not conflict with federal law or with purposes and objectives of Congress.

Federal Communications Commission's (FCC) policy preference for a "light-touch" broadband regulatory approach, expressed in its decision to reclassify broadband services as "information services” not subject to regulation under Title I of the Communications Act, did not preempt California Public Utilities Commission’s (CPUC) imputation of internet service provider’s (ISP) revenues to affiliate telephone service providers, in calculation of subsides under voluntary subsidy program for small, rural, independent telephone companies that provided local telephone service in rural and remote areas of California; CPUC’s broadband imputation applied only to those who desired a state subsidy and did not compel participation in the subsidy program.

Finding in prior state court action, brought by ten telephone companies that participated in program that provided subsidies to small, rural, independent providers of telephone service in rural and remote areas of California against California Public Utilities Commission (CPUC), that CPUC’s broadband imputation policy, which imputed revenues of internet service providers (ISP) to affiliate telephone companies in calculation of subsidies under the program, was not facially preempted by Federal Telecommunications Act and Federal Communications Commission (FCC) order exempting broadband internet services from utility-style regulation, was not res judicata in subsequent federal court action brought by one of the telephone companies from state court action against CPUC, claiming that CPUC’s use of broadband imputation in ratemaking decision for company was preempted by federal law; company’s as-applied challenge in federal case included facts specific to its rate case, whereas prior case did not raise specific effect of CPUC’s policy on each company.

Prior state court proceeding, brought by telephone companies that participated in program that provided subsidies to small, rural, independent providers of telephone service in rural and remote areas of California against California Public Utilities Commission (CPUC), wherein statute allowing CPUC to impute broadband revenues of telephone companies’ internet service provider (ISP) affiliates in determining subsidies under the program was found not to be preempted by the Federal Telecommunications Act and Federal Communications Commission (FCC) order exempting broadband internet services from utility-style regulation, did not collaterally estop one telephone company from prior case from litigating claim in federal court that CPUC’s use of broadband imputation in ratemaking decision for company was preempted by FCC’s determinations; prior case presented facial challenge to broadband policy, whereas federal court action disputed application of broadband imputation on behalf of one telephone company.

Telephone company that participated in program that provided subsidies to small, rural, independent providers of telephone service in rural and remote areas of California, internet service provider (ISP), and their parent company, did not sufficiently allege that California Public Utilities Commission’s (CPUC) ratemaking decision for telephone company, which imputed revenues of ISP to company in calculation of subsidies under the government program, pursuant to its broadband imputation policy, burdened interstate commerce, in support of claim that CPUC’s ratemaking decision violated the Dormant Commerce Clause; all burdens alleged by plaintiffs were upon ISP’s internal operations.

Claim asserted in federal court action by telephone company that participated in program that provided subsidies to small, rural, independent providers of telephone service in rural and remote areas of California, internet service provider (ISP), and their parent company against California Public Utilities Commission (CPUC), that CPUC’s imputation of ISP’s revenues to affiliate telephone company in calculation of company’s subsidies under the program violated the Dormant Commerce Clause, was not within the scope of prior state court action challenging CPUC’s broadband imputation policy as facially unconstitutional, and thus was not precluded, under doctrine of res judicata; transactional nucleus of facts of prior facial challenge differed from the as-applied challenge raised in federal court.

HOSPITAL DISTRICTS - FLORIDA

Harrison v. South Broward Hospital District

District Court of Appeal of Florida, Fourth District - November 8, 2023 - So.3d - 2023 WL 73679 - 2048 Fla. L. Weekly D2154

Former general counsel for hospital district board of commissioners brought action against board members, asserting claims for defamation, tortious interference with advantageous business relationship, outrage, and gross negligent infliction of emotional distress for their actions in holding meeting and voting to terminate her.

Members moved for summary judgment based on summary judgment. The Circuit Court entered nonfinal order denying the summary judgment motion. Members appealed that order and separately filed petition for writ of certiorari for review the denial of their summary judgment motion. Cases were consolidated for resolution.

The District Court of Appeal held that members were entitled to absolute immunity as to general counsel's claims.

Members of hospital district board of commissioners were acting within scope of their duties when they held meeting to review general counsel's performance and voted for her discharge, and thus members were entitled to absolute immunity as to general counsel's tort claims for defamation, tortious interference with advantageous business relationship, outrage, and gross negligent infliction of emotional distress, even if members were acting in bad faith and maliciously; district's bylaws gave board broad authority to employ personnel, and even if only the chief executive officer (CEO) could terminate general counsel's employment because she reported only to the CEO, the bylaws recognized board's authority to vote for her discharge and direct CEO to terminate her.

EMINENT DOMAIN - INDIANA

State v. Laughlin

Court of Appeals of Indiana - November 29, 2023 - N.E.3d - 2023 WL 8246853

Parties with property interest in billboard advertising sign and lease commenced action against state and Department of Transportation alleging inverse condemnation.

The Superior Court entered order of appropriation without resolving factual issues as to whether taking occurred. State and Department filed interlocutory appeal.

The Court of Appeals held that trial court erred in determining that taking occurred without setting matter for hearing or allowing other dispositive motions to be filed.

Trial court improperly determined that taking had occurred based upon only complaint by purported holders of property interest in billboard advertising sign, which state and Department of Transportation removed as part of highway improvement project, and state's objections and affirmative defenses, in inverse condemnation action; court was required to make factual determination as to whether taking occurred by setting matter for hearing or allowing other dispositive motions to be filed.

IMMUNITY - KANSAS

Unruh v. City of Wichita

Supreme Court of Kansas - January 5, 2024 - P.3d - 2024 WL 57470

Arrestee brought action against city, police chief, and police officers, asserting a claim for negligence arising from allegations that officers used excessive force to arrest him.

The District Court granted summary judgment to defendants. Arrestee appealed. The Court of Appeals affirmed. Arrestee's petition for review was granted.

The Supreme Court held that:

- Special duty needed for negligence claim arising from an officer's alleged use of excessive force does not simply arise anytime there is an affirmative act by the officer causing injury, disapproving *Dauffenbach v. City of Wichita*, 233 Kan. 1028, 667 P.2d 380, and
- Substance of arrestee's claim sounded not in negligence, but in civil battery, and was thus subject to the 12-month limitations period for such claims.

PREEMPTION - NEW YORK

Town of Babylon, NY v. James

United States District Court, E.D. New York - December 19, 2023 - F.Supp.3d - 2023 WL 8734201

Incorporated towns of New York, which had sued opioid distributors and producers in state court seeking damages for financial losses suffered as a consequence of distributors' and producers' wrongdoings, brought action against Attorney General for state of New York, seeking declaratory relief that challenged statute, which created opioid settlement fund for settlements reached with certain distributors and producers and extinguished state court claims by towns and others, violated towns' rights to substantive due process, equal protection, and access to the courts under the U.S. and New York Constitutions and violated the home-rule restrictions under New York Constitution.

Attorney General moved to dismiss.

The District Court held that:

- Proprietary interest exception to capacity-to-sue rule under New York law did not apply to give towns capacity to sue Attorney General and challenge statute;
- Home rule exception to capacity-to-sue rule under New York law did not apply to give towns capacity to sue Attorney General and challenge statute;
- Court would take judicial notice of legislative materials supporting New York senate bill that was later codified into challenged statute;
- Towns lacked standing to pursue Fourteenth Amendment claims;
- Exercise of supplemental jurisdiction over towns' claims under New York Constitution would be declined; and
- Towns lacked necessary legal predicate to seek declaratory judgment.

Proprietary interest exception to capacity-to-sue rule under New York law, barring constitutional challenges by political subdivisions, did not apply to give incorporated towns capacity to sue New

York Attorney General and challenge statute, which created opioid settlement fund for settlements reached with certain opioid distributors and producers and extinguished state court claims by towns and others; even though challenged statute affected towns' vested rights in continuing litigation against distributors and producers, there was no statute granting towns right to receive from any statutorily created fund based on their pre-existing lawsuits against producers and distributors, but rather, towns had only unadjudicated legal claims that may or may not have resulted in monetary recovery.

BONDS - TEXAS

Senior Care Living VI, LLC v. Preston Hollow Capital, LLC

Court of Appeals of Texas, Houston (1st Dist.) - November 30, 2023 - S.W.3d - 2023 WL 8262772

Assisted-living facility management company brought declaratory-judgment action against bank and trust company, seeking declaration that management company was not in default under bond agreements to finance construction of facility.

Bondholder intervened, and its separate action against individual guarantor of management company's debt was consolidated with declaratory-judgment action.

Bank and trust company conditionally asserted same claims as bondholder, alleging breach of contract against management company and claim against guarantor under guaranty.

The District Court entered partial summary judgment that bank and trust company were properly appointed as co-successor trustees, dismissed management company's claims for conversion, and after bench trial, entered judgment against management company and guarantor, jointly and severally, for $52.6 million.

After their motions for new trial were overruled, management company and guarantor appealed.

The Court of Appeals held that:

- Appointment of bank and trust company as successor co-trustees was effective;
- Notice to co-trustees was not a condition precedent to bondholder bringing action against management company;
- Bondholder did not qualify as guaranteed party entitled to enforce guaranty against individual guarantor;
- Notice of intent to accelerate debt incurred under bond agreements was not clear and unequivocal; and
- There was no evidence that management company owned or had possession of funds or entitlement to possession of funds under bond agreements.

Issue on appeal, in declaratory-judgment action brought by company that managed assisted-living facility against bondholders who issued bonds to finance construction of facility, raised by company, alleging bondholder was not entitled to receivership because it did not plead for that relief, was rendered moot when, during pendency of appeal, receiver moved for final accounting and sought to be discharged, and trial court granted that request and discharged receiver from all duties, responsibilities, and obligations under trial court's post-judgment receivership order.

Appointment of bank and trust company as successor co-trustees by bond trustee, who managed distribution of proceeds from sale of bonds to finance construction of assisted-living facility and loan payments from facility's management company, was effective under provision of trust indenture agreement governing appointment of co-trustees, even though management company, as obligor under agreement, did not give prior consent; bond trustee sent notice appointing bank and trust company as co-trustees, provision explicitly vested bond trustee with "power to appoint" one or more persons to act as co-trustee jointly with bond trustee, and provision gave bond trustee power to make the appointment "on its own" if obligor did not join.

Assisted-living facility management company and individual guarantor of management company's debt incurred under bond agreements to finance construction of facility, waived argument on appeal that bondholder could not recover on its breach of contract claim because copy of agreement admitted at trial indicated that it had been amended, but bondholder did not introduce amended version into evidence; no party argued in trial that agreement was inoperable or sought to introduce amended agreement, and management company did not attempt to establish in trial that agreement had been amended, and it obtained no fact findings on amendments modifying agreement.

Provision of trust indenture agreement, under which proceeds from sale of bonds were used to finance construction of assisted-living facility, regarding actions taken by bondholder representative in lieu of bond trustee, did not make written notice a prerequisite to proceeding in lieu of trustee, merely noting bondholder's election to proceed would be evidenced by written notice, and thus, notice was not a condition precedent to bondholder bringing action against facility's management company, as obligor under agreement, for breach of contract; provision contemplated that written notice would constitute contemporaneous or after-the-fact proof that an election to proceed had taken place, and provision did not have conditional language such as "if," "provided that," or "on condition that."

Even if provision of trust indenture agreement, under which proceeds from sale of bonds were used to finance construction of assisted-living facility, regarding notice of actions taken by bondholder representative in lieu of bond trustee was a condition precedent to bondholder bringing action against facility's management company, as obligor under agreement, bondholder substantially complied with such condition; bondholder's counsel emailed bank serving as co-trustee under agreement, stating that counsel intended to file a complaint against management company in federal court, including complaint as attachment, and stating that filing included input from bank's counsel and counsel for trust company serving as co-trustee.

Bondholder, as noteholder representative and majority bondholder representative under bond agreements in which proceeds from sale of bonds were used to finance construction of assisted-living facility, could pursue remedies on behalf of subordinate bondholders for breach of contract claim against assisted-living facility management company, as obligor under agreements, even if relevant provisions ensured priority of senior notes and bonds; nothing in relevant provisions of agreements provided that, when entire debt had been accelerated due to default, bondholder could pursue remedies only on behalf of senior bondholders, and could not also pursue remedies on behalf of subordinate bondholders in same proceeding.

Bondholder, as noteholder representative and majority bondholder representative under bond agreements in which proceeds from sale of bonds were used to finance construction of assisted-living facility, was not a noteholder, and thus, did not qualify as a guaranteed party entitled to enforce guaranty against individual guarantor of financing for facility; bondholder was not a registered owner of promissory notes, and was not required to be in order to be noteholder representative, and guaranteed parties under guaranty included only trustee for the benefit of noteholders.

Bondholder’s status as noteholder representative and majority bondholder representative, under bond agreements in which proceeds from sale of bonds were used to finance construction of assisted-living facility, did not grant it authority to enforce guaranty against individual guarantor of financing for facility; text of guaranty itself said nothing about allowing either noteholder representative or majority bondholder representative to pursue remedies under guaranty, and instead provided only that noteholder representative could direct trustee under agreements to take action after an event of default.

Assisted-living facility management company and individual guarantor of management company’s debt, incurred under bond agreements to finance construction of facility, preserved for appeal issue of whether bondholder properly accelerated debt under agreements, even if bondholder pleaded that all conditions precedent to suit had been performed, and management company and guarantor did not specifically challenge notice of intent to accelerate as condition precedent, where trial court admitted evidence of notices of default, of intent to accelerate debt, and of acceleration, and made express fact findings that debt was properly accelerated.

Trustee’s notice of intent to accelerate debt incurred under bond agreements to finance construction of assisted-living facility, including parenthetical “(subject to further election and notice to you),” was not clear and unequivocal, and thus, subsequent notice of acceleration of debt was ineffective; agreements gave trustee option to accelerate payment of amounts owed by facility’s management company upon occurrence of an event of default, and by including parenthetical, trustee failed to unequivocally indicate that management company’s failure to cure alleged defaults would automatically result in acceleration, and instead suggested that an additional election and notice would need to be made in the future.

Court of Appeals would reverse $52.6 million award of damages in favor of bondholder and remand for a new trial on bondholder’s breach of contract claim, which was reversed in part on appeal, rather than suggesting a remittitur, in declaratory-judgment action brought by company that managed assisted-living facility against bondholders who issued bonds to finance construction of facility; no party had suggested an amount for a remittitur, management company had not challenged all breaches found by the trial court, and the trial court made no findings that would identify an appropriate lesser amount of damages.

There was no evidence that assisted-living facility management company owned or had possession of funds or entitlement to possession of funds, under bond agreements in which proceeds from sale of bonds were used to finance construction of assisted-living facility, as required element of management company’s conversion claim against bank and trust company, as co-trustees managing distribution of proceeds from sale of bonds and loan payments from management company, and bondholder.

There was no evidence that bank and trust company, as co-trustees under bond agreements in which proceeds from sale of bonds were used to finance construction of assisted-living facility, and bondholder held money that belonged to assisted-living facility management company, as obligor under agreements, as required element of management company’s money had and received claim against bank, trust company, and bondholder.

Guaranty, under which individual guarantor of assisted-living facility management company’s debt incurred under bond agreements to finance construction of facility guaranteed full and prompt payment of debt to trustee for the benefit of noteholders, could not be used to justify requiring guarantor to pay bondholder’s attorney fees and expenses, in management company’s declaratory-judgment action seeking declaration that it was not in default under agreements; bondholder was not a guaranteed party, i.e., noteholder, under guaranty, and could not enforce guaranty.

Bank and trust company, as co-trustees under bond agreements in which proceeds from sale of bonds were used to finance construction of assisted-living facility, were not entitled to recover attorney fees against individual guarantor of financing for facility, in declaratory-judgment action brought by management company of facility against bank, trust company, and bondholder, seeking declaration that it was not in default under agreements; bank and trust company conditionally asserted same causes of action asserted by bondholder, in the event bondholder lacked authority to bring suit, and trial court awarded damages against guarantor to bondholder only, such that condition to trigger assertion of bank and trust company's claims never occurred.

PUBLIC RECORDS - UTAH

McKitrick v. Gibson

Supreme Court of Utah - January 11, 2024 - P.3d - 2024 WL 119334 - 2024 UT 1

Former county commissioner petitioned for review of city records review board's grant of freelance journalist's request under Government Records Access and Management Act (GRAMA) for records relating to investigation into alleged official misconduct.

The Second District Court granted journalist's motion to intervene and denied her motion to dismiss for lack of standing. Journalist appealed, and the Supreme Court reversed and remanded. The Second District Court denied journalist's motion for attorneys' fees and litigation costs. Journalist appealed.

The Supreme Court held that:

- GRAMA did not limit the availability of fees and costs only to appeals initiated by the governmental entity or the requester;
- Journalist's legal filings as intervenor sufficed as a statement of position to city for purposes of GRAMA fee provision;
- Journalist could be found to have substantially prevailed under GRAMA fee provisions even if she did not prevail against city or did not prevail on the merits; and
- On remand, district court should apply GRAMA's statutory fee provisions to the facts and underlying circumstances of journalist's appeal.

District court should exercise its discretion on remand to apply the statutory fee provisions of the Government Records Access and Management Act (GRAMA) to the facts and underlying circumstances of journalist's appeal of denial of her motion to dismiss county commissioner's petition for review of decision by city records review board to grant journalist's records request, even though commissioner's petition was never addressed on the merits; trial court should look beyond the question of commissioner's standing when considering the public benefit derived from the case, the nature of journalist's interest in the records, and whether city's actions had a reasonable basis.

Munis in 2024: The Key Factors to Watch

Alex Petrone, Rockefeller Asset Management director of fixed income, discusses the outlook for the municipal bond market. She spoke on the Jan. 10 episode of "Bloomberg Markets: The Close."

Watch video.

Bloomberg Markets: The Close

January 12th, 2024

S&P U.S. States 2024 Outlook: Credit Stability Endures In Unstable Times

Sector View: Stable

Robust reserve positions and strong management controls will allow states to brace for slower economic growth and softening revenues in fiscal 2024. States' credit fundamentals appear resilient, but fiscal 2025 budget discussions will likely center on managing increasing costs, waning federal support, and changes in tax policy potentially further straining revenues.

Continue reading.

4 Jan, 2024

Fitch Ratings 2024 Outlook: U.S. Public Finance Compendium

View the Compendium.

Municipal Outlook 2024: Capture the Momentum

A likely soft landing and rate cuts paint an optimal backdrop for the muni market in 2024.

The municipal bond market finished 2023 on a high note and its 2024 prospects look just as promising.

Munis whipsawed through sharp monthly selloffs and spikes for most of the year. In the end, the Bloomberg Municipal Bond Index returned 6.4% for the year, well above the 3.1% after-tax return for the Bloomberg 1–3 Month US Treasury Bill Index.

Unfortunately, munis' rollercoaster year made many investors reluctant to return to the market, leaving just under $6 trillion still sitting in money market funds. Wary investors may also worry they've missed the rally.

But thanks to a favorable mix of historically high yields, expectations that the Federal Reserve will ease off higher-for-longer interest rates, and attractive credit spreads, munis have seldom held as strong a potential as they do today.

Continue reading.

Alliance Bernstein

Jan 12, 2024

What 2024 May Hold for Municipal Bonds, a 'Crucial Financing Tool for Cities.

Interest rate trends, investor demand and the 2024 elections could all impact the municipal bond market, according to finance experts.

Dive Brief:

- As cities ramp up their investment in local infrastructure in 2024, state and local bond sales are expected to reach about $400 billion, up about 7% from 2023, according to Peter DeGroot, a JP Morgan managing director and head of municipal research and strategies. DeGroot spoke at a Dec. 14 webinar hosted by the bond insurer Build America Mutual and the National League of Cities.
- Municipal bonds typically are the source of more than 70% of state and local financing for infrastructure projects, such as road repairs, sewer system maintenance and school construction.
- Despite that expected growth, interest rate trends, investor demand and the 2024 elections could all impact the municipal bond market, webinar speakers said.

Continue reading.

smartcitiesdive.com

By Gaby Galvin

Published Jan. 11, 2024

United States ESG & the Muni Market 2023: A New Frontier in ESG Politics

DUBLIN, Jan. 10, 2024 /PRNewswire/ — The "U.S ESG & the Muni Market 2023" report has been added to ResearchAndMarkets.com's offering.

Environmental, social and governance (ESG) factors in the municipal market have garnered significant attention, both positive and negative, in the past five years. Some market participants see it as an opportunity for industry growth in the U.S. and abroad. Indeed, ESG bond issuance has grown even as overall municipal issuance has dropped precipitously. Others see ESG as a costly and unnecessary additional issuer disclosure burden with little pricing benefit for state and local governments that say the debt they issue is inherently ESG.

Several politicians and other government officials assert ESG is part of a "woke" agenda in the financial markets. Some states have written legislation and enacted laws prohibiting the use of ESG in the public finance markets, while others have barred financial institutions from participating in the municipal market due to their stance on the firearm and/or fossil fuel industries.

Continue reading.

Wed, January 10, 2024

NASBO FY25 Budget Proposals.

Overview

Over the course of the coming months, governors in 33 states, the territories, and the District of Columbia will release a budget proposal for fiscal 2025 (governors in Kentucky, Virginia, and Wyoming will propose a biennial budget for both fiscal 2025 and fiscal 2026). Last year, 17 states enacted biennial budgets covering both fiscal 2024 and fiscal 2025; in some of those states, the governor will release a supplemental or revised budget recommendation for fiscal 2025. Forty-six states begin their fiscal year on July 1 (New York begins its fiscal year on April 1, Texas on September 1, and Alabama and Michigan on October 1). Puerto Rico begins its fiscal year on July 1, while the District of Columbia, Guam, and the U.S. Virgin Islands begin their fiscal year on October 1.

Continue reading.

Muni Bond Defaults Most Likely to Occur in Senior Living, Skilled Nursing, Survey Finds.

Yields may have peaked in 2023 for municipal bonds, with defaults this year most likely to happen in senior living and skilled nursing, according to the results of a recent survey published by Hilltop Securities.

Long-term care-related defaults had been decreasing as of May.

Hilltop surveyed 125 market participants. Half of the respondents to the Hilltop Securities High Yield Impact Survey were investors; bankers and advisers accounted for 16%; sell side intermediaries accounted for 9%; and bond counsel, insurers and rating analysts contributed 16% of the responses. Other market participants (including bond evaluators and researchers) contributed the remaining 9%.

Continue reading.

McNight's Senior Living

by Kathleen Steele Gaivin

JANUARY 9, 2024

Hospitals Are Back to the Muni Market With Labor Costs Easing.

- **Borrowing this month far outpaces all of last January**
- **Pent-up need for upgrades drives issuance as finances improve**

Hospitals are returning to the municipal-bond market as they aim to pivot from survival to revival. So far this year, hospitals are tapping the market with more than $1.7 billion to expand and upgrade facilities, according to data compiled by Bloomberg as of Jan. 12. That figure outpaces $390.7 million of issuance by hospitals last January.

It’s cheaper to tap the muni market at the moment, with the yield on the 10-year AAA benchmark down 127 basis points since Nov. 1. Financial pressures on hospitals have also started to ease. Staffing costs — by far their heftiest expense — have steadied and operating margins have been improving.

Continue reading.

Bloomberg Markets

By Lauren Coleman-Lochner

January 12, 2024

S&P General Obligation Medians For Municipalities: December 2023

S&P Global Ratings derives the general obligation (GO) municipal medians from rating reviews completed under its GO criteria, “Local Government GO Ratings Methodology And Assumptions”, published Sept. 12, 2013. The medians include the 3,952 municipalities that we rated as of December 2023, presented by rating category.

These medians do not pertain to counties and special districts such as school districts. We are publishing separate GO county and school district median reports concurrently with this article.

We calculate the metrics, for which we provide the medians, based on raw data, or in some cases, data that we have adjusted (for more information, see “S&P Public Finance Local GO Criteria: How We Adjust Data For Analytic Consistency,” published Sept. 12, 2013), and they are only one component of the rating analysis. The metrics play a part in the quantitative analysis in five factors: economy, budgetary flexibility, budgetary performance, liquidity, and debt and contingent liabilities. Qualitative adjustments within each factor (which the medians do not reflect) also play an important part in the analysis.

Continue reading.

3 Jan, 2024

S&P General Obligation Medians For School Districts: December 2023

S&P Global Ratings derives the general obligation (GO) school district medians from rating reviews completed under its “GO Debt” criteria published Oct. 12, 2006. We derive the school district medians from the 5,148 school districts we rated as of December 2023.

We present the medians by rating category. These medians do not pertain to municipalities and counties. We are publishing separate GO county and municipality median reports concurrently with this article.

Continue reading.

3 Jan, 2024

S&P U.S. Local Governments 2024 Outlook: Stimulus Shelters Governments In 2024; Preventing Long-Term Leaks Requires Fiscal Focus Now

Sector view: Stable

U.S. local governments continue to enjoy financial stability that stems from federal stimulus distributed during the pandemic. Despite elevated inflation and rising interest rates, ongoing credit strength has led to increasing revenues and improved reserve levels. However, if local or macroeconomic conditions prevent revenues from keeping pace with expenditure growth, management teams could be pressured to balance budgets while still addressing persistent issues requiring longer-term solutions, such as demographic changes and extreme weather.

Continue reading.

9 Jan, 2024

S&P Outlook For U.S. Not-For-Profit Transportation Infrastructure: Back To The Future For Most Operators, While Mass Transit Minds The Gap

Sector View: Stable Except For Mass Transit, Which Is Negative

S&P Global Ratings' view of business conditions and credit quality across the U.S. not-for-profit transportation infrastructure sector for 2024 is stable, as most asset class operators fully return to historical activity levels and planning for the future. Our view applies to rated airports (and related special facilities), toll roads, maritime ports, parking operators, and all federal transportation grant-secured entities. Our negative sector view for mass transit is unchanged, reflecting financial pressures facing many transit providers with a historical reliance on fare revenues as they look to plug operating fund gaps as federal assistance runs out.

Continue reading.

10 Jan, 2024

S&P Request for Comment: Request For Comment: Methodology For Rating U.S. Governments

This article presents S&P Global Ratings' proposed criteria for rating U.S. governments. This proposal consolidates the criteria for U.S. states, counties, municipalities, school districts, and special government districts under a single framework for determining a stand-alone credit profile (SACP) (see "Related Publications" section for details of superseded criteria).

These proposed criteria would apply only to U.S. governments not in scope of other issuer credit rating (ICR) criteria.

Although the scope of activities may vary, governments share the following characteristics:

- Leadership is elected or is appointed by others who are elected;
- The entity provides public services and/or public infrastructure; and
- The entity is supported directly or indirectly by taxes and fees levied on residents or funds transferred from other levels of government.

[Continue reading.](#)

11 Jan, 2024

[S&P Credit FAQ: An Overview Of S&P Global Ratings' Proposed Methodology For Rating U.S. Governments](#)

On Jan. 11, 2024, S&P Global Ratings published a request for comment (RFC) on its proposed Methodology For Rating U.S. Governments. The proposed criteria apply to U.S. states, counties, municipalities, school districts, and special government districts. S&P Global Ratings believes it will be useful to provide additional context about the proposed criteria and to address questions on it, including scope, expected rating impacts, and key differences between the proposed and existing criteria. For the full proposed framework, see “Request For Comment: Methodology For Rating U.S. Governments.”

Key Takeaways

- The proposed criteria, when finalized, will fully supersede “U.S. State Ratings Methodology,” “U.S. Local Governments General Obligation Ratings: Methodology And Assumptions,” “GO Debt,” “Financial Management Assessment,” “Debt Statement Analysis,” and “Key General Obligation Ratio Credit Ranges.”
- The proposal would consolidate criteria to analyze credit risks of U.S. governments using one comprehensive scored framework. We believe bringing government entities under the same analytic framework increases transparency of our methodology, improves consistency and alignment of ratings across these government types, and enhances global comparability.
- Across all ratings in scope of these proposed criteria, we expect approximately 95% will remain unchanged. For U.S. state and territories, we expect all ratings will remain unchanged.

[Continue reading.](#)

11 Jan, 2024

[S&P U.S. Not-For-Profit Health Care Rating Actions, December 2023](#)

S&P Global Ratings maintained 22 ratings without revising the outlooks, took one positive rating action, and six negative rating actions in December. In addition, we revised two outlooks favorably, revised two outlooks unfavorably, placed one issuer on CreditWatch with positive implications, and placed one issuer on CreditWatch with negative implications, all without changing the ratings in the U.S. not-for-profit health care sector.

There were six new debt issuances in the month, with four ratings maintained, one lowered (Scripps Health), and one rating initially assigned for Tampa General Hospital. In addition, SoutheastHEALTH was placed on CreditWatch with positive implications due to an upcoming merger with Mercy Health (subsequently upgraded upon consummation of the merger), while Hunt Memorial Hospital District was placed on CreditWatch with negative implications due to a recent debt issuance with the potential for additional borrowings with weakened performance and diminished reserves.

Continue reading.

11 Jan, 2024

S&P U.S. State Ratings And Outlooks: Current List

View the Current List.

11 Jan, 2024

Fitch Updates U.S. Public Sector, Revenue-Supported Entities Rating Criteria.

Fitch Ratings-New York/Chicago/San Francisco-12 January 2024: Fitch Ratings has updated its master criteria for rating public sector, revenue-supported entities. The criteria updates and replaces the prior report from April 2023.

The new criteria report sets out Fitch's methodology for assigning new ratings and monitoring existing ratings for U.S. public sector and not-for-profit entities that provide or support essential public or social services and activities and whose debt is intended to be repaid from the entity's own revenue and resources. Fitch has limited the criteria's scope, to U.S. entities only and has added an appendix that provides additional guidance for assessing the key rating drivers for U.S. not-for-profit Institutions. The methodology for assigning new ratings and monitoring ratings of public policy government-related entities and not-for-profit outside the U.S. is now set out separately in Fitch's Public Policy Revenue-Supported Entities Rating Criteria.

The key criteria elements remain consistent with those of the prior report. There is no impact on outstanding ratings. The previous version of the criteria has been retired.

The updated criteria report is available at 'www.fitchratings.com'.

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Additional information is available on www.fitchratings.com

Jefferson County, Alabama [Water, Sewer]: Fitch New Issue Report

The 'BBB(EXP)' warrant rating reflects anticipated improvement in the Jefferson County (the county) sanitary fund's (the system) credit quality and financial profile as a result of the plan of finance and updated rate resolution. The final rating is contingent upon receipt by Fitch Ratings of executed documents and legal opinions conforming to the information already received and reviewed. Revenue defensibility is assessed at 'a', which reflects an improvement from the prior review in light of enhanced rate flexibility. All of the system's revenue is derived from services or business lines exhibiting monopolistic characteristics in a service area with favorable demographic trends. The system's operating risk is assessed at 'bbb', which takes into consideration a very low operating cost burden of $5,131 per million gallons (mg) of sewer flows in fiscal 2022. The system's life cycle ratio of 63% has been rising annually and indicates elevated capital needs. The financial profile is assessed at 'bbb', improved from prior reviews given the simultaneous strengthening of the revenue defensibility assessment and improved debt structure. Jefferson County is located in the north-central part of Alabama at the southern end of the Appalachian Mountains. With an estimated population of about 665,000, the county is the most populous in the state with 44 incorporated and unincorporated cities and towns, including Birmingham, the largest city in the state .

ACCESS REPORT

Mon 08 Jan, 2024

Once-Bankrupt Jefferson County Tests Muni-Bond Market With Mega Deal.

- **Offering set to be one of the biggest tax-exempt sales of 2024**
- **County to refinance debt that helped end 2011 bankruptcy**

Virtually every investor in the municipal-bond market knows Jefferson County, Alabama.
Home to the city of Birmingham, the county earned the dubious distinction of being the biggest US municipal borrower to go bankrupt when it entered court protection in 2011. Now, armed with an investment-grade credit rating, it's selling $2.3 billion of bonds to refinance the debt that helped get the county out of bankruptcy.

The sale represents the latest chapter in the county's turnaround, and will test investor demand with what is poised to be one of the biggest deals of the year in the $4 trillion US state and local debt market.

Continue reading.

Bloomberg Markets

By Skylar Woodhouse

January 9, 2024

[Governors Propose Spending Billions on Overdue Infrastructure Projects.]

In State of the State addresses this week, several governors said they would prioritize ambitious and much needed infrastructure projects. Plus, more news to use from around the country in this week's State and Local Roundup.

It's Saturday, Jan. 13, and we'd like to welcome you to the weekly State and Local Roundup. There is plenty to keep tabs on with the high court agreeing to hear a case about homeless encampments that could have huge implications in the West, the first all-female city council gaveling into session in St. Paul, a Massachusetts court ruling that "emerging adults" cannot be sentenced to life without parole and the feds cracking down on funny messages on electronic highway signs.

But first we turn to state infrastructure plans, which governors are still pressing forward on even as the financial picture for states is darkening.

Perhaps the most audacious plan comes from Georgia, where Republican Gov. Brian Kemp is proposing to spend $1.5 billion on transportation projects. The vast majority of that would go to the state transportation department before the current fiscal year ends in June, in order to speed up progress on the agency's list of planned roadwork. The department will use part of that money to establish a freight infrastructure program and give cities and counties $200 million for their own projects.

Continue reading.

ROUTE FIFTY

by DANIEL C. VOCK

JANUARY 13, 2024

[Fast-Growing Force in Muni Market Is Upending Mutual Funds' Grip.]

- **Investors flocked to separately-managed accounts in 2023**
- **The products could deter interest in muni mutual funds**

A booming corner of the municipal-bond market is poised to topple the long-standing dominance of mutual funds.

Affluent investors wanting to get in on surging yields have been increasingly turning to so-called separately managed accounts instead of mutual fund portfolios posting losses.

Estimates of the hard-to-track products — which allow investors to build customized portfolios with the help of a professional — suggest accounts hold anywhere from $600 billion to nearly $1 trillion of US state and local government bonds.

Citigroup Inc. estimated the market has grown more than 40% over the past decade to about $750 billion of munis as of the third quarter. Mutual funds, meanwhile, have shed more than a quarter of muni assets from their 2021 peak, with Federal Reserve data showing the funds held about $727 billion of the securities in the third quarter.

With yields at multi-year highs, individual investors have opted to snap up muni bonds using separately managed accounts as well as exchanged-traded funds rather than the traditional mutual funds.

Allspring Global Investments, for one, has seen significant inflows into its offerings. SMAs own about 23% of muni bonds, while mutual funds now hold about 20%, according to Manju Boraiah, Allspring's head of custom SMA investments. Households account for another 19% while banks, insurance companies and others own the rest, he said.

"The SMA growth has been fairly persistent and growing double digits over the past few years," he said.

Buying Force

Separately managed accounts began to make inroads in the early 2000s as advances in technology improved the ability of firms to oversee more accounts.

The interest in the products has been a major bright spot for demand given that municipal-bond mutual funds — one of the major buying forces in the market — recorded another year of outflows in 2023.

Kara South, municipal portfolio manager for GW&K Investment Management, said her firm tends to favor the products for its clients because they are so customizable. "SMAs will continue to be a driver of demand," she said.

Fee War

In addition to their individualized nature, competitive costs are a draw.

Fees on the products are often cheaper than mutual funds, and have been falling, according to Eric Kazatsky, municipal strategist for Bloomberg Intelligence. "Ten years ago, SMAs were basically 0% of the market, now they're 25%," he said.

Allspring's Boraiah estimates passively-run SMA portfolios fees range from 10 to 18 basis points, while actively managed ones are north of 20 basis points — still much less than what mutual funds charge.

While it can be harder to withdraw money from these accounts, it also protects them from the "herd mentality" that can spur mutual fund outflows as investors dump assets during a market selloff, Cumberland Advisors, an investment firm, said in a report in November.

Unlike mutual funds, SMAs often have high investment minimums, usually around $250,000. Those minimums have been dropping over the years, which has made the products more accessible to a wider swath of investors.

Exchange-traded funds, meanwhile, have also made inroads, but still only have a market share of about 3%. The funds saw inflows of about $14.7 billion in 2023, data compiled by Bloomberg show. The overall muni ETF universe is over $120 billion.

Year Ahead

Of course, if interest rates fall mom and pop investors sitting on the sidelines in cash could return to municipal-bond mutual funds to goose returns.

Vikram Rai, head of municipal markets strategy at Wells Fargo & Co., said investment firms would benefit from including open-end funds, SMAs and ETFs in their product offerings. “In fact, most large complexes are doing so,” he said.

Allspring’s Boraiah doesn’t see mutual funds going away, but noted that the products are less popular among the financial advisory community. That will dampen growth.

“There is definitely a threat, but it’s kind of like a slow moving iceberg,” he said.

Bloomberg Markets

By Amanda Albright

January 12, 2024

— With assistance from Nic Querolo

[Advantages of Separately Managed Accounts for Municipal Bonds.]()

Separately managed accounts (SMAs) have been utilized for decades to effectively manage client assets. Benefits include transparency, flexibility, control over costs, and choice. They can be optimized for various purposes including taxes, income, cash flow, etc. They also allow for more customization than ETFs or mutual funds.

They are particularly popular for fixed income purposes and have seen impressive growth in recent years. For instance, municipal fixed-income assets went from $100 billion in 2008 to $718 billion in July 2023. In part, this is due to SMAs becoming more accessible to a wider universe of investors as improved technology has led to lower costs and lower minimum amounts to invest.

ETF’s presence in the municipal bond market is also growing fast. There are now 81 funds and $108 billion in assets, a 50% increase from 2021 but less than 3% of the total muni market. Many active mutual funds are being converted into active ETFs. One advantage is greater liquidity which allows investors to quickly gain exposure as a placeholder while they accumulate individual securities.

Mutual fund flows can be affected by market sentiment, leading to selling during periods of redemption, which is not an issue with SMAs. Due to the growth of SMAs and ETFs, muni mutual funds have seen net outflows over the last couple of years. Another factor is high rates making short-term securities or bank deposits more attractive relative to longer-duration assets.

Continue reading.

nasdaq.com

Written by dkorth@finsum.com

January 09, 2024

[Investing in Nature Is Gaining Traction. Will It Be Enough?]

Investing in nature to address climate change, support biodiversity, and protect ocean health—and more—is expected to reach record levels this year in response to more regulation and market demand, according to Cambridge Associates, a global investment firm.

Still, the amount of private capital invested to support natural systems will fall far short of what's needed, according to the annual "State of Finance for Nature" report published in December from the United Nations Environment Programme.

A big reason is that nearly US$7 trillion in public and private finance was directed to companies and economic activities in 2022 that caused direct harm to nature, while only US$200 billion was directed to so-called nature-based solutions, or NbS—investments that protect, conserve, restore, or engage in the sustainable management of land and water ecosystems, as defined by the United National Environment Assembly 5, or UNEA5, the report said.

Continue reading.

Barron's

By Abby Schultz

Jan. 9, 2024

Beyond 'Boring Bonds': SEC Settles with Former Executive Over Risky Investment Recommendations - Sherman & Howard

The Securities and Exchange Commission (SEC) has reached a settlement with the former head of the municipal bond desk at Aegis Capital Corporation (Aegis) Alan Appelbaum.

The SEC alleged Appelbaum violated customer-specific suitability requirements in both recommending and selling variable interest rate structured products ("VRSPs") to seven retail investors. The SEC stated in the complaint that Appelbaum either, "knew, was reckless in not knowing, or should have known that these securities were unsuitable for those customers." Appelbaum was obligated under both suitability requirements and internal Aegis policy to make recommendations only after considering a customer's risk tolerance, age, and investment time horizons.

VRSPs are high-risk structured products and pay interest at a fixed rate for an initial period, usually 1-3 years. After that, they are not guaranteed to pay any interest. The recovery of the principal at maturity is based on the operation of derivative features connected to equity indices like the Standard and Poor's 500 and the Russell 2000. Additionally, there is no assurance of liquidity. A secondary market may not exist for VRSPs, and if a secondary market does exist, it can be at a great discount to face value.

The complaint alleged Appelbaum made "over 140 unsuitable recommendations and purchases of highly complex structured products for [the] retail investors." All seven retail investors had a "moderate" risk tolerance, meaning they were unwilling to lose their entire investment principal.

Additionally, the customers included in the complaint all had investment time horizons of up to 11 years. In contrast, the majority of VRSPs Applebaum recommended or purchased for customers did not mature for 15 years.

Aegis policy required customers to sign a disclosure form prior to purchasing any VRSPs; however, Appelbaum failed to provide such form to any of the seven customers presented in the complaint. Additionally, Appelbaum did not attend the Aegis mandatory training on structured products. The complaint also alleged Appelbaum engaged in unauthorized trading. All the accounts managed by Appelbaum were "non-discretionary." Aegis policy required Appelbaum to obtain customer authorization before every transaction in a "non-discretionary" account. The SEC claimed Appelbaum failed to obtain the mandatory consent needed from customers before purchasing and selling VRSPs in their accounts.

Customers noticed losses and confronted Appelbaum about his investment strategies. The complaint alleged Appelbaum continued to make material misrepresentations to his customers, assuring them that he was investing in "boring bonds," and they would see a return on their investments in time. One customer lost over $1 million, and another lost over $200,000; in contrast, Appelbaum received at least $1 million in compensation for the VRSP trades.

Without admitting or denying the allegations, Appelbaum and the SEC reached a settlement. The United States District Court for the Southern District of Florida entered final judgment on November 14, 2023. The final judgment permanently restrained and enjoined Appelbaum from any further violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. Appelbaum was also ordered to pay $42,000 in disgorgement, (representing net profits gained as a result of the conduct alleged in the complaint), $5,500 in prejudgment interest, and a civil penalty of $50,000. The SEC also settled an administrative proceeding against Aegis and another against former Aegis broker Paul Gallivan, both for the improper recommendation and trading of VRSPs.

VRSPs are not, in fact, "boring bonds," as Appelbaum put it. As indicated in the complaint; "Retail investors often rely on the recommendations of broker-dealers and their associated registered representatives when purchasing or selling securities. Registered representatives are required under, inter alia, FINRA and SEC Rules to recommend only securities transactions that are suitable for their customers…" The SEC views VRSPs as complex and risky structured products that are not suitable for retail investors with moderate risk tolerances, incompatible investment time horizons, and an unwillingness to lose their entire invested principal.

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Litigation Release: SEC.gov | Alan Z. Appelbaum

Complaint: Alan Z. Appelbaum (sec.gov)

Final Judgment: judg25895.pdf (sec.gov)

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Sherman & Howard L.L.C.

by Jessie Salas

January 9, 2024

Southern California Public Power Authority, California (Linden Wind Energy Project): Fitch New Issue Report

The ‘AA–’ rating on the Linden Wind Energy Project rating and ‘aa–’ Standalone Credit Profile (SCP) are dependent on the credit quality of the Los Angeles Department of Water and Power (LADWP, AA–/Stable), the sole participant required to make payments to the Southern California Public Power Authority (SCPPA), sufficient to pay operating expenses and debt service on the project. The rating also reflects Fitch’s assessment of the project’s midrange operating risk profile as well as the project’s modest financial profile. The operating risk and financial profile are less of a consideration in Fitch Ratings’ determination of the project’s final rating, given the absolute and unconditional terms of the power sales agreements (PSAs) that require LADWP to make a full payment, regardless of project operations.

ACCESS REPORT

Fri 12 Jan, 2024

State of Massachusetts: Fitch New Issue Report

The Commonwealth of Massachusetts’ (the commonwealth) ‘AA+’ Long-Term Issuer Default Rating (IDR) reflects its considerable economic resources, adroit management of economic and revenue cyclicality and strong budget controls. A strong reserve funding mechanism that shields the general fund from capital gains-related volatility has accelerated the building of Massachusetts’ stabilization fund. The commonwealth carries a long-term liability burden for debt and Fitch Ratings-adjusted net pension liabilities (NPL) that is well above the U.S. state median but remains a moderate burden on resources.

ACCESS REPORT

Thu 11 Jan, 2024

State of Illinois: Fitch New Issue Report

Dedicated Tax Key Rating Drivers Rating Linked to State IDR: Statutory and bond document provisions structurally protect dedicated revenues for the Build Illinois bonds from the state of Illinois’ general operations, warranting a rating above the state’s IDR. Fitch retains a linkage to the state IDR, because the bond security does not include a constitutional or voter-approved pledge of the state share of sales tax revenues and those revenues are not held in a closed loop for debt service. The linkage caps the rating below Fitch’s assessment of the underlying credit quality of the debt structure. Two-Notch Distinction: The limited scope of the pledged revenue used for debt service, based on the additional bonds test leverage limitations for the senior and junior liens, and the statutorily defined, limited nature of the borrowing program support a rating two notches above the Illinois IDR. Robust Coverage and Resilience: Debt service coverage on both the senior and junior lien bonds from the state share of sales tax revenues (pledged revenues) is very high. Given the legal leverage limitations on the Build Illinois bonds, pledged revenues can sustain a significant level of decline and still maintain ample debt service coverage on all obligations. This is consistent with a ‘aaa’ assessment of resilience through moderate economic declines.

ACCESS REPORT

Wed 10 Jan, 2024

State of Kansas [General Government]: Fitch New Issue Report

Key Rating Drivers Revenue Framework — ‘aa’ Fitch expects the future pace of revenue expansion, absent policy actions, to be generally in line with inflation given Kansas’ slow natural rate of population growth. The state retains complete control over its revenue system, with an unlimited ability to implement recurring revenue increases and levy new taxes and service charges as needed. Expenditure Framework — ‘aa’ Expenditure growth is expected to be in line with, to slightly above, annual revenue growth. Fitch’s expectations factor in the state’s primary spending drivers, which are K-12 education and healthcare, as in other states. Carrying costs are moderate for a U.S. state, ranging near 5% of governmental expenditures over the past several years. Long-Term Liability Burden — ‘aaa’ Long-term liabilities, including debt and pensions, are a low burden on the economic resource base and are in line with the national median for states. The pension liability reflects the KPERS state employee pension plan and the school employee pension plan, which the state supports via school funding appropriations. New issuance plans are modest.

ACCESS REPORT

Tue 09 Jan, 2024

Tampa General Hospital, Florida: Fitch New Issue Report

The ‘A’ rating reflects Tampa General Hospital’s (TGH’s) demonstrated operating cost flexibility through the pandemic and while undergoing a large construction project and implementing an ambitious ambulatory growth strategy. Revenue defensibility for TGH is assessed as midrange, supported by a strong and growing market position in a competitive but favorable service area. TGH has expanded its ambulatory footprint throughout the region. TGH’s operating risk profile assessment has been revised to ‘a’ from ‘bbb’. TGH has demonstrated strong operating cost flexibility and double-digit top line revenue growth through the challenges of the pandemic, a major construction project and, more recently, industrywide labor and supply chain disruption. TGH will issue about $350 million to fund the permanent financing for the acquisition and initial integration projects of Bravera Health. TGH increased its existing $70 million bank line of credit to $300 million for the purchase, which will be repaid with the bond financing.

ACCESS REPORT

Mon 08 Jan, 2024

Even BlackRock Funds Buying Oil Stocks Are Banned by Texas ESG Fight.

- **Funds prohibited in Texas invested $5 billion in fossil fuels**
- **Texas's list of funds that boycott has gotten little scrutiny**

Texas bars its public pensions from investing in 350 funds run by asset-management giants such as BlackRock Inc. and Invesco Ltd. because a key Republican state official says they "boycott" the oil and gas industries.

But a Bloomberg News analysis found that the 72 BlackRock funds on the prohibited list have invested more than $2 billion in the oil industry, while an Invesco fund allocates about 20% to oil and natural gas companies, some of which are also Texas-based. The TIAA-CREF Social Choice International Equity Fund has a nearly 5% allocation to fossil fuels.

Altogether, almost half the funds on the boycotters list have invested a combined $5 billion directly in the oil and gas industry. And two thirds of the now banned funds have more than $13 billion invested in Texas-based companies, including Tesla Inc. and Waste Management Inc.

Continue reading.

Bloomberg Politics

By Amanda Albright, Mathieu Benhamou, and Saijel Kishan

January 10, 2024

New York State Plans to Give Some Cities Free Cyber Tools.

Gov. Kathy Hochul expands county program amid raft of cyber announcements

New York state will provide select cities in most counties with free cybersecurity tools, Gov. Kathy Hochul said in her annual State of the State agenda Tuesday.

The two largest municipalities in each New York county, except for those comprising New York City, will be given access to cybersecurity technology from CrowdStrike Holdings free of charge, she said.

"My administration is taking significant steps to make sure that local governments have tools and resources to address the debilitating cyberattacks to which they are often the victim," Hochul said.

Continue reading.

The Wall Street Journal

By James Rundle

Jan. 9, 2024

GASB Proposes Guidance on Disclosure of Certain Risks.

Norwalk, CT, January 8, 2024 — The Governmental Accounting Standards Board (GASB) issued guidance today that requires governments to disclose information about certain risks.

Although governments are required to disclose information about their exposure to some risks, such as interest and credit risk associated with investments, essential information about certain other risks that are prevalent among state and local governments is not routinely disclosed because it is not explicitly required. The new Statement is meant to provide financial statement users with information about certain risks when circumstances make a government vulnerable to a heightened possibility of loss or harm.

GASB Statement No. 102, *Certain Risk Disclosures*, requires governments to disclose essential information about risks related to vulnerabilities due to certain concentrations or constraints.

1. The Statement defines a concentration as a lack of diversity related to an aspect of a significant inflow or outflow of resources—for example, a small number of companies that represent a majority of employment in a government's jurisdiction, or a government that relies on one revenue source for most of its revenue.
2. The Statement defines a constraint as a limitation imposed on a government by an external party or by formal action of the government's highest level of decision-making authority—such as a voter-approved property tax cap or a state-imposed debt limit. Based on input from financial statement users during the research phase of the project, GASB is proposing that certain types of assets be disclosed separately in the note disclosures about capital assets. This would allow users to make informed decisions about these and to evaluate accountability.

Concentrations and constraints may limit a government's ability to acquire resources or control spending.

Disclosure Criteria

The Statement generally requires a government to disclose information about a concentration or constraint if all of the following criteria are met.

1. The concentration or constraint is known to the government prior to issuing the financial statements.
2. The concentration or constraint makes the government vulnerable to the risk of a substantial impact.
3. An event or events associated with the concentration or constraint that could cause a substantial impact have occurred, have begun to occur, or are more likely than not to begin to occur within 12 months of the date the financial statements are issued.

Note Disclosures

The disclosures should include a description of the following:

1. The concentration or constraint,
2. Each event associated with the concentration or constraint that could cause a substantial impact if the event has occurred or has begun to occur prior to the issuance of the financial statements, and
3. Actions taken by the government to mitigate the risk prior to the issuance of the financial statements.

The requirements of Statement 102 are effective for fiscal years beginning after June 15, 2024, and all reporting periods thereafter. Earlier application is encouraged.

The Statement is available on the GASB website, www.gasb.org.

Correctly Calculating Net Investment in Capital Assets: GFOA Webinar

February 5, 2024 | 1 pm – 2 pm ET

Details:

The calculation of net investment in capital assets has proven challenging to many governments because of the wide variety of transactions and other events that must be considered. This class will begin by providing participants with a conceptual understanding of net investment in capital assets as a classification of net position in multiple reporting units presented in financial statements and annual comprehensive financial reports prepared in accordance with generally accepted accounting principles. Then, those concepts will be applied to example facts and circumstances that are faced by preparers of GAAP-based state and local government financial statements.

Learning Objectives:

- Those who successfully complete this seminar should be able to identify:
- The role of net investment in capital assets as a component of net position
- The reporting units for which a net investment in capital assets is calculated
- Capital vs. noncapital liabilities and deferred resource flows
- Frequent missteps in the calculation of net investment in capital assets.

Click here to learn more and to register.

MSRB Files to Shorten Timeframe for Trade Reporting to One Minute.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission amendments to MSRB Rule G-14 to shorten the timeframe for trades to be reported to the MSRB. The amendments change the current 15-minute standard to as soon as practicable, but no later than one minute after the time of trade, subject to exceptions for manual trades and firms with limited municipal trading activity.

“With this rule filing, the MSRB achieved a milestone on the way to improving the transparency of the municipal securities market,” said MSRB CEO Mark Kim. “We look forward to working with the SEC to finalize this rulemaking. I also want to acknowledge FINRA, with whom we worked closely to harmonize our respective rule proposals to provide clarity and consistency in trade reporting across fixed income markets.”

The MSRB initially sought comment from stakeholders on its one-minute trade reporting proposal in August 2022, which resulted in a robust response from market participants. Thereafter, the MSRB engaged in additional analysis and extensive engagement with market stakeholders to understand why certain types of voice-brokered, block and other trade types might not currently be readily reportable within one minute, as well as to understand potential resource or other barriers to meeting a new one-minute timeframe that might exist for some firms, including smaller or less active firms.

"We have considered this feedback and recognize the critical roles that all types of firms and differing manners of trading play in the municipal securities market," said Ernesto Lanza, Chief Regulatory and Policy Officer. "The proposal filed today represents a carefully crafted modernization of the trade reporting paradigm that we believe will result in substantial improvements in making more contemporaneous prices available to investors and other market participants. It also will ensure firms with limited trading volumes can continue to participate in this market and the many legitimate uses of manual trades are not unnecessarily impeded."

Trades reported on RTRS are made available for free to the public via the Electronic Municipal Market Access (EMMA®) website, providing investors, dealers, municipal advisors and other market participants with the information they need to make informed decisions about the pricing of municipal securities.

Read the SEC Filing.

Date: January 12, 2024

Contact: Bruce Hall, Director, Communications
202-838-1500
bhall@msrb.org

MSRB 2023 Municipal Bond Market in Review.

View the MSRB publication.

1/11/24

- Megadeals, Lower Rates Set the Stage for Brisk Muni Borrowing in January.
- Wall Street Thrived, Small Towns Lost as Anti-ESG Campaign Raged in 2023.
- Dealers Want Subsection of Rule G-12 Eliminated.
- Proposed Rule Change to Establish the 2024 Rate Card Fees for Dealers and Municipal Advisors Pursuant to MSRB Rules A–11 and A–13: SIFMA Comment Letter
- *Regions Bank v. Crawford Health Facilities Development Corporation* – District Court approves Indenture Trustee/Receiver's private sale of substantially all the Assets of the Receivership Estate, primarily health care facilities funded by revenue bonds. [Ed. Note: Nothing particularly interesting about this case, but the opinion is a fantastic bankruptcy checklist.]
- *In re Jasper Pellets, LLC* – In bankruptcy of industrial facility financed by revenue bonds, Bankruptcy Court holds that proposed global settlement agreement of $655,000 paid to trustee was fair, equitable, and in best interest of estate, and therefore would be approved by Bankruptcy Court in Chapter 7 case converted from one under Chapter 11, in adversary proceeding brought by successful bidder on debtor's assets at auction asserting claims against debtor for, inter alia, breach of contract, violation of South Carolina Unfair Trade Practices Act, fraud, unjust enrichment, and declaratory judgment.

- And Finally, The Honorable Justice Hemingway Presiding is brought to us this week by *Penny v. City of Winterset*, in which the Supreme Court of Iowa kindly sets the scene for the drama that ensues. There will be chases, crashes, mayhem – both general and particularized, and a good old-fashioned traumatic brain injury. But to get us all in the mood, the court began its opinion thusly: "Christian Dekker, a police officer for the City of Winterset, was home on his dinner break when he received a call indicating there was an unresponsive female in the parking lot of a local motel." If this whole law thing doesn't work out, Justice Christensen (or her clerk) might just have a bright future in literature.

EMINENT DOMAIN - ARIZONA

State v. Foothills Reserve Master Owners Association, Inc.

Court of Appeals of Arizona, Division 1 - December 7, 2023 - P.3d - 2023 WL 8467518

State Department of Transportation filed condemnation action to acquire subdivision's common areas for highway construction, and homeowners sought proximity damages for a complete taking of their positive easements to use the land and negative easements to preserve the open space.

Following cross-motions for summary judgment, the Superior Court determined homeowners were entitled to proximity damages, and a stipulated final judgment was entered. State appealed.

The Court of Appeals held that:

- Easements were not parcels of land for purposes of severance damages, and
- Homeowners did not possess any title to or ownership interest in common areas.

Negative and positive common area easements, which allowed subdivision homeowners to use common areas and required common areas to remain open space, were not parcels of land, and thus homeowners were not entitled to proximity damages for the loss of the easements after common areas were condemned and taken as part of highway construction project.

Subdivision homeowners did not possess any title to or ownership interest in common areas taken for highway construction project, and thus could not recover severance damages for the alleged "severance" of their homes from a larger parcel which included the common areas; rather, homeowners' association owned the common areas, and homeowners only possessed easements giving them a right to use or limit development of the common areas.

PUBLIC UTILITIES - CALIFORNIA

Center for Biological Diversity, Inc. v. Public Utilities Commission

Court of Appeal, First District, Division 3, California - December 20, 2023 - Cal.Rptr.3d - 2023 WL 8796605

Environmental organization and others petitioned for writ review of Public Utilities Commission's adoption of successor to net energy metering (NEM) tariff, which significantly reduced prices utilities paid for customer-generated power, contending it failed to comply with statute setting forth objectives for successor tariff.

The Court of Appeal held that:

- Commission was not required to consider costs and benefits of renewable energy generally when valuing energy generated and exported by consumers;
- Commission's decision to base price of customer-generated energy on utilities' marginal cost of energy was reasonably related to statutory goal of equity between customers;
- Petitioners failed to establish benefits of increased resiliency conferred by customer-generated energy accrued to utilities or electrical system rather than to those customers;
- Utilities' costs under regulatory category "transmission revenue requirements" did not undermine Commission's estimate of avoided transmission costs;
- Reduction in financial benefit to customers with renewable energy systems did not violate statutory directive to ensure "customer-sited renewable distributed generation continues to grow sustainably";
- Successor tariff satisfied statutory requirement of including "specific alternatives designed for growth" of customer-generated energy among disadvantaged residential communities; and
- Sufficient evidence supported finding that applying successor tariff to nonresidential customers would serve statutory requirement of balancing costs and benefits to all customers and electrical system.

OPEN MEETINGS - COLORADO

The Sentinel Colorado v. Rodriguez

Colorado Court of Appeals, Division II - December 7, 2023 - P.3d - 2023 WL 8462301 - 2023 COA 118

Newspaper filed complaint against city records custodian seeking release of recording of city council executive session about censure charges against council member, alleging council committed Colorado Open Meetings Law (OML) violations at that executive session.

The District Court held that the violations were cured by a subsequent public city council meeting and ordered custodian not to release recording. Newspaper appealed.

The Court of Appeals held that:

- Council's announcement of executive session closed to public for "Legal Advice" failed to comply with OML;
- Council adopted a position or formal action at executive session, in violation of OML;
- Council waived any attorney-client privilege that existed to protect recording of executive session from public disclosure;
- Subsequent public meeting of city council regarding censure charges did not "cure" OML violations of executive session; and
- Newspaper was not entitled to award of attorney fees under OML.

EMINENT DOMAIN - GEORGIA

Wise Business Forms Inc. v. Forsyth County

Court of Appeals of Georgia - December 22, 2023 - S.E.2d - 2023 WL 8862419

Property owner brought action against county and Georgia Department of Transportation (GDOT) asserting a claim for inverse condemnation by permanent nuisance after road expansion increased the surface and stormwater runoff flowing under its property, which created a sinkhole in its parking lot.

The Superior Court dismissed complaint, and property owner appealed. The Court of Appeals affirmed. Property owner appealed, and the Supreme Court reversed.

On remand, the Court of Appeals held that property owner's claim that drainage system resulted in an inverse condemnation by permanent nuisance was not barred as a matter of law by the applicable four-year statute of limitations.

Property owner's claim that drainage system constructed by county and Georgia Department of Transportation (GDOT) resulted in an inverse condemnation by permanent nuisance was not barred as a matter of law by the applicable four-year statute of limitations, although the construction had occurred more than four years earlier, where property owner alleged that increased stormwater runoff was a nuisance that was not immediately observable.

EMINENT DOMAIN - INDIANA

State v. Franciscan Alliance, Inc.

Court of Appeals of Indiana - November 28, 2023 - N.E.3d - 2023 WL 8226129

State brought condemnation proceeding to acquire landowner's 0.632-acres strip of undeveloped property, which was adjacent to neighbor's property used as a pharmacy, to transform a road into part of an interstate corridor.

The Superior Court entered a jury verdict that awarded landowner $680,000 and neighbor $1.5 million. State appealed.

The Court of Appeals held that:

- Landowner and neighbor were not entitled to damages for alleged inconvenience associated with traffic flow and increased travel distance;
- Neighbor was not entitled to award of attorney's fees; and
- Eminent domain statute providing for 8% prejudgment interest applied.

Landowner of 0.632-acres strip of undeveloped property and neighbor that owned adjacent property used as a pharmacy were not entitled to damages for alleged inconvenience associated with traffic flow and increased travel distance, in State's condemnation proceeding to acquire landowner's strip of property to transform a road into part of an interstate corridor; landowner and neighbor still had access to the new interstate, and though the construction project would have added approximately one to three miles of travel distance to reach their property, it was not severe enough to be considered an effective elimination of ingress and egress rights.

Neighbor that owned property used as a pharmacy, which was adjacent to landowner's 0.632-acres strip of undeveloped property, was not entitled to award of attorney's fees under statute providing that recovery of a defendant's litigation expenses, including reasonable attorney's fees was limited to when amount of damages awarded was greater than amount specified in plaintiff's last offer of settlement, in State's condemnation proceeding to acquire landowner's strip of property to transform a road into part of an interstate corridor; as only the value of landowner's strip was compensable, and it was solely owned by landowner, there were no longer any damages for neighbor to recover.

Eminent domain statute that provided for an 8% prejudgment interest, rather than general statute governing interest payments on final judgments that provided for a 6% prejudgment interest, applied in State's condemnation proceeding to acquire landowner's 0.632-acres strip of undeveloped property, which was adjacent to neighbor's property used as a pharmacy, to transform a road into part of an interstate corridor.

IMMUNITY - IOWA

Penny v. City of Winterset

Supreme Court of Iowa - December 29, 2023 - N.W.2d - 2023 WL 9008159

Motorist brought action against city and police officer alleging that officer was reckless in his conduct related to collision with motorist in an intersection, and that city was vicariously liable for the alleged recklessness.

The District Court granted city's and officer's motion for summary judgment. Motorist appealed, and the case was transferred to the Court of Appeals, which reversed and remanded. City's and officer's application for further review was granted.

The Supreme Court held that officer's conduct did not meet high bar for "recklessness" in order for liability to exist under statute providing liability protections to drivers of emergency vehicles.

Police officer's conduct in driving through an intersection without making full stop at the stop sign while responding to an emergency call did not meet high bar for "recklessness," as required for city and officer to have liability under exception to statute providing liability protections to drivers of emergency vehicles for injuries sustained by motorist with whom officer collided in the intersection, where officer had his lights running and siren blaring, he saw traffic to his left was either stopped or far enough away from the intersection not to be problem and saw a light to his right he believed to be coming from a nearby farmhouse, he slowed to speed that was reasonable before proceeding through the intersection, and he had a clear lane through which he could proceed.

PUBLIC UTILITIES - MAINE

Office of the Public Advocate v. Public Utilities Commission

Supreme Judicial Court of Maine - December 28, 2023 - A.3d - 2023 WL 8940325 - 2023 ME 77

Office of Public Advocate sought review of order of Public Utilities Commission (PUC) which approved an amended special rate contract between natural gas utility and customer.

The Supreme Judicial Court held that:

- PUC's decision to apply different standard of review to special rate contract for natural gas service than it would to a special rate contract for electric transmission and distribution, so as to require that special rate contract for electric transmission and distribution maximize revenue above marginal cost of service while not requiring the same of a special rate contract for natural gas service, was not unreasonable, unjust, or unlawful;
- Special rate contract did not result in a discount for customer that was so high as to constitute an unreasonable burden on other ratepayers served by utility and thus was not unjust, unreasonable,

or discriminatory, supporting approval of such contract; and
- PUC acted within discretion in declining to require a general cost-of-service study before approving contract.

ZONING & PLANNING - MASSACHUSETTS

Carroll v. Select Board of Norwell

Supreme Judicial Court of Massachusetts, Suffolk - January 5, 2024 - N.E.3d - 2024 WL 56172

Subdivision residents brought action against town select board, seeking mandamus relief so as to compel board to transfer land abutting subdivision to conservation commission.

On cross-motions for summary judgment, the Land Court Department granted summary judgment to board. Residents appealed and board cross-appealed.

After sua sponte transfer of case from Appeals Court, the Supreme Judicial Court held that:

- Land was held by town for specific purpose of providing affordable housing rather than as general corporate inventory and therefore could not be diverted to an inconsistent use, including use for conservation, without approval of board or officer having charge of land, and
- Residents' objections to board's statement of undisputed facts were insufficient to constitute a request for more discovery prior to summary judgment ruling.

PUBLIC RECORDS - OHIO

State ex rel. WTOL Television, L.L.C. v. Cedar Fair, L.P.

Supreme Court of Ohio - December 20, 2023 - N.E.3d - 2023 WL 8790609 - 2023-Ohio-4593

Broadcast news companies sought writ of mandamus to compel amusement park operator and police department that provided security for amusement park to produce records responsive to companies' public-records requests related to incident in which guest of amusement park was injured and to alleged sexual assaults at amusement park's employee housing.

The Supreme Court held that:

- Amusement park's police department was functional equivalent of public institution, and, thus, was required to respond to companies' requests under Public Records Act;
- Companies were entitled to writ of mandamus compelling amusement park operator and amusement park's police chief to product copies of reports of alleged sexual misconduct and reports regarding alleged incident with ride that injured guest;
- Companies were not entitled to writ of mandamus compelling production of reports from emergency medical services (EMS) personnel or related to EMS services regarding alleged incident of injured guest;
- Companies were entitled to an award of their court costs;
- Award of statutory damages to companies was not warranted; and
- Award of attorney fees to companies was not warranted.

Amusement park's police department was functional equivalent of public institution, and, thus, was required to respond to broadcast news companies' requests under Public Records Act; at time of requests, police department was serving as police department for employees and guests of amusement park, it did more than just provide security for amusement park, it enforced criminal laws, and it was made up of sworn, state-certified police officers who exercised plenary police power.

BANKRUPTCY - SOUTH CAROLINA

In re Jasper Pellets, LLC

United States Bankruptcy Court, D. South Carolina - December 15, 2023 - B.R. - 2023 WL 9062959

Successful bidder on Chapter 11 debtor's assets at auction brought adversary proceeding against debtor, asserting claims for breach of contract, violation of South Carolina Unfair Trade Practices Act, fraud, negligent misrepresentation, fraud in the inducement, breach of contract accompanied by a fraudulent act, fraudulent concealment, unjust enrichment, and declaratory judgment. Case was converted to one under Chapter 7. Later, trustee filed motion seeking approval of settlement.

Debtor's main secured creditor objected.

The Bankruptcy Court held that:

- Proposed global settlement agreement was fair, equitable, and in best interest of estate, and therefore would be approved, and
- Settlement agreement did not require creditor's consent.

Proposed global settlement agreement of $655,000 paid to trustee was fair, equitable, and in best interest of estate, and therefore would be approved by Bankruptcy Court in Chapter 7 case converted from one under Chapter 11, in adversary proceeding brought by successful bidder on debtor's assets at auction asserting claims against debtor for, inter alia, breach of contract, violation of South Carolina Unfair Trade Practices Act, fraud, unjust enrichment, and declaratory judgment; trustee identified avoidable transfers totaling approximately $566,000 and commercial torts believed to be worth in excess of $1 million, whereas bidder asserted claims of over $43 million, and if settlement agreement was not approved, trustee would have to continue litigating factually complex issues with uncertainty as to any recovery for the estate and with no funds whatsoever to do so.

Creditor's security interest did not extend to escrowed good faith deposit in connection with asset purchase agreement between debtor and successful bidder in auction of debtor's assets, which creditor claimed was part of its collateral, and thus global settlement agreement between bidder and trustee in debtor's Chapter 7 case converted from one under Chapter 11, which ascribed no value to the asset purchase agreement, did not require creditor's consent; Bankruptcy Court never entered an order approving the sale with any liens of secured creditors to attach to the proceeds, and good faith deposit remained in escrow subject to creditor's claims that it was refundable to it and thus never vested to the bankruptcy estate.

BANKRUPTCY - TEXAS

[Regions Bank v. Crawford Health Facilities Development Corporation]()

United States District Court, W.D. Texas, Austin Division - December 5, 2023 - Slip Copy - 2023 WL 9105659

Receiver filed a Motion for Order: (I) Approving Sale Procedures; (II) Authorizing Private Sale of Substantially All Assets of the Receivership Estate; (III) Waiving Certain Requirements of 28 U.S.C. § 2001(b); (IV) Setting a Hearing Date to Confirm a Private Sale; and (V) Approving Form and Manner of Notice (the "Motion").

The court held a hearing on the Motion on December 5, 2023.

Having conducted a hearing and having reviewed the Motion and the entire case file and having noted no other responses, objections, or other filings with respect to the Motion, the court issued and adopted the Report and Recommendation.

ENVIRONMENTAL - WASHINGTON

Advocates for a Cleaner Tacoma v. Puget Sound Clean Air Agency

Court of Appeals of Washington, Division 2 - December 26, 2023 - P.3d - 2023 WL 8889864

Objector sought review of Pollution Control Hearings Board's (PCHB) dismissal of claim that regional clean air agency's approval of permit for construction of a liquefied natural gas facility was issued ultra vires.

The Superior Court affirmed. Objector appealed.

The Court of Appeals held that permit approval, via agency control officer's delegation of authority to staff to approve the permit, was not an ultra vires act.

Regional clean air agency's approval of permit for construction of a liquefied natural gas facility, under which the agency's control officer sub-delegated authority to staff members to approve the permit, was not ultra vires, where control officer complied with agency's resolution granting him authorization to delegate the issuance of orders of approval, and such delegation was appropriate based on the volume of applications that the agency received, the expertise required, and the limited duties that were expected of board members.

Bloomberg Muni Outlook for 2024.

Chris Brigati, Senior VP and Director of Strategic Planning at SWBC (new role), joins to discuss the muni bond market. Hosted by Paul Sweeney and Lisa Mateo.

Listen to audio.

Bloomberg Markets

Jan 05, 2024

For Public Finance, a Year for Stability and Cautious Optimism.

As inflation and interest rates ease, 2024 will be a perfect time for overdue multiyear strategic planning and keeping up with breakthrough information technologies.

For state and local government financiers, the good news for 2024 is that most financial functions will be more predictable. Budget projections will be easier and more reliable, at least for the calendar year, as the economy continues settling fairly smoothly to a slower pace with inflation easing and interest rates drifting down with it.

Of course, a slowing economy can be expected to be accompanied by softening tax revenues, and that has been reported in some states already. Nonetheless — and absent the usual unforeseeables like new wars, oil shocks and pandemics — public finance is returning to something resembling business as usual. With a few exceptions, the “New Normal” is becoming the “Old Normal,” at least for budgeting, collective bargaining, pension funding, tax rates and debt issuance.

Wall Street has come to a growing consensus that the economy is gliding to a “soft landing,” with the only question being how long this can last. Inflation likely won’t drop in 2024 to the Federal Reserve’s target of 2 percent, so while interest rates will likely drift somewhat lower, don’t look for anything near the unusually minuscule levels that prevailed before and during the COVID-19 pandemic. Borrowers will still pay and investors will still earn a positive real rate of return on debt instruments. Mirroring that overall economic glide path, upward pressures on salaries are likely to ease. But labor markets nationally will remain tight by historical standards, making it an ongoing public-sector challenge to hire personnel amid tight budgets.

Continue reading.

governing.com

Jan. 2, 2024 • Girard Miller

Fitch: Most North American Sector Outlooks Deteriorating on Slowing Economy

Fitch Ratings-New York-05 January 2024: Sharply slowing economic growth, higher unemployment and continued tight financing conditions are key factors underpinning Fitch Ratings’ ‘deteriorating’ 2024 sector outlooks for the majority of North American credit, including sovereigns, U.S. banks, leveraged finance, retailing, REITs, most non-bank financial institutions and most structured finance asset classes. U.S. growth was better than expected in 2023 at 2.4%, but we forecast it to drop to 1.2% in 2024, with only a shallow recovery in 2025. Core inflation, while easing, remains above central banks’ 2% targets.

Key risks include higher-for-longer interest rates beyond our base case and financial market volatility should monetary policy and growth meaningfully vary from current expectations. Tight funding conditions, decelerating economic growth and sector-specific pressures on key asset classes, such as real estate and structured finance, indicate risk bias to the downside.

Across multiple sectors, profits are declining and demand is expected to decelerate further as the economy slows in response to the lagged effect of higher interest rates and tightening credit conditions. Rising unemployment and higher cost of living pressures are key headwinds for consumer-based industries and asset classes, also pressuring U.S. banks' asset quality and operating profits.

Continue reading.

SIFMA US Municipal Bonds Statistics.

SIFMA Research tracks issuance, trading, and outstanding data for the U.S. municipal bond market. Issuance data is broken out by bond type, bid type, capital type, tax type, coupon type and callable status and includes average maturity. Trading volume data shows total and average daily volume and has customer bought/customer sold/dealer trade breakouts. Outstanding data includes holders' statistics. Data is downloadable by monthly, quarterly and annual statistics including trend analysis.

YTD statistics include:

- Issuance (as of December) $380.5 billion, -2.6% Y/Y
- Trading (as of December) $13.1 billion ADV, -6.8% Y/Y
- Outstanding (as of 3Q23) $4.0 trillion, -0.3% Y/Y

View xls.

Jan 3, 2024

Megadeals, Lower Rates Set the Stage for Brisk Muni Borrowing in January.

- **Jefferson County, Washington put big bond sales on calendar**
- **Borrowing costs fall 130 basis points in November, December**

The municipal bond market is setting up for something it hasn't seen in a few years: a busy January for borrowing.

January is typically the slowest month in terms of new muni bond sales, averaging $25 billion over the past decade, according to Bloomberg LEAG data. But a lighter-than-average December sales calendar, coupled with an interest rate decline of more than a percentage point in recent months, sets the stage for an uptick in issuance this time around.

Long-term bond sales totaled $22.3 billion in December. That's above the $15.3 billion sold in December of 2022, but still well below the decade-average for the month of $29 billion. A slower December usually leads to a busier January.

Continue reading.

Bloomberg Markets

By Joseph Mysak Jr

January 2, 2024

[Wall Street Thrived, Small Towns Lost as Anti-ESG Campaign Raged in 2023.]

In 2023, a fervent anti-environmental, social and governance campaign swept state legislatures but failed to curtail the movement's main foe: Wall Street and its multitrillion-dollar asset management firms.

At the same time, the new state policies seeking to eliminate ESG considerations from public investments had some real-life consequences for cities and towns caught by the new mandates.

In Texas, the municipal bond market is in turmoil after the state's attorney general, Ken Paxton, issued an advisory in October to state and local government agencies asking them to be on the lookout for bond underwriters that may "boycott energy companies, discriminate against firearm entities or associations, or boycott Israel." Paxton's letter included a list of 22 companies he accused of violating Texas laws passed in 2021 to protect such interests.

Within days, the city of Del Rio on the Mexican border dropped RBC Capital Partners, its lead underwriter for a $12.5 million municipal bond deal, and replaced it with BOK Financial Corp., an Oklahoma-based firm that had escaped Paxton's scalpel. Paxton's public finance division had told the city of 34,000 it might not be able to close on schedule with RBC, prompting a last-minute scramble.

"It was very much a timing issue for the city," said Jay Juarez, Del Rio's bond counsel.

Around the same time, a Houston-area school district dropped Wells Fargo & Co. from a $310 million bond after Paxton indicated the company's practices were being reviewed. A Wells Fargo spokesperson declined to comment.

Neither RBC Capital nor Wells Fargo is on the Texas Comptroller's Office's most recent list of financial services companies, updated in December 2023, that boycott energy firms.

Similar situations have played out in other states.

Uproar in Oklahoma

In the spring of 2023, the city of Stillwater, Okla., an hour north of Oklahoma City, had lined up a low-interest $13.5 million loan from Bank of America Corp. to install energy-efficient lighting and replace two aging heating and cooling units in municipal buildings. The saved energy costs from the improvements would pay off the loan over 15 years, according to the city's deal with the bank.

That plan was halted when Oklahoma Treasurer Todd Russ in May published an initial list of 13 financial institutions, including Bank of America, barred from doing business in the state. Russ had determined that the companies violated the state's 2022 Energy Discrimination Elimination Act by boycotting energy companies.

Russ revised the list in August, naming six companies, including Bank of America.

"I appreciate that this is a fossil fuel state and the intention behind it, but the law passed here had not been vetted very well," Stillwater Mayor Will Joyce said in an interview. "I even had some folks at the legislature tell me they never intended for the bill to have an impact on local municipalities."

Like the Texas law, Oklahoma's measure was among 36 bills lawmakers in 18 states passed over the last two years to blacklist banks and asset management firms that consider ESG risks and opportunities in investment decisions, data from the law firm Ropes & Gray shows.

An early 2023 analysis by Econsult Solutions Inc. estimated that six states including Oklahoma could see up to $708 million in higher borrowing costs by barring some banks from underwriting municipal bonds. Undeterred, ESG critics are pushing forward.

Republicans in Congress and GOP-controlled state legislatures say large money managers wield too much influence over pensions, bonds and other public investments, accusing them of playing politics with money they do not own. As the 2023 state legislative sessions wound down in early summer, about half of the anti-ESG bills introduced had not passed. But more than 40 will be automatically reintroduced in 2024, and new bills are expected.

'A fiduciary responsibility'

By October, Oklahoma lawmakers were discussing how to amend their energy discrimination law to better protect cities like Stillwater. The state's second-largest public pension system had also resisted the restrictions in the law. The Oklahoma Public Employees Retirement System voted 9-1 in August to retain BlackRock Inc. and State Street Corp. as investment advisers even though those banks were on the treasurer's blacklist.

"We were talking about a potential $10 million hit to our pensioners," Oklahoma Insurance Commissioner Glen Mulready, a member of the pension system's board and former Republican state lawmaker, said in an interview. "If we thought that we could have abided by the law without hurting the pension fund we would have done that in a heartbeat. But we have a fiduciary responsibility."

The disagreement between the treasurer and the pension system has yet to be resolved, Mulready said.

Adding to the ESG drama in Oklahoma, a retiree and former president of the Oklahoma Public Employees Association in November filed a lawsuit against the state and its treasurer, calling the state's anti-ESG legislation "government overreach" and a violation of free speech. The lawsuit was backed by three groups representing public state employees.

Business as usual for Wall Street

Meanwhile, banks on state non grata lists — including BlackRock, JPMorgan Chase & Co., State Street and Vanguard Group Inc. — continued to do business in states such as Florida, Texas and West Virginia that had been especially vocal ESG critics.

Now navigating a patchwork of different state policies as well as different regulations overseas, US financial firms have to be more strategic in how they tailor their communications while also avoiding potential legal pitfalls, said Josh Lichtenstein, a partner with Ropes & Gray. That does not mean they have changed their investment strategies, he said.

BlackRock's high-profile CEO, Larry Fink, a frequent Republican target over his company's investment policies, made headlines in June when he said BlackRock was abandoning the term ESG. The company would instead choose more specific words like decarbonization or corporate governance, which Fink summed up as "conscientious capitalism."

"That's the progressive left's ammo: Once we figure out what their acronyms really mean they're going to change it," said Derek Kreifels, CEO of the State Financial Officers Foundation, speaking to a London journalist in November about his group’s support for state anti-ESG efforts.

In October, BlackRock launched a new “climate-transition oriented” private debt fund to meet the growing needs of institutional investors who set low-carbon and climate transition goals for their portfolios. A survey of 200 large investors in 15 countries the asset manager conducted a few months earlier found that 98% of investors fall into that category, the company said.

For other players, it is business as usual. JPMorgan Chase, deemed by shareholder activist group As You Sow and others to be the world’s largest fossil fuel investor, published an ESG report as recently as May 2023. It also has detailed on its website how the investor plans to channel $2.5 trillion this decade for sustainable development.

Both asset management firms remain members of the Net Zero Asset Managers initiative, an alliance vilified by ESG critics. Its signatories commit to work with clients to decarbonize their portfolios by 2050 in alignment with the Paris Agreement on climate change.

New realities for community banker, small-town mayor

Even in Florida, which in May enacted what is arguably the nation’s strictest anti-ESG law, Climate First Bank continues to attract new customers “who wish to bank with the world’s first [Federal Deposit Insurance Corp.]-insured bank found to combat the climate crisis.” Ken LaRoe, the community bank’s founder and CEO, said in an email.

But because of the new Florida law, known as H.B. 3, “we are required to bank any industry, including dirty energy, tobacco, the for-profit prison industry and others,” LaRoe wrote. Such companies had previously been on the bank’s exclusionary list, which the law revoked.

An analysis by the law firm Akin Gump says the Florida law limits investment decisions for state pension assets to “pecuniary factors,” and prohibits consideration of “any social, political or ideological interests.” Local governments are prohibited from considering ESG principles in investment decisions and in awarding contracts.

By contrast, Oklahoma’s law has some wiggle room, enough to offer a possible solution for Stillwater and its stalled capital improvement project.

Oklahoma Attorney General Gentner Drummond had considered the city’s calculations showing that going with a lender other than Bank of America would cost Stillwater $1.2 million in lost energy savings and shrink the city’s project.

In a letter to the mayor, the attorney general wrote his “position” is that the loss qualified the city and Bank of America for an exception under the 2022 energy discrimination law.

“But that was not a binding legal opinion,” Joyce said. “What is the city’s liability if someone else in a few years tries to enforce the law? We had no certainty.”

So Stillwater decided to look within for funding for its energy efficiency upgrades. Rather than taking 12 months, the project will now take several years and there is no guarantee the funding will remain, Joyce said. “Overall,” he said, “we’re in a worse situation.”

S&P Global Capital

by Karin Rives

[Hospitals Face More Credit Rating Downgrades Ahead, Fitch Says.]

- **Operating margins will improve over time, but slowly**
- **Margins still falling short of what's needed to save, invest**

The not-for-profit hospital sector may continue to see downgrades as their health-care entities struggle to recover from the pandemic.

While 2023 didn't face the same intensity of challenges as its predecessor, namely higher labor costs and disappointing revenues, not-for-profit hospitals are still a ways off from being stable, Fitch Ratings senior director Kevin Holloran said during a presentation Thursday.

"For a lot of people, this is going to be another make-or-break year for the sector," he explained. Labor "is still troublesome for a big swath of the sector that's out there."

Continue reading.

Bloomberg Markets

By Lauren Coleman-Lochner

January 4, 2024

Early Median Signs Show 'Signs of Life' Amid Stress for U.S. NFP Hospitals: Fitch

Fitch Ratings-New York/Austin-04 January 2024: U.S. not-for-profit hospitals are beginning to dig out of a formidable operating trench, according to Fitch Ratings during a webinar hosted earlier today. However, results for the sector are still nowhere near pre-pandemic levels.

While median operating margins will gradually improve, a larger expense base will keep huge gains unlikely over the next two years, according to Senior Director and Sector Head Kevin Holloran. "2024 will not be markedly better and certainly not the V-shaped recovery we're hoping for," said Holloran. "NFP hospital margins are still below both pre-pandemic levels, but more importantly they will tread below the "magic number" operating margin of 3%."

A theme likely to dominate this year is ratings "trifurcation", which Fitch discussed its outlook report for the sector. This means a heightened risk of downgrades for a portion of hospitals already struggling to return to some degree of pre-pandemic normalcy. This follows a 2023 that saw a 3:1 ratio of hospital downgrades to upgrades.

Of note are recent Fitch downgrades among providers with smaller size and scale, and in hospital systems in two states now seen as challenging states in which to operate. "IT implementation issues, significant capital spending and aggressive expansion initiatives that simply did not work out as intended will further cloud outlooks for smaller hospitals and some providers in Washington and Pennsylvania," said Holloran.

Also of concern is what Holloran called a "dreaded" second year of debt service covenants violations, which "may intensify the potential for bondholders to declare an event of default and perhaps accelerate bond repayment."

A replay of the webinar in its entirety will be available shortly. Fitch will release its latest NFP hospital medians later in the year.

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FERC Opens Inquiry into Upstream Investment Interests in Public Utilities: Troutman Pepper

On December 19, 2023, FERC issued a Notice of Inquiry ("NOI") to examine whether and how to revise its policy on providing blanket authorizations for holding companies, including investment companies, to acquire securities in electric utilities and their upstream owners pursuant to section 203(a)(2) of the Federal Power Act ("FPA"). Specifically, the Commission is soliciting comment on what constitutes control of a public utility in evaluating holding companies' requests for authorization and what factors it should consider when evaluating control. Commissioner Mark Christie concurred with a separate statement, stating that FERC should examine whether investment companies are truly acting as passive investors in electric utilities and whether FERC's blanket authorization practices are still sufficient to protect the interests of the electric utilities' customers.

The Commission has issued blanket authorizations on a case-specific basis to holding companies, allowing acquisitions of securities in certain electric utilities over the $10 million threshold pursuant to FPA section 203(a)(2), as well as to investment companies on a company-specific basis to acquire securities in publicly traded electric utilities over the $10 million threshold and up to 20% of the voting securities in the electric utility. These authorizations are time-limited, requiring periodic reevaluation to ensure they remain in the public interest, and are typically based on representations from the investment companies that they cannot exercise control over the electric utilities. FERC noted that changes in the public utility, finance, and banking industries, including consolidation and the growth of large index funds and asset managers, necessitate a review of the Commission's blanket authorization policy.

FERC's Notice of Inquiry seeks comments in response to various questions related to whether, and if so, how the Commission should revise its current policy on providing blanket authorizations for investment companies. In addition, FERC seeks comments in response to questions regarding whether FERC should consider the size of an investment company in evaluating a request for blanket authorization and what factors the Commission should consider when evaluating control over public utilities as part of a request for blanket authorization.

Commissioner Christie concurred in a separate statement, stating that there is a potential conflict between the interests of investment companies and the public service obligations that an electric utility has. As a result, Commission Christie stated the NOI is timely and compelling to explore whether investment companies are actually exerting control over electric utilities rather than acting as passive investors and to examine whether FERC's blanket authorization policies adequately protect the electric utilities' customers. Commissioner Christie noted that while Congress has directed the Commission to streamline regulations to facilitate greater investments in the utility industry, this should not come at the expense of protecting consumers. Commission Christie further stated that it is the Commission's task to balance these responsibilities and continually evaluate this balance.

Initial comments on the NOI are due 90 days after publication in the Federal Register, with reply comments due 120 days after publication in the Federal Register.

FERC's NOI, issued in Docket No. AD24-6, can be found here.

Troutman Pepper

by Quintessa Davis and Russell Kooistra

December 29, 2023

Bureau of Transportation Statistics Releases Final Update to the Government Transportation Financial Statistics.

The Bureau of Transportation Statistics (BTS) today released its final update to the Government Transportation Financial Statistics (GTFS), with data through 2021. The GTFS provides a set of maps, charts, and tables with information on transportation-related revenue and expenditures for all levels of government, including federal, state, and local, and for all modes of transportation. This year BTS will transition to a new product called Transportation Public Finance Statistics (TPFS). TPFS builds on the GTFS foundation buy increasing the granularity of the estimates and will include a preliminary release in June of 2024 (2022 estimates) as well as an annual release in December 2024.

Continue reading.

Friday, January 5, 2024

High-Yield Municipal Bonds: A Cautious Outlook for 2024

High-yield municipal bonds, a star performer in the financial arena with a 9.2% gain in 2023, are expected to tread on a different trajectory in 2024. Money managers, who had reaped the benefits of a limited supply of high-yield offerings and a broad market rally initiated in November of the previous year, caution against expecting a repeat performance.

Potential Challenges in 2024

The financial forecast for 2024 is mired with potential hurdles, including the possibility of the Federal Reserve cutting interest rates and an increase in municipal issuers making a beeline to borrow. The slowing U.S. economy could especially impact sectors such as nursing homes, tobacco bonds, and charter schools, that form a significant chunk of the high-yield muni market.

A Growing Concern for Defaults

A survey by Hilltop Securities has raised red flags about potential defaults, particularly in senior living facilities. The survey found 45% of the respondents, who were high-yield muni investors, expressing their concern. Financial institutions, BNY Mellon Wealth Management and Barclays, echo this sentiment of caution with their prediction of a subdued performance for high-yield munis. Barclays, in particular, forecasts mid-to-low single-digit returns.

Presidential Elections and Market Performance

The upcoming U.S. presidential election is poised as a potential game-changer for high-yield muni performance. Changes in economic policies, a likely outcome of the election, could send ripples across the financial sector, influencing the performance of these bonds.

Optimism Amid Uncertainty

Despite the cautious outlook, there are optimists like Franklin Templeton Fixed Income's municipal-bond team who believe in the potential for improved performance. The team opines that with interest rates on the decline and capital availability, the stage could be set for better performance if mutual fund inflows occur. However, recent data from LSEG Lipper paints a different picture, showing outflows from high-yield muni funds and indicating investor hesitation. Market participants are advising prudence in the face of economic uncertainties and potential Federal Reserve rate cuts in 2024.

By: BNN Correspondents

Published: January 5, 2024

Investors Expect Tepid Returns for High-Yield Munis After Stellar Year.

- **A gauge tracking high-yield munis surged 9.2% in 2023**
- **Supply and demand dynamics supporting such debt remain strong**

Money managers don't anticipate another banner year for high-yield municipals, one of the best-performing sectors of US debt in 2023.

Junk muni bonds posted a 9.2% advance for the full year, the most since 2019. Returns were buoyed by a lack of high-yield supply and a widespread market rally starting in November.

The market could look different this year if the Federal Reserve cuts interest rates and muni issuers rush to borrow. A slowing US economy also doesn't bode well for a sector that's largely made up of nursing homes, tobacco bonds and charter schools, said John Flahive, head of fixed income at BNY Mellon Wealth Management.

Continue reading.

Bloomberg Markets

By Maxwell Adler and Amanda Albright

January 5, 2024

[The Bloomberg Tape: Jobs, Munis, and Ozempic]

Ben Emons, Head of Fixed Income at NewEdge Wealth, joins to give his market reaction to the jobs report for December. Chris Brigati, Senior VP and Director of Strategic Planning at SWBC, joins to discuss the muni bond market. Simone Foxman, reporter with Bloomberg News, joins to discuss her story on the burden weight loss drugs are having on state budgets, US taxpayers, and the healthcare system. Kristin Pothier, US Healthcare Lead at KPMG, joins to discuss the outlook for M&A in the healthcare sector in 2024. Julia Pollak, Chief Economist at ZipRecruiter, joins to break down the jobs report and outlook for hiring in 2024. Hosted by Paul Sweeney and Lisa Mateo.

[Listen to audio.]

Bloomberg

Jan 05, 2024

[State of Florida: Fitch New Issue Report]

Florida's 'AAA' Issuer Default Rating (IDR) and full faith and credit ratings recognize the state's history of sound financial management practices, high gap-closing capacity and reserves, and low long-term liability burden. The state's long-term economic and revenue growth prospects should exceed inflation but are subject to more volatility than in other states. The 'AA+' ratings on the Dept. of Management Services (DMS) COPs and facilities pool revenue bonds, one notch below Florida's IDR, reflect the slightly higher degree of optionality associated with payment of appropriation debt.

[ACCESS REPORT]

Fri 05 Jan, 2024

[MSRB Prepares to Change the Market for Dealers in 2024.]

The Municipal Securities Rulemaking Board is gearing up to change how broker-dealers operate in 2024, as the controversial move to a one-minute trade reporting window will come into effect, a change to a T+1 settlement cycle, in addition to a new proposal aimed at soliciting market feedback on pre-trade data.

The board's last few years have been dominated by its self-described focus on pre-trade, time of trade, and post-trade regulations and in the new year, those efforts will begin to shape the market.

“Most likely in the first quarter of 2024, we will see the MSRB file amendments to our Rule G-14 on trade reporting,” said MSRB Chief Executive Officer Mark Kim. “This is the culmination of a years-long effort to look at market structure, examine post-trade transparency and to look specifically at shortening the trade reporting requirements from the current 15 minutes to the proposed one-minute timeline.”

“The rule filing the MSRB is anticipating to make early next year will include two important exemptions to the one-minute trade reporting requirement,” Kim said. “They focus around an exemption for de minimis market activity, or firms that do not trade a significant amount in the municipal securities market, as well as an exemption for manually-executed trades.”

In addition to amendments to Rule G-14 on time of trade, the MSRB will also move to a T+1 settlement cycle, with the compliance date set for equities and corporate bonds May 28, 2024, and launch a new proposal on pre-trade reporting.

“The MSRB has systematically been examining market structure and our rules thereunder,” Kim said. “Rule G-14 is an example of post-trade transparency and looking at how long it takes the market to report the trades once they happen. Earlier this year, the MSRB examined time of trade disclosures in proposing amendments to its Rule G-47,” he added. “In the year ahead, I would expect the MSRB to continue its examination of pre-trade market transparency in the form of soliciting feedback from the industry.”

The Financial Data Transparency Act will upend the way in which most issuers present and submit financial information and has received a heavy dose of criticism since it passed a year ago. Rulemaking from the SEC is coming in 2024 and the board looks forward to the opportunity to comment.

“I think the market is looking forward to the data standards that will be coming from the Treasury and SEC as mandated by Congress under the FDTA,” Kim said. “We’re expecting those standards to come out for public comment sometime in the middle of this next year, sometime perhaps in the summer of 2024.”

The MSRB has already put in some effort to educate the market. Within the last year the board has published its structured data lab on its own EMMA Labs platform and within that, has published case studies that show how some issuers have dealt with structured data so far.

Early in the new year the MSRB plans to publish another case study from what it calls a “prominent issuer” to give market participants even more information ahead of the regulations.

The board also plans, early next year, to publish a 2023 year in review research piece, which analyzes many of the ups and downs of 2023. But as far as what can be predicted for the new year, the MSRB is keeping an eye on the new rate environment for 2024. Rates are widely expected to drop and that expectation is already being priced into the market, Kim said.

“We’ve seen a very rapid rise in interest rates over the last two years and if you believe some of the projections for the coming year, the interest rate cycle may have peaked, and we may be expecting the Fed to begin lowering interest rates. Of course, if that doesn’t happen, we will see a lot more volatility across our markets which have already priced in that expectation.”

The SEC’s Best Execution rule, proposed at the end of 2022, has been controversial due to the fact that there are already Best Execution rules on the books at the MSRB and FINRA. Once that’s finalized, the MSRB will likely have to reexamine its own rule.

“If the SEC adopts a new Best Execution standard, that almost certainly would require the MSRB to pivot and re-examine our own Best Execution rule to make sure that our rules are harmonized across markets,” Kim said.

By Connor Hussey

BY SOURCEMEDIA | MUNICIPAL | 01/02/24 10:48 AM EST

Outlook: SEC In for a Dizzying Year.

The year 2024 is shaping up to be a landmark one for the Securities and Exchange Commission, not only through their own rigorous enforcement agenda but the regulator is in for continued industry backlash and a Supreme Court case that could test its enforcement powers and change how the SEC operates.

Through its own enforcement agenda, the SEC has made clear its muni market focus in 2024 will be to scrutinize solicitor municipal advisors and compliance with Regulation Best Interest. Dave Sanchez, director of the SEC’s Office of Municipal Securities, also said during a panel during at regulator’s Compliance Outreach Program in early December that issuers should keep an eye on the Government Finance Officer’s Association’s best practices for climate and ESG risk disclosure.

But outside of its normal examination priorities, the Commission has received intense backlash in recent years for what many market participants view as an unprecedented regulatory agenda, and with many of these proposals coming into effect in 2024, even more backlash is expected.

“Next year is going to be the year of the lawsuit for the SEC,” said Chris Iacovella, chief executive officer of the American Securities Association. “This administrative state chairman (SEC chairman Gary Gensler), who is an unelected partisan, has decided to use his influence to demand that the MSRB write rules, when there is no market failure, is a threat to our marketplace and quite frankly, it’s a threat to democracy and the freedom to operate because you have somebody coming in and telling the MSRB that they have to change what works, because that’s what he thinks is best.”

Top of mind for the broker-dealer community are the post-trade and time-of-trade reporting rules, which change the trade reporting window to one minute and the settlement date to T+1, respectively. The MSRB has also indicated in the new year that it will be soliciting feedback on pre-trade reporting.

“We’re very concerned that he’s not going to stop with post-trade reporting, and that he intends fully to lean on them to try to change to some pre-trade mechanism to force everything onto an electronic platform because he’s predisposed to trying to do that, based upon his time at the CFTC, implementing the swaps regime,” Iacovella said of Gensler.

“It’s come to our attention that the current chair of the SEC has called the MSRB a glorified trade association,” Iacovella said. “We obviously disagree with that but we’re also concerned that the government is using its authority to lean on and pressure the SRO (self-regulatory organization) to do things that are unnecessary, because there’s no market failure.”

“My view is that 2024 is going to continue to be a difficult environment for the broker-dealer community,” said Leslie Norwood, managing director, associate general counsel and head of municipal securities at the Securities Industry and Financial Markets Association. She noted a mix of factors such as the interest rate environment, expected to come down in 2024, that has caused new issue volume to decrease, and capital rules such as the Basel III End Game proposal, on which comments are due Jan. 16.

“There’s also direct costs that are at play, such as the increase in MSRB fees,” Norwood said. The MSRB recently filed its new rate card with the SEC and comments on that are due Jan. 2, though the rates were effective immediately.

“The rate card was put in place to try to create more certainty in terms of the fees and to try and smooth out some of the swings,” Norwood said. “However, the swings within each of the buckets of this new rate card model have been pretty dramatic this round, including a reduction in the trade count fees of 48% and an increase in the underwriting fees of 25%. The increase in underwriting fees was only 25% because they hit the cap,” she added. “I think that’s something that continues to be an issue for the broker dealer community.”

Gensler has made it clear that he’s trying to bring the Commission up to speed with the large technological and societal changes over the last several decades and has made strong efforts to issue regulations, not just enforcement actions.

“We’ve all seen complaints that they’re doing regulation through enforcement, and now they’re doing regulation through regulation so I guess we can’t have it both ways,” said Teri Guarnaccia, partner at Ballard Spahr, co-leader of the firm’s public finance group and co-leader of the firm’s municipal securities regulation and enforcement team.

But for the SEC’s Public Finance Abuse Unit, new ground has been broken on enforcement as well. Beginning at the end of 2022, the Office of Municipal Securities has begun enforcing nonadherence to the limited offering exemption, and so far, it’s had a positive effect on the habits of the market.

“I think that it is one of those areas like MCDC was, where the regulatory or the enforcement activities have forced better practices from broker dealers,” Guarnaccia said. “Where now, certainly at least the big banks, most of whom the SEC has already looked at, have policies and procedures in place and it’s received such attention that I think its people are really looking at it.”

Others have already noted the MCDC-like nature of the SEC’s look at the limited offering exemption, where the Commission takes a specific offense and offers lenient settlements with firms that self-report their offenses. The Commission has so far charged seven firms for violating the exemption.

“I don’t know that they’re done, because maybe they haven’t finished all of their started actions,” Guarnaccia said. “But I think going forward, people understand what they were looking at and are more cognizant of how to comply.”

But all will be eager to watch what happens in SEC v. Jarkesy, the case that will test whether the Commission’s statutory provisions which allow them to seek civil penalties have been violating the Seventh Amendment. The decision is expected in 2024.

By Connor Hussey

BY SOURCEMEDIA | MUNICIPAL | 12/27/23 11:32 AM EST

Dealers Want Subsection of Rule G-12 Eliminated.

The Municipal Securities Rulemaking Board's proposal on Rule G-12(c), the subsection of its uniform practices dealing with inter-dealer confirmations, which would simplify some existing guidance, retire some others and merge much of it into Rule G-15, should go further and eliminate the subsection altogether, dealers say.

MSRB Rule G-12 on uniform practice establishes the industry standards for the processing, clearance and settlement of transactions between municipal securities dealers. The MSRB's current proposal is focused solely on Rule G-12(c) and would codify existing interpretive guidance on inter-dealer disclosure requirements that are ineligible for automated comparison.

Since the vast majority of transactions are eligible for automated comparison, Rule G-12(c) doesn't touch a large swath of the market but for those it does, paper confirmations among dealers are outdated and new requirements to simplify these disclosures would only streamline a process largely out of sync with the rest of the market.

"Rule G-12(c) should be deleted as electronification of systems has rendered it obsolete," Leslie Norwood, managing director, associate general counsel and head of municipal securities at the Securities Industry and Financial Markets Association wrote in the proposals' only comment letter. "Rule G-12(c) had value when it was originally adopted, and it served a valid purpose in an operational environment where there were a significant number of trades that were ineligible for automated comparison. However, Rule G-12(c) has been made obsolete in large part to the speed of computers as settlement cycles have continued to shrink from T+3 to the current T+2 and the planned move to T+1 in May 2024."

The draft amendments, proposed as part of the MSRB's retrospective rule review, would reorganize the content of Rule G-12(c) on inter-dealer confirmation to align with the format for similar provisions in Rule G-15(a) on written confirmations. The amendments would also regroup requirements into the three buckets of transaction information, securities identification information and securities descriptive information.

The proposal would also require inter-dealer confirmations to include confirming party's name, address and telephone number, contra party identification, designation of purchase from or sale to, par value of the securities, trade date, settlement date, yield and dollar price, amount of concession, final monies, delivery of securities and "additional information about the transaction," the proposal said.

They would also have to include the name of the issuer, CUSIP number, maturity date, interest rate and dated date and descriptive information such as credit backing, features of the securities, information on status of securities, and tax information. Some of this may be worth disclosing to customers but not for dealers.

"While Rule G-15 customer confirmations still have value, paper interdealer transactions do not," the SIFMA letter said. "Currently industry practice is to evidence interdealer trades with Bloomberg screen captures, VCONs, or trade blotters. These are also the types of items that FINRA examiners ask for as evidence of interdealer trades."

Harmonizing Rule G-12(c) with Rule G-15 would be unnecessary, as disclosures of information as such would "merely create a web of potential regulatory foot-faults without any benefit," SIFMA said.

The scope of the proposal is also overwhelming and if the board chooses to proceed with the proposal, the amount of guidance being amended, codified, merged and retired should be significantly reduced, as the sheer scope makes it difficult to gauge any unintended consequences, SIFMA said.

SIFMA also recommends that the MSRB should prioritize guidance not being incorporated into the rule before taking further action, and should address the guidance being retired or codified in a FAQs page before being codified into the rule.

By Connor Hussey

BY SOURCEMEDIA | MUNICIPAL | 12/18/23 01:52 PM EST

Proposed Rule Change to Establish the 2024 Rate Card Fees for Dealers and Municipal Advisors Pursuant to MSRB Rules A-11 and A-13 (Joint Trades): SIFMA Comment Letter

SUMMARY

SIFMA, American Securities Association (ASA), Bond Dealers of America (BDA), and National Association of Municipal Advisors (NAMA) provided comments to the U.S. Securities and Exchange Commission (SEC) on the MSRB's Proposed Rule Change to Establish the 2024 Rate Card Fees for Dealers and Municipal Advisors Pursuant to MSRB Rules A-11 and A-13.

Read the SIFMA Comment Letter.

Proposed Rule Change to Establish the 2024 Rate Card Fees for Dealers and Municipal Advisors Pursuant to MSRB Rules A–11 and A–13: SIFMA Comment Letter

SUMMARY

SIFMA provided comments to the U.S. Securities and Exchange Commission (SEC) on the Municipal Securities Rulemaking Board's (MSRB) filing to establish its 2024 Rate Card Fees.

Read the SIFMA Comment Letter.

MSRB Designation Information Regarding Mandatory Participation in Business Continuity and Disaster Recovery Testing.

Read the MSRB Notice.

1/4/24

- **BCB 2023 Year In Review:** Sucked a bit less than last year.
- Puerto Rico Electric Power Authority v. Assured Guaranty: SIFMA Amicus Brief
- Fitch Ratings to Host 2024 U.S. Public Finance Outlook Series
- IRS: Register for Elective Payment or Transfer of Credits
- State and Local Governments Rake in Surpluses after Pandemic.
- Jefferies' Muni Boss Built a Powerhouse While Others Scaled Back.
- *In re City of Chester* – Bankruptcy Court holds (very much *inter alia*) that Chapter 9 debtor-city's claim against indenture trustee seeking turnover of prepetition excess funds accrued, for purposes of applicable four-year statute of limitations under Pennsylvania law for breach of contract claims, at the earliest when amount held in sinking fund accounts established by indenture trustee exceeded the amount due to pay principal and interest for bonds issued by city.
- And Finally, Nobody Can, Like, Own A Bicycle, Man is brought to us this week by *Alave v. City of Chicago*, in which "Bicyclist brought negligence action against city arising from his accident with pothole while he was riding his *privately-owned* bicycle through a crosswalk." (Yeah, we added that emphasis. What are you gonna do about it?) What kind of commie-infested world are we living in where we have to deploy the Supreme Court of Illinois just to tell us that bicycles can be private property? Eh, comrade cyclist?

POLITICAL SUBDIVISIONS - CALIFORNIA

Yalung v. State

Court of Appeal, Fifth District, California - December 21, 2023 - Cal.Rptr.3d - 2023 WL 8821363

Driver who was injured in car accident in which four of driver's children were injured seriously and one of her children was injured fatally brought action on behalf of herself, her injured children, and her deceased child's estate against individual who, while working as a provider of caretaking services under state's In-Home Supportive Services (IHSS) program, allegedly rear-ended driver's car after running a stop sign and against state, county, and state and county entities involved in administering IHSS program, alleging claims for wrongful death, negligence and breach of statutory duties, and survival, and asserting that government entities were liable as provider's employer or joint employer.

The Superior Court sustained demurrers of state and county without leave to amend. Driver appealed only the order sustaining state's demurrer.

The Court of Appeal held that state was not special employer of provider, who had been hired directly by recipient under the direct-hiring method for providing services under the IHSS program, and state thus was not vicariously liable for provider's actions.

State was not the special employer of provider who was employed under the In-Home Supportive Services (IHSS) program as a caretaker for an IHSS recipient, who had directly hired caretaker in a county whose public authority for administering the IHSS program used the direct-hiring method, and state thus was not vicariously liable for injuries to driver and her four children, and for fatal injuries to one of driver's children, that they sustained in car accident allegedly caused by caretaker's negligence and breach of statutory duties; state lacked power to supervise the details of caretaker's work, state did not select provider to work for IHSS recipient, and state's agent in administering IHSS program, the public authority, was not provider's employer for purposes of vicarious liability.

NEGLIGENCE - IDAHO

[Yellowstone Log Homes, LLC v. City of Rigby]

Supreme Court of Idaho - December 20, 2023 - P.3d - 2023 WL 8792973

Real property owner brought action against city for negligence and negligence per se for city's failure to mark lateral sewer line when marking utilities for construction company, which later bored through the lateral sewer line which city failed to mark, causing damage to the property.

The Seventh Judicial District Court granted city's motion for summary judgment, but denied city's motion for summary judgment. Property owner appealed, and city-cross-appealed.

The Supreme Court held that:

- Property owner had standing under the Idaho Underground Facilities Damage Prevention Act to bring negligence per se claim;
- Genuine issue of material fact as to whether city located the underground facilities with "reasonable accuracy" or used "the best information available" precluded summary judgment on negligence per se claim;
- Property owner was a member of the class of persons the Underground Facilities Damage Prevention Act was intended to protect;
- Genuine issue of material fact as to whether city's alleged violation of the Act was the proximate cause of property owner's damages precluded summary judgment on negligence per se claim;
- City had a common law duty to property owner to act as a reasonable manager of its property under the circumstances when marking underground facilities; and
- Genuine issue of material fact as to whether city breached a duty owed to property owner precluded summary judgment for city on claim it had discretionary function immunity.

IMMUNITY - ILLINOIS

[Alave v. City of Chicago]

Supreme Court of Illinois - December 14, 2023 - N.E.3d - 2023 IL 128602 - 2023 WL 8633536

Bicyclist brought negligence action against city arising from his accident with pothole while he was riding his privately-owned bicycle through a crosswalk on roadway near a city-authorized bicycle rental station and a large bike rental sign.

The Circuit Court granted city's motion for involuntary dismissal. Bicyclist appealed. The Appellate Court reversed and remanded. City petitioned for leave to appeal, which was allowed. Holdings:

In a case of first impression, the Supreme Court held that:

- Existence of nearby bike rental station was a factor for whether bicyclist was an intended roadway user to whom city would owe a duty of care; and
- Bicyclist was not an intended roadway user at site of accident.

Existence of city-authorized bicycle rental station in plaza adjoining a sidewalk that ran parallel to roadway, approximately 100 feet from site of bicyclist's accident with pothole while he was riding his privately-owned bicycle on right side of roadway through crosswalk, was a factor for determining whether bicyclist was an intended user of roadway at site of accident, for whom city would owe a duty of care under Local Governmental and Governmental Employees Tort Immunity Act to maintain roadway in reasonably safe condition.

Bicyclist was not an intended user of roadway at site of his accident with pothole while he was riding his privately-owned bicycle on right side of roadway through a crosswalk, and thus city did not city owe bicyclist a duty of care under Local Governmental and Governmental Employees Tort Immunity Act to maintain roadway in reasonably safe condition, even though a city-authorized bicycle rental station and a large sign advertising bike rentals were nearby; rental station and sign established only that city permitted bicycling on adjacent roadway, and there were no other no other affirmative physical manifestations, such as road signs or pavement markings, indicating that city intended for bicyclists to use roadway.

ZONING & PLANNING - MICHIGAN

Sakorafos v. Charter Township of Lyon

Court of Appeals of Michigan - November 21, 2023 - N.W.2d - 2023 WL 8101316

Neighbors brought action against city and veterinary clinic for nuisance, conspiracy, and deprivation of civil rights, alleging that operation of commercial dog kennel on clinic property violated city ordinances.

The Circuit Court granted city's and clinic's motions for summary disposition, and neighbors appealed.

The Court of Appeals held that:

- Neighbors were not required to show that their damages were singular or unique in order to have standing to bring nuisance per se claim, and
- Neighbors lacked ability to obtain writ of mandamus to compel township to enforce zoning ordinance.

Neighbors were not required to show that their damages from veterinary clinic's dog kennel were singular or unique in order to have standing to bring nuisance per se claim based on alleged violation of city ordinances, as the fact that other nearby residents also may have suffered ill effects from the dog kennel did not defeat their standing; instead, neighbors were only required to demonstrate special damages different from the injury suffered by others in the community generally, which was supported by their status as an adjoining property owner.

Neighbors lacked ability to obtain writ of mandamus to compel township to enforce zoning ordinance governing commercial kennels as applied to veterinary clinic and its variance, as township had discretion in the enforcement of its ordinances, and neighbors' ability to seek abatement of the nuisance per se created by the alleged zoning violation provided an equitable remedy to achieve enforcement of the ordinance.

REFERENDA - MISSOURI

[Byrd v. State]

Supreme Court of Missouri, en banc - December 19, 2023 - S.W.3d - 2023 WL 8790264

Objectors brought action against State for declaratory and injunctive relief, alleging that house bill, which had been passed by House of Representatives and Senate and signed into law and which related to political subdivisions, violated the single subject, clear title, and original purpose requirements of state constitution.

The Circuit Court sustained State's motion for judgment on pleadings. Objectors appealed.

The Supreme Court held that:

- Bill's inclusion of provisions regulating expenditure of state funds for housing or homelessness violated constitution's single subject requirement, and
- Non-germane provisions were not severable, and thus entire bill was required to be struck.

House bill, which had been passed by House of Representatives and Senate and signed into law, relating to political subdivisions violated constitution's single subject requirement by including provisions regulating the expenditure of state funds for housing or homelessness, even though such provisions would apply to political subdivisions receiving those funds; connection between political subdivisions and homelessness was remote at best, and provisions included portions that did not relate to political subdivisions at all, such as subsection providing certain immunity to private campground operators.

It was not clear beyond reasonable doubt that house bill relating to political subdivisions would have been passed by General Assembly without the portions of bill that, in violation of constitution's single subject requirement, were not germane to subject of political subdivisions, namely provisions regulating the expenditure of state funds for housing or homelessness, and therefore the non-germane provisions were not severable and entire bill was required to be struck; narrative title of bill had been changed in Senate after bill was passed by house, and provision at issue was added to bill by Senate Substitute.

EMINENT DOMAIN - NEW YORK

[Bowers Development, LLC v. Oneida County Industrial Development Agency]

Court of Appeals of New York - December 14, 2023 - N.E.3d - 2023 WL 8629207 - 2023 N.Y. Slip Op. 06406

Owner of certain real property that had been condemned by eminent domain by county industrial-development agency for use as a surface parking lot associated with hospital and healthcare facility petitioned to annul condemnation determination.

The Supreme Court, Appellate Division, granted petition. Agency appealed.

The Court of Appeals held that agency had rational basis for concluding that use of property was for a "commercial" purpose, and so had authority to condemn property.

County industrial-development agency had rational basis for concluding that use of certain real property as surface parking lot associated with hospital and healthcare-facility project was for a "commercial" purpose, and so had authority to condemn property by eminent domain; as a general matter parking facility used by customers of a profit-making business generally had a "commercial" purpose, proposed use of this property did not serve any healthcare-related function, but facility instead functioned simply to satisfy need for parking created by medical office building and to provide public parking at night, although some paying tenants of medical office building provided healthcare services, building itself was an office building with space leased out to paying tenants, and even assuming some of its paying tenants could have qualified as "hospitals" or "health-related facilities," that would not have negated commercial nature of office building as a whole.

EMINENT DOMAIN - NORTH DAKOTA

Sargent County Water Resource District v. Beck Revocable Living Trust

Supreme Court of North Dakota - December 15, 2023 - N.W.2d - 2023 WL 8658361 - 2023 ND 230

County water resource district brought eminent domain action seeking to condemn landowners' property for a drainage project.

Following a bench trial, the District Court condemned property, denied landowners' motion for a new trial, but concluded that landowners' arguments were not foreclosed for failure to appeal water district's "Resolution of Necessity" or barred by res judicata or collateral estoppel. Landowners appealed, and water district cross-appealed.

The Supreme Court held that:

- Applying doctrine of res judicata to bar any further review would have been unjust;
- Landowners' arguments against eminent domain were not barred by collateral estoppel;
- Water district's board obligated costs for drainage project beyond maximum maintenance levy and authorized accumulation of a fund exceeding six-year maximum levy without landowner approval, in violation of statute governing maintenance of drainage projects; and
- Project did not satisfy additional cost limitations for public use under statute authorizing eminent domain for certain public uses.

Applying doctrine of res judicata to bar any further review of matters contained in water resource district's resolution of necessity related to drainage project would have been unjust in eminent domain proceeding seeking to condemn landowners' property, even though landowners failed to timely appeal resolution of necessity which barred judicial review; district court had noted in landowners' underlying declaratory judgment action that water district, being well aware of opposition to project and a request for a vote, considered and passed resolution of necessity without including it on agenda of a regularly scheduled meeting, then erroneously told landowners at the next meeting that time to appeal decision had already expired, and statement in resolution was misleading in that water district sought permanent and temporary easements over properties without including legal description of affected properties.

Landowners' arguments against eminent domain action brought by county water resource district seeking to condemn landowners' property for drainage project were not barred by collateral estoppel, notwithstanding landowners' prior action against water district, seeking declaratory and injunctive relief; landowners did not have a fair opportunity to be heard prior to eminent domain action given that final judgment by district court dismissing declaratory judgment action for lack of appellate subject matter jurisdiction, which dismissal was affirmed by Supreme Court, was not on the merits.

County water resource district's board obligated costs for drainage project beyond the maximum maintenance levy and authorized the accumulation of a fund exceeding six-year maximum levy without landowner approval in violation of statute governing maintenance of drainage projects.

Assuming that drainage project qualified as "maintenance" within meaning of statute governing maintenance of drainage projects, project as approved required an unlawful accumulation of funds in excess of the maximum permissible levy and unlawfully obligated county water resource district for costs beyond the maximum maintenance levy under that section, and therefore project did not satisfy additional cost limitations for public use under statute authorizing eminent domain for certain public uses.

POLITICAL SUBDIVISIONS - OHIO

Meade v. Lorain County

United States District Court, N.D. Ohio, Eastern Division - December 15, 2023 - F.Supp.3d - 2023 WL 8656902

Terminated county employee brought action against county and supervisors, alleging termination violated Family and Medical Leave Act (FMLA), Title VII, and Ohio state law. County and supervisors moved for judgment on pleadings.

The District Court held that:

- Under Ohio law, county was not an "agency of…a political subdivision of a State," as would fall within definition of a "public agency" under FLSA and therefore constitute an "employer" subject to suit under FMLA;
- Term "the government of," as used in provision of FLSA defining a "public agency," as would constitute an "employer" subject to suit under the FMLA, to include "the government of a State or political subdivision thereof" applies to both the term "State" and the term "political subdivision thereof," as opposed to only applying to the term "State," and therefore a political subdivision itself is not a public agency under that provision;
- Under Ohio law, county was not the "government of a State or political subdivision thereof," as would fall within definition of a "public agency" under FLSA and therefore constitute an "employer" subject to suit under FMLA; and
- Court would decline to grant employee leave to amend pleadings.

BANKRUPTCY - PENNSYLVANIA

In re City of Chester

United States Bankruptcy Court, E.D. Pennsylvania - November 3, 2023 - B.R. - 2023 WL 7274750

Chapter 9 debtor-city brought adversary proceeding against creditors, holders of city-issued bonds, and indenture trustee, seeking turnover of revenues received by indenture trustee and to avoid security interests in revenues due to city.

Parties cross-moved for summary judgment.

The Bankruptcy Court held that:

- Trust indenture plainly required indenture trustee to turn over prepetition excess funds to debtor-city;
- Debtor-city's claim seeking turnover of prepetition excess funds accrued at earliest when amount held in sinking fund accounts exceeded amount due;
- Revenues payable to or to be received by debtor-city and pledged as collateral constituted payment intangible or account for purposes of perfection;
- Creditors' security interests in revenues pledged as collateral, as part of trust indenture, were properly perfected;
- Ordinance authorizing debtor-city to incur debt to issue bonds and grant security interest in certain revenues did not create statutory lien;
- Pledged revenues as part of trust indenture were collateral, and not "proceeds"; and
- Revenues payable to debtor-city from horse racing facility as a slot machine license operation fee were not "taxes."

Under Pennsylvania law, trust indenture plainly required the indenture trustee to turn over prepetition excess funds to Chapter 9 debtor-city, regardless that city did not initiate a request for the excess funds prior to petition date pursuant to course of performance whereby indenture trustee would typically contact city when excess funds were available and ask city to provide a direction letter specifying the account where the excess funds should be sent; indenture trust did not make the city's entitlement to the excess funds dependent upon the city following a certain procedure for obtaining the funds.

Chapter 9 debtor-city's claim against indenture trustee seeking turnover of prepetition excess funds accrued, for purposes of applicable four-year statute of limitations under Pennsylvania law for breach of contract claims, at the earliest when amount held in sinking fund accounts established by indenture trustee exceeded the amount due to pay principal and interest for bonds issued by city.

Under Article 9 of the Uniform Commercial Code (UCC), as adopted in Pennsylvania, revenues payable to or to be received by Chapter 9 debtor-city pledged as collateral as part of trust indenture executed in connection with bonds issued by city constituted a "payment intangible" or "account" for purposes of perfection, as the trust indenture gave the bond parties a security interest in a right to payment of a monetary obligation through certain date, and if the drafters of the trust indenture only meant to capture money actually received, they would have eliminated "to be" and simply defined the pledged revenues as amounts "received."

Under Article 9 of the Uniform Commercial Code (UCC), as adopted in Pennsylvania, revenues paid or payable to Chapter 9 debtor-city in connection with entity's operation of harness racing and casino facility, pledged as collateral as part of prepetition contribution agreement with county to assist city with financing the construction of a soccer stadium, constituted a "payment intangible" or "account" for purposes of perfection; nowhere did the contribution agreement limit county's security interest to solely revenues received, but rather, financing statement specifically described county's collateral as all of city's right, title and interest in and to host community payments under Pennsylvania Race Horse and Development Gaming Act.

Creditors' security interests in revenues pledged as collateral, as part of trust indenture executed in connection with bonds issued by Chapter 9 debtor-city, were properly perfected under Pennsylvania's Local Government Unit Debt Act, where financing statements provided name of the debtor, name of the secured party, and a description of the collateral.

Under Article 9 of the Uniform Commercial Code (UCC), as adopted in Pennsylvania, filing of financing statements was sufficient to perfect creditors' security interests in revenues payable to Chapter 9 debtor-city pledged as collateral as part of trust indenture executed in connection with bonds issued by city.

Ordinance authorizing Chapter 9 debtor-city to incur debt to issue bonds and grant security interest in certain revenues payable to city for benefit of indenture trustee did not create "statutory lien" within meaning of Bankruptcy Code, but rather, created "consensual lien"; although the ordinance governed aspects of the lien, it was entirely reliant on the underlying trust indenture and would have no operative force without it, and liens held by bond parties did not arise solely under the ordinance.

County, as creditor by virtue of prepetition contribution agreement to assist Chapter 9 debtor-city with financing the construction of a soccer stadium, held "consensual lien," and not "statutory lien" within meaning of Bankruptcy Code, in horse racing facility's revenues payable to city, even though ordinance specifically provided that city agreed to make contribution to county, because the ordinance indicated that it was built upon the contribution agreement, which was voluntary and consensual in nature and inherently contrary to the form of statutory liens.

Under exception to general rule that property which bankruptcy estate acquires postpetition is not subject to liens resulting from prepetition security agreements, if security agreement entered before commencement of bankruptcy case extends to proceeds, product, offspring or profits of original collateral, then security interest continues to apply to proceeds and so on, even when they are acquired by debtor or estate after bankruptcy case begins.

Revenues payable to Chapter 9 debtor-city and pledged as part of trust indenture executed in connection with bonds issued by city were collateral, and not "proceeds" within meaning of Article 9 of the Uniform Commercial Code (UCC), as adopted in Pennsylvania, and thus, statutory "proceeds" exception to general rule against the continued postpetition effect of prepetition security interests did not apply to the pledged revenues.

Even if revenues payable to Chapter 9 debtor-city and pledged as part of trust indenture executed in connection with bonds issued by city were considered "proceeds," within meaning of Article 9 of the Uniform Commercial Code (UCC), as adopted in Pennsylvania, those proceeds would be generated by postpetition acts of a third party and thus constitute proceeds of postpetition property, rather than prepetition property, making statutory "proceeds" exception to general rule against the continued postpetition effect of prepetition security interests inapplicable to the pledged revenues.

Revenues payable to Chapter 9 debtor-city from horse racing facility pursuant to Pennsylvania Gaming Act as a slot machine license operation fee were not "taxes" exempt from general rule against the continued postpetition effect of prepetition security interests; gaming entity's license was conditioned on payment of the fee, suggesting that the slot machine license operation fee was payment in exchange for a privilege not shared by others.

Table game revenues from Pennsylvania local share assessment payable or to be received by Chapter 9 debtor-city from horse racing facility were fees, and not "taxes" exempt from general rule against the continued postpetition effect of prepetition security interests; payment of local share assessment ultimately related to individual privilege only applicable to certain individual entities of holding a certificate to operate table games, and Pennsylvania distinguished local share assessment from table game taxes.

Revenues payable to or to be received by Chapter 9 debtor-city from horse racing facility pursuant to additional consideration agreement, pledged as collateral as part of trust indenture executed in connection with bonds issued by city, were payments due under a contract, i.e., debts, and not "taxes" exempt from general rule against the continued postpetition effect of prepetition security interests.

States and Localities In 2023: A Look At the Top Stories of the Year

The first half of the year was marked by the end of pandemic-era benefits. The second half was dominated by the shutdown. All the while, leaders were preoccupied with infrastructure, technology and flags.

The U.S. House voted 749 times this year, but passed just 27 bills—making Congress the least productive in decades. But that's not the story in state and local government. 2023 has been a busy year, and Route Fifty's top 10 stories show the breadth of topics that leaders from statehouses to city halls have been dealing with. This is just a sampling, of course. Other big stories of the year covered electric vehicles, bail reform, broadband, gas stoves, artificial intelligence, passenger rail, housing and more.

Continue reading.

ROUTE FIFTY

DECEMBER 29, 2023

2023 Trends from NLC's Center for Research and Data Analysis.

As the countdown to 2024 begins, it is important for local governments, of all sizes and geographies, to keep an eye on key trends impacting their communities. To help stay ahead of the curve, the NLC Center for Research and Data Analysis staff highlights a few key takeaways from recent research that will continue to inform and be of interest in the year ahead…

Municipal Finance

Against the backdrop of elevated but moderating inflation, cities can expect to see continued real growth in their tax revenues in the coming year, enabling the expanded funding of public services and infrastructure projects. At the same time, local governments are engaging in cautious budgeting headed into 2024, which may prove to be beneficial in the long run, as they have built up significant fiscal reserves and avoid excessive spending. Check out NLC's recent report: City Fiscal Conditions 2023.

Continue reading.

National League of Cities

by Joshua Franzel, PhD

DECEMBER 19, 2023

State and Local Governments Rake in Surpluses after Pandemic.

State and local governments accumulated $1.3 trillion in excess savings during the pandemic recession and subsequent recovery, from first quarter 2020 to second quarter 2023. Much of this excess is due to large federal transfers and high tax receipts relative to prepandemic trends.

While excess household savings have been credited with helping support U.S. economic resiliency throughout 2023, households were not alone in amassing excess savings after the pandemic. The existence of large sums in state and local government coffers runs counter to historic post-recession trends. State and local governments usually grapple with budget shortfalls due to rising social program demands and weak revenue streams following recessions.

Spending deadlines, along with requirements about how the funds should be used, accompanied most federal pandemic relief funds distributed to state and local governments. Additionally, many state and local governments face political pressure to pass accumulated non-pandemic relief funds along to households via transfers or tax cuts, for example. These factors may lead to sizeable drawdowns in state and local government excess savings over the next few years.

Continue reading.

dallasfed.org

by Ron Mau and Fang Yang

December 19, 2023

Cost Efficiency of Municipal Green Bonds' Measures: A Marginal Abatement Cost Curves Approach

This paper aims to investigate the cost-efficiency of the carbon reduction measures financed in Swedish municipalities through the scheme of municipal green bonds using the marginal abatement cost curves (MACCs) methodology.

Read the paper.

sei.org

Tommaso Piseddu
Research Associate

Fedra Vanhuyse
Head of Division: Societies, Climate and Policy Support

Published on 21 December 2023

Investor Jitters or Legitimate Concerns? Decoding the State Revenue Decline and Its Impact on Municipal Bonds.

Municipal bonds are typically seen as a boring fixed income sector. Volatility and defaults are both low. So, when any type of risk begins to grow, it tends to make investors nervous. And right now, a major risk is starting to brew.

The cash that helps pay for muni bond coupons—state and local revenues/taxes—is starting to slip.

But should investors actually be concerned or is this just a case of the boy who cried wolf? Is the recent dip in state revenues the start of a worrisome trend? The data suggests that it may not be a real concern.

Trending Lower

Taxes. They are the lifeblood of state and local governments. States rely on income taxes for about 40% of revenues and sales taxes for more than 35% of total revenues. Without this cash flowing in, they can't pay for essential services and expansion plans. They also can't pay their debts. Normally, this isn't a worry and muni bonds feature some of the lowest default rates of any bond type. But when something upends the apple cart of taxes, investors start to take notice. And that's just what is happening today.

State and local governments' revenues are starting to slide.

Continue reading.

dividend.com

by Aaron Levitt

Dec 22, 2023

Puerto Rico Electric Power Authority v. Assured Guaranty: SIFMA Amicus Brief

SUMMARY

Court:
U.S. Court of Appeals
(First Circuit)

Amicus Issue:
Whether a "pledge" of revenue is merely an unsecured promise. Whether the special revenue provisions of the Bankruptcy Code only protect the lien on revenues that are already on deposit with the trustee. Whether revenue bondholders do not have a contractual right to payment in full, but merely an unsecured claim for an amount calculated in an estimation proceeding.

Counsel of Record:

Faeger Drinker Biddle & Reath LLP

by Laura E. Appleby & Kyle R. Hosmer

Read the Brief.

Fitch U.S. Charter School Rating Criteria: Discussion Paper (Potential Changes to Charter School Rating Methodology in Advance of Exposure Draft)

Fitch Ratings believes that components of its current "U.S. Public Finance Charter School Rating Criteria," particularly the criteria's treatment of some major revenue defensibility factors, may be better characterized as scalable, rather than "asymmetric" credit factors. ("Asymmetric" factors have only neutral or negative rating impacts.) Fitch's new view of revenue defensibility would add the possibility that certain factors — such as charter renewal prospects and certain governance metrics, including authorizer framework — may have positive rating impacts, instead of just neutral or negative "asymmetric" impacts. Fitch's existing criteria resulted in "weaker" revenue defensibility profiles for almost all charter schools, effectively limiting ratings across the sector. A potential shift in view is that competitive funding positions vary widely among issuers and could result in higher revenue defensibility profiles for a subset of charter schools. Issuers that may receive higher revenue defensibility assessments will demonstrate favorable attributes across Fitch's proposed enhanced revenue defensibility factors, including authorizer funding and charter renewal protocols, competitive position, academics and certain governance metrics.

ACCESS REPORT

Wed 20 Dec, 2023

America's Billionaire Sports Team Owners Had a Banner Year Getting Public Handouts for Extravagant New Stadiums.

Standing on a portable stage erected at home plate of the Milwaukee Brewers ballpark, Wisconsin Gov. Tony Evers recently praised the professional baseball team as an "essential part" of the state's "culture and identity" and "economic success."

With fanfare, Evers then signed off on $500 million in public aid for the stadium's renovation, adding to a remarkable run of such blockbuster deals. This year alone, about a dozen Major League Baseball and National Football League franchises took steps toward new or improved stadiums.

A new wave of sports facility construction is underway. One driven, in part, by a race to keep up with rivals and one that could collectively cost taxpayers billions of dollars despite skepticism from economists that stadiums boost local economies.

Continue reading.

BY DAVID A. LIEB AND THE ASSOCIATED PRESS

December 24, 2023

Tobacco Bonds Are on Fire, Defying the Odds.

Backed by cigarette sales, they continue to thrive despite high rates and declining smoking

Anyone who has tried to quit smoking knows that cigarettes are tough to resist—almost as hard as it is for politicians to keep their hands off big piles of money.

Smoking and government spending had a rare chance to interact in the late 1990s when the largest American tobacco companies agreed to pay $206 billion over 25 years to 52 U.S. states and territories in exchange for those jurisdictions giving up future legal claims against them. The payers and the terms have been tweaked over the years as a result of more companies joining and lawsuits involving some states, but they are now effectively payments in perpetuity.

At least 21 states or territories, plus local entities within some of them, didn't want to wait for the money to trickle in, taking it up front and transferring that risk to municipal bond investors. Even after all these years, tobacco bonds are close to 9% of the high-yield municipal bond market, according to analysts at Invesco. Unlike those who buy bonds secured by the full faith and credit of a state government with taxing authority, though, tobacco bond investors typically have no recourse if the cash runs low.

Continue reading.

The Wall Street Journal

By Spencer Jakab

Dec. 28, 2023

Why Small US Colleges Are Struggling Financially.

Scores of small colleges in the US are facing growing pressures from demographic changes and increasing costs. Speaking with Vonnie Quinn and Sonali Basak, Nic Querolo also discusses the outlook for municipal bonds in 2024.

Watch video.

Bloomberg Markets Muni Moment

December 27th, 2023

States Will Need Millions to Protect Affected Wetlands.

After the U.S. Supreme Court stripped federal oversight of millions of acres of wetlands, the financial maintenance of those lands now falls to the states. It could take years for them to address the loss of federal standards, if they do it at all.

Earlier this year, the U.S. Supreme Court stripped federal oversight from millions of acres of wetlands long protected under the Clean Water Act. Now, erecting safeguards to ensure those waters are not polluted, drained or filled in by developers falls to the states.

They're finding that it's not easy.

"States and tribes already didn't have enough funding to support the programs they have, and now they are being put in a position where they need to step up," said Marla Stelk, executive director of the National Association of Wetland Managers, a nonprofit group that represents state and tribal regulators.

Continue reading.

governing.com

by Alex Brown, Stateline

Dec. 29, 2023

Citi Poised to Be Dropped From Mega Muni Deal After Unit Axed.

- **County officials took first step to remove bank on Tuesday**
- **Jefferson County, Alabama, filed for bankruptcy in 2011**

Jefferson County, Alabama, took a step toward removing Citigroup Inc. from an upcoming $2.5 billion municipal-bond transaction after the bank announced it was shuttering its public finance division.

The county, which filed for bankruptcy in 2011, initially chose Citigroup to serve as lead manager on the sale that is set to price in January.

County commissioners held a work session on Tuesday and considered a resolution authorizing the sale of the bonds. Citigroup, set to lead the underwriting group, was no longer mentioned as an underwriter in that resolution. Instead, Raymond James Financial Inc. was named the book runner, or lead manager, for the transaction.

Continue reading.

Bloomberg Markets

By Amanda Albright and Skylar Woodhouse

December 19, 2023

Jefferies' Muni Boss Built a Powerhouse While Others Scaled Back.

- **Under Kym Arnone, bank is the fourth largest muni underwriter**
- **She's known as architect of $85 billion tobacco-bond sector**

In a year when banks across Wall Street scaled back their ambitions in municipal finance, Kym Arnone has Jefferies Financial Group Inc. on track for its best year in the business.

Her prowess has made the New York-based bank the fourth biggest player in the industry where states and cities raise money for major infrastructure projects. As other banks struggled to boost market share amid high interest rates, her team nabbed the largest muni deal of 2023 by eluding political firestorms surrounding Wall Street's policies on guns and fossil fuels that stymied rivals.

Today, Arnone is the only woman to lead a major public finance department, one she's built by attracting nearly three dozen bankers in the past three years. She has a reputation of being a no-nonsense banker, whose attention to detail and specialization in complex bond structures has landed Jefferies win after win.

Continue reading.

Bloomberg Markets

By Amanda Albright

December 19, 2023

Private Credit Attracts Billions From US Pension Plans.

- **State and local funds boost allocations to booming sector**
- **Retirement plans seek higher returns, but there are risks**

US state and local retirement funds are pumping billions into private credit, joining the stampede into a booming sector of finance in the pursuit of higher returns.

These systems are collectively allocating at least $100 billion of their roughly $5 trillion in assets into private debt, according to Equable, a bipartisan pension researcher founded by public finance leaders. While that's only a sliver of their holdings at present, funds' private credit positions have been steadily growing and are poised to take off as pension plans including the California Public Employees' Retirement System — the largest among its peers and a bellwether — show a keen interest in committing more to the space.

Continue reading.

Bloomberg Markets

By Shruti Singh

December 18, 2023

Fitch Ratings to Host 2024 U.S. Public Finance Outlook Series

Fitch Ratings-New York-20 December 2023: Join Fitch Ratings for our virtual 2024 U.S. Public Finance Outlook Series starting on Jan. 4. Gain valuable insights from Fitch's USPF sector heads as they delve into the rationale and considerations behind their 2024 sector outlooks.

You can learn more about each event below.

Click here to learn more and to register.

IRS: Register for Elective Payment or Transfer of Credits

Qualifying businesses, tax-exempt organizations or entities such as state, local and tribal governments can take advantage of certain tax credits even if they don't have taxable income through new elective payment and transfer options. These options can be applied to certain clean energy and manufacturing credits under the Inflation Reduction Act of 2022 and CHIPS Act.

To monetize applicable credits, an authorized representative of the entity must:

- Use this online tool to register the intention to make an elective payment or transfer election
- Include registration numbers received through this online tool on the entity's tax return

The registration tool is part of the IRS business tax account application. For detailed guidance on how to use the tool, refer to Publication 5884, Inflation Reduction Act (IRA) and CHIPS Act of 2022 (CHIPS) Pre-Filing Registration Tool — User Guide and Instructions.

Continue reading.

Tallahassee, Florida: Fitch New Issue Report

The 'AA+' utility revenue bond rating and 'aa+' Standalone Credit Profile (SCP) reflect the Tallahassee, FL Consolidated Utility Systems' 'Very Strong' financial profile within the framework of 'Very Strong' revenue defensibility and operating risk profile, both assessed at 'aa'. The system's leverage, measured as net adjusted debt to adjusted funds available for debt service (FADS), was exceptionally low at 4.6x in fiscal 2022 (FYE Sept. 30) but is estimated to exceed 7.5x over the next five years in Fitch's Analytical Stress Test (FAST) stress case.

ACCESS REPORT

Wed 27 Dec, 2023

Sarasota County, Florida: Fitch New Issue Report

Key Rating Drivers Strong Pledged Revenue Performance Underpins Growth Prospects: The CIRB bond structure has demonstrated resilience to pandemic-related declines and experienced robust post-pandemic growth, bolstered by continued population gains, tax base expansion and economic development within the county. Fitch expects growth in pledged revenues to trend in line with national GDP gains over the long term, consistent with a 'aaa' growth assessment. Solid Resilience for CIRBs: The 'aa' resilience assessment reflects the moderate cushion above 1.0x maximum annual debt service (MADS) in relation to cyclical revenue volatility and cumulative historical revenue declines. MADS coverage on the CIRBs is very strong and additional leverage to the 1.30x ABT is unlikely as excess revenues are used to support operations. Issuing Entity Exposure: Fitch does not consider the pledged revenue for the CIRBs as special revenues and they do not require appropriation to be used for debt service; therefore, the rating is capped by the county's Issuer Default Rating (IDR; 'AAA' Stable Outlook).

ACCESS REPORT

Wed 20 Dec, 2023

Dallas Independent School District, Texas: Fitch New Issue Report

The 'AA+' Issuer Default Rating (IDR), and ULT and maintenance tax note bond ratings reflect the Dallas Independent School District's (the district, or Dallas ISD) highest level of financial resilience, solid expenditure flexibility, sound revenue framework led by solid growth prospects and moderate liability burden. Fitch Ratings believes that, over the long term, business activity should produce economic, population and tax base gains consistent with historical performance.

ACCESS REPORT

Wed 27 Dec, 2023

TAX - CONNECTICUT

Alico, LLC v. Town of Somers

Supreme Court of Connecticut - December 19, 2023 - A.3d - 348 Conn. 350 - 2023 WL 8631975

Taxpayer sought review of decision by town board of assessment appeals to uphold personal property tax assessments on vehicles that were owned by out-of-state limited liability company (LLC), of which taxpayer was sole member.

The Superior Court denied taxpayer's request for judgment declaring that tax was unconstitutional under the dormant Commerce Clause. Taxpayer appealed, and the appeal was transferred to the Supreme Court.

The Supreme Court held that tax scheme for the personal property tax was not unconstitutional under the dormant Commerce Clause.

Tax scheme for personal property tax that was assessed on motor vehicles owned by nonresident limited liability company (LLC) and registered in Massachusetts but garaged overnight at home of taxpayer, the LLC's owner, was fairly apportioned, rather than internally inconsistent in violation of the dormant Commerce Clause, even though taxpayer paid taxes on the vehicles in Connecticut and Massachusetts; if every state had adopted same scheme, it would not result in double taxation, and to extent that taxpayer paid multiple taxes on the vehicles, it was because of the combined effect of Connecticut's and Massachusetts' different and nondiscriminatory tax schemes, as the former taxed vehicles on basis of physical location and amount of time they were in the state, and the latter taxed on basis of their registration.

[Calpers's Yup Kim Departs to Run $37 Billion Texas Pension.]

The head of private equity investments for the largest public pension fund in the US is joining the Texas Municipal Retirement System as chief investment officer.

Yup Kim will start his new job on Jan. 15, replacing Dave Hunter, who announced his retirement in November, according to a statement Tuesday.

The incoming CIO worked with a team of 30 investment professionals at California Public Employees' Retirement System to manage almost $60 billion of global private equity assets, according to the statement. Calpers said Anton Orlich, its managing investment director for private equity, will continue to oversee the group.

Continue reading.

Bloomberg Wealth

By Dawn Lim and Allison McNeely

December 19, 2023

Texas City Pension System Names Calpers Investment Director as CIO.

The move takes out one more investment professional from Calpers, where the CIO quit in September

The Texas Municipal Retirement System has reached into the professional ranks of the $480.31 billion California Public Employees' Retirement System to find a successor for its retiring chief investment officer in Austin.

The municipal system with $37.4 billion in total assets at the end of June tapped Calpers's Yup Kim to fill its top investment role, TMRS said. At Calpers, Kim is investment director for private equity and helps manage a $60 billion portfolio of fund positions and direct co-investments. Kim reports to Anton Orlich, who the pension system named as managing investment director of the private-equity group in 2022.

The giant California system, the largest public pension in the U.S., has long struggled to attract and retain investment professionals. Calpers has had at least six CIOs over the past two decades, taking about 18 months to find and hire the most recent one, Nicole Musicco, last year. She left at the end of September.

Continue reading.

The Wall Street Journal

By Rod James

Dec. 19, 2023

[Texas Tops US States in 2023 Debt Sales With No Signs of Slowing.]

- **Municipalities in Texas have sold $58 billion of bonds in 2023**
- **Population growth has driven need for new infrastructure**

Texas governments sold more debt that any other state this year, issuing $58 billion of bonds to finance school construction, water utility projects and airport improvements as its population surged.

It’s the first time since at least 1990 that Texas municipal bond sales outpaced the debt-heavy powerhouses of both New York and California, according to data compiled by Bloomberg. The jump came even as borrowing costs hovered near decade-highs for much of the year and other governments pulled back on tapping the market. It’s the second highest yearly volume for Texas governments, dwarfed only by sales in 2020 when municipal benchmark rates fell to 0.5%.

“The one place you want to be a muni banker this year and going forward is in Texas,” said Keith Richard, senior managing director and head of the Texas region at Siebert Williams Shank & Co.

Continue reading.

Bloomberg Markets

By Danielle Moran

December 22, 2023

[Forbes: These Are Good Times For Bond Investors And Mid-Cap Stocks]

“It’s sort of opposite day in the financial markets,” George Bory said during Allspring Global Investment’s market-outlook press conference. “But for bond investors, these are good times.”

Bory, the firm’s chief investment strategist for fixed income, said earlier this month in New York that 2024 may be more challenging for equities, but that the bond market is well supported because fundamentally monetary policy is tight, inflation is falling, and economic growth is slowing. He said these are the three most important factors that bond investors want to see.

Headquartered in Charlotte, N.C., Allspring manages $551 billion in assets. The global asset management firm started in 2021 after Wells Fargo sold it to two private equity firms: Reverence Capital and GTCR, which own 70% of Allspring.

Continue reading.

Forbes

by Lawrence Carrel

December 27, 2023

[City of Chicago/Sales Tax Securitization Corporation Win Bond Buyer's Deal of the Year Award.]

CHICAGO – The City of Chicago was awarded the esteemed national Bond Buyer 2023 Deal of the Year award and the 2023 Deal of the Year award in the Midwest category. The City was honored for its innovative financing techniques to invest in social initiatives in the Chicago Recovery Plan, its capital investments, and the refinancing of outstanding debt, all of which generated significant debt-service savings for the City.

"This accomplishment reflects our dedication to fiscal responsibility and the vision we have for a strong economic future for our city," said Mayor Brandon Johnson. "I am proud to celebrate this achievement with the entire team in recognition of their efforts, which show how as a collective, our administration is committed to continued improvement in City finances, which will strengthen our ability to provide for residents and communities."

Continue reading.

Weekly Citizen

Dec 28, 2024

Disney Says in Lawsuit that DeSantis-Appointed Government is Failing to Release Public Records.

ORLANDO, Fla. (AP) — Disney has filed a lawsuit claiming that the oversight government for Walt Disney World, which was taken over by appointees of Gov. Ron DeSantis earlier this year, has failed to release documents and properly preserve records in violation of Florida public records law.

Disney said in the lawsuit filed Friday that the Central Florida Tourism Oversight District, often referred to as CFTOD, has been so slow in fulfilling its public records duties that it has failed to respond completely to a request the company made seven months ago when it paid more than $2,400 to get emails and text messages belonging to the five district board members appointed by DeSantis.

Disney, DeSantis and the DeSantis appointees already are battling for control of the government in two pending lawsuits in federal and state court.

Continue reading.

YAHOO FINANCE

by MIKE SCHNEIDER

Tue, December 26, 2023

How Governments and Nonprofits Can Take Advantage of Tax Credits for Clean Energy: Opening of the Pre-Filing Window Publications - Kutak Rock

On December 22, 2023 the Internal Revenue Service (IRS) announced the availability of the anticipated *"IRA/CHIPS Pre-filing Registration Tool" (the "Tool") relating to elective payment of certain tax credits. State and local governments and political subdivisions thereof, Indian tribal governments, tax-exempt organizations and other applicable entities will now be able to use the Tool to register tax credits expected to be claimed as direct payments for eligible energy projects.* The IRS announcement and additional information regarding the Tool may be found here.

There are 12 tax credits currently eligible for direct payments (also referred to as "elective payment") including, for example, the following credits: renewable electricity production (I.R.C. § 45 – pre-2025); carbon oxide sequestration (I.R.C. § 45Q); clean electricity production (I.R.C. § 45Y – 2025 onwards); energy credit (I.R.C. § 48 – pre-2025); and clean electricity investment credit (I.R.C. § 48E – 2025 onwards). Elective payment of these tax credits was made available through the Inflation Reduction Act of 2022, Pub. L. No. 117-169 (IRA). These tax credits are general business credits under I.R.C. § 38. Elective payment under I.R.C. § 6417 creates an alternative way for applicable entities that have earned tax credits to receive the benefit of the credits even if these entities cannot use the credit to offset tax liability. Please see our publication of June 16, 2023 describing elective pay tax credits generally. Please contact any member of the firm's Energy Group to discuss general eligibility for elective pay tax credits.

Continue reading.

Client Alert | December 28, 2023

Kutak Rock LLP

- **Ed. Note:** We will be off next week – 12/26 – returning with ye olde Double Dose O' Drivel on 1/2/24.
- S&P U.S. Public Finance 2023 Year In Review: Better Than Expected
- S&P: Pending Federal Regulation Could Significantly Affect Thousands Of U.S Water Utilities
- Best Practices in Debt Issuance and Management: GFOA In-Person Training
- Citigroup's Muni-Market Exit Sows Fears of a Wall Street Retreat.
- Citi's Exit Carries Costs for Issuers, Market Liquidity, But Industry Expected to Weather It.
- Fitch: California Retains Ample Tools to Address Deep Revenue Shortfall
- And Finally, Next Up, Drunk Uncle Dan's Astute Political Musings is brought to us this week by *Dundon v. Kirchmeier*, in which police officers experienced some serious blowback from their actions. In the intelligence community, "blowback" is the unintended consequences and unwanted side-effects of a covert operation. In this case, the blowback was, uh, perhaps a tad more literal, as "the officers fired tear gas canisters into the crowd. The gas proved ineffective: the wind blew the gas back at the officers…" May your holiday season be free from noxious gases, whether tear gas or those emanating from the various blow-holes of the family members gathered 'round your table.

EMINENT DOMAIN - FEDERAL

Barlow v. United States

United States Court of Appeals, Federal Circuit - November 22, 2023 - 86 F.4th 1347

In rails-to-trails case, owners of property abutting railroad line filed suit against United States, seeking compensation for alleged Fifth Amendment taking effected by Surface Transportation Board (STB) issuing notice of interim trail use (NITU) for railroad line, pursuant to National Trails System Act, thereby allowing railroad and Illinois Department of Natural Resources (DNR) to negotiate railbanking and interim trail use agreement for railroad line.

The Court of Federal Claims granted government summary judgment. Property owners appealed.

The Court of Appeals held that:

- Right-of-way agreements conveyed easements to railroad limited to railroad purposes;
- Deeds that included words “for railroad purposes” conveyed easements to railroad;
- Railroad at most held easements on property for which deeds were lost; and
- Owners held fee simple interests to centerline of property for which deeds were lost.

FEES - ILLINOIS

Habdab, LLC v. County of Lake

Appellate Court of Illinois, Second District - November 21, 2023 - N.E.3d - 2023 IL App (2d) 230006 - 2023 WL 8054100

Developer brought declaratory judgment action against county and village, seeking declaration that it was not obligated to pay highway improvement fees under intergovernmental agreement between county and villages as a condition of annexation.

The Circuit Court granted county’s motion for summary judgment and denied developer’s cross-motion for summary judgment. Developer appealed.

The Appellate Court held that:

- Highway improvement fees did not fall within statutory definition of “road improvement impact fees,” and
- Unconstitutional conditions doctrine did not apply to render fees an unconstitutional taking.

Highway improvement fees, which were assessed as a condition to annexation under intergovernmental agreement between county and villages, did not constitute “road improvement impact fees” within meaning of the Road Improvement Impact Fee Law, in developer’s declaratory judgment action against county and village, seeking declaration that it was not obligated to pay fees as a condition of annexation; Impact Fee Law defined “road improvement impact fees” as any charge or fee levied or imposed by a unit of local government as a condition to the issuance of a building permit or a certificate of occupancy in connection with a new development, and the agreement provided that payment of highway improvement fees was a condition of annexation into one of the villages.

Essential nexus existed between highway improvement fees, which were assessed as a condition to annexation under intergovernmental agreement between county and villages, and a legitimate state interest, in determining whether unconstitutional conditions doctrine applied to render fees as an unconstitutional taking, in developer's declaratory judgment action against county and village, seeking declaration that it was not obligated to pay fees as a condition of annexation; nexus existed between preventing further traffic congestion and providing for road improvements to ease that congestion, and agreement provided that, as property developed, residents would benefit from highway improvements that ensured traffic was efficiently transported through the area, and provided for construction funding for such improvements.

There was a rough proportionality between highway improvement fees, which were assessed as a condition to annexation under intergovernmental agreement between county and villages, and the harm the county sought to remedy through fee assessment, and thus unconstitutional conditions doctrine did not apply to render fees as an unconstitutional taking, in developer's declaratory judgment action against county and village, seeking declaration that it was not obligated to pay fees as a condition of annexation; agreement's purpose was to establish construction funding for future highway improvements, which were intended to address existing and future traffic demands, and county agreed to design and construct road improvements in exchange for a portion of construction costs being reimbursed from fees collected from developers.

EDUCATION - MONTANA

Stand Up Montana v. Missoula County Public Schools

Supreme Court of Montana - December 12, 2023 - P.3d - 2023 WL 8593762 - 2023 MT 240

Parents of public school students brought action alleging that school districts' mandatory masking policies for students, staff, and visitors to schools during COVID-19 pandemic violated substantive due process.

The District Court of the Fourth Judicial District granted school districts' motion in limine and then granted summary judgment for school districts. Parents appealed.

The Supreme Court held that:

- Rational basis review rather than strict scrutiny applied for due process claim;
- Mask policies did not violate due process; and
- Expert testimony on physical effects of face mask usage on children was irrelevant to due process analysis.

Under rational basis review, school districts' mandatory masking policies for students, staff, and visitors to public schools during COVID-19 pandemic did not need to be logically consistent in every respect to be consistent with substantive due process, and they would be upheld unless they were unreasonable or arbitrary.

School districts' mandatory masking policies for students, staff, and visitors to public schools during COVID-19 pandemic did not infringe on students' and parents' fundamental rights of privacy and individual dignity and parents' rights to control the care and custody of their children, and therefore rational basis review rather than strict scrutiny applied to parents' substantive due process challenge to masking policies.

School districts' mandatory masking policies for students, staff, and visitors to public schools during COVID-19 pandemic did not violate substantive due process, where school districts, prior to adoption of policies, considered information and recommendations of reputable public and private health care providers and agencies, including the Centers for Disease Control (CDC), which all recommended universal masking.

Proffered expert testimony on physical effects of face mask usage on children, including tooth decay, halitosis, and speech impediments, was irrelevant in action raising a substantive due process challenge to school districts' mandatory masking policies for students, staff, and visitors to public schools during COVID-19 pandemic; testimony would not have aided a jury in determining whether mask policies were rationally related to stemming the spread of COVID-19.

INSURANCE - NEW JERSEY

City of Whittier v. Everest National Insurance Company

Court of Appeal, Second District, Division 1, California - December 6, 2023 - Cal.Rptr.3d - 2023 WL 8441663

City brought declaratory judgment action against its excess liability insurers to recover for breach of contract by denying coverage for settlement of police officers' suit alleging retaliation for refusing to participate in and/or reporting unlawful citation and arrest quota.

The Superior Court adopted referee's statement of decision granting insurers' motions for summary disposition and denying city's motion for summary adjudication. City appealed.

The Court of Appeal held, as a matter of first impression that coverage was not barred by statute providing that insurer was not liable for loss caused by wilful act of insured.

Police officers' complaint against city for retaliating against officers for refusing to participate in allegedly unlawful citation and arrest quotas alleged non-willful bases for liability under statute that prohibited retaliation against employee for refusing to participate in activity that would result in violation of law, and, thus, coverage under city's excess liability policy for settlement of officers' claims was not barred by statute providing that insurer was not liable for loss caused by wilful act of insured; alleged acts of "shift averaging" and of setting performance benchmarks by comparing officers' arrest counts were not clearly illegal such that city reasonably could not have believed otherwise.

POLITICAL SUBDIVISIONS - NEW YORK

Drake v. Village of Lima

Supreme Court, Appellate Division, Fourth Department, New York - November 17, 2023 - N.Y.S.3d - 2023 WL 7982101 - 2023 N.Y. Slip Op. 05833

Village residents brought action against village and village department of public works seeking damages and injunctive relief arising from defendants' alleged failure to properly maintain and operate sewer main, causing sewage to backflow into residents' home, asserting causes of action for, inter alia, negligence, trespass, public nuisance, private nuisance, and inverse condemnation or de facto taking.

The Supreme Court, Livingston County, granted in part and denied in part defendants' motion to dismiss. Parties appealed.

The Supreme Court, Appellate Division, held that:

- Village and village department of public works failed to establish that department was administrative unit of village that lacked capacity to be sued;
- Residents' notice of claim included information sufficient to enable defendants to investigate claim for damages for personal injury to deceased resident;
- Residents failed to state trespass claim;
- Residents' private nuisance cause of action was duplicative of negligence claim;
- Residents failed to state claim for inverse condemnation or de facto taking;
- Residents failed to state claim for public nuisance; and
- Residents failed to state claim for injunctive relief.

IMMUNITY - NORTH DAKOTA

Dundon v. Kirchmeier

United States Court of Appeals, Eighth Circuit - November 3, 2023 - 85 F.4th 1250

Protestors, who were allegedly injured by police officers' use of force to disperse crowd while they were protesting construction of oil pipeline, brought § 1983 action alleging claims against individual officers for using excessive force in violation of their Fourth and Fourteenth Amendment rights, *Monell* claim against municipalities alleging unconstitutional policies, and claim against police chief and county sheriffs for supervisory liability based on deliberate indifference for actions of officers.

The United States District Court for the District of North Dakota granted summary judgment in favor of the defendants. Protestors appealed.

The Court of Appeals held that:

- It was not clearly established that officers' use of force designed to disperse protesters violated constitutional right under Fourth Amendment, and thus, officers were entitled to qualified immunity;
- Municipalities' use-of-force policies were facially lawful, and thus, protesters were required to show that failures to adopt adequate safeguards were product of deliberate indifference to establish *Monell* liability;
- Municipalities were not subject to *Monell* liability, given lack of clearly established right; and
- Law enforcement chiefs were not subject to supervisory liability, given lack of clearly established right.

It was not clearly established that police officers' use of force designed to disperse a crowd constituted a seizure under the Fourth Amendment, and thus officers who deployed water, tear gas, rubber bullets, and bean bags to disperse a crowd at protest over oil pipeline were entitled to qualified immunity from excessive-force claims in § 1983 action by protesters who were allegedly injured by the officers' use of force; one decision from another Court of Appeals fell short of robust consensus of authority clearly establishing use of force to disperse was seizure under Fourth Amendment, and subsequent Eighth Circuit precedent concluded that law was not clearly established on relevant point.

BALLOT INITIATIVE - OREGON

[Ady v. Rosenblum]

Supreme Court of Oregon - December 7, 2023 - P.3d - 371 Or. 702 - 2023 WL 8467527

Petitioners challenged ballot title including captions and summary for initiative petition to establish a program to provide state funding to certain families who incur qualified expenses for educating their children outside of the public school system.

The Supreme Court held that:

- Reference to religious schools was not impermissibly misleading;
- Funding of religious schools would have been a significant change to existing law, thus warranting reference to funding of religious schools as a major effect;
- Reference to income eligibility did not fail to adequately describe how funds from initiative petition's Education Savings Account Program would be limited to income-eligible students;
- Decision to focus on major effects did not render ballot title noncompliant with statute requiring that a caption identify all major effects to the limit of the available words;
- Statute requiring that "yes" result statement in ballot measure be a simple and understandable statement of 25 words or less that describes the result if proposed measure is approved did not require "yes" result statement to expressly make overly specific statement that funds from Education Savings Account Program were parent-directed for the student's benefit;
- Statute requiring that the "yes" result statement in a ballot measure be a simple and understandable statement of 25 words or less that describes the result if the proposed measure is approved did not require that "yes" result statement include "qualified expenses" in quotation marks; and
- Express statement that public funding of religious schools was prohibited by Oregon Constitution would have risked confusing voters.

[Fitch: Relative Calm for U.S. State & Local Governments in 2024]

Fitch Ratings-San Francisco/New York-11 December 2023: Both U.S. state and local government ratings are in a strong fiscal position with a recession looking less likely in 2024, according to Fitch Ratings in its outlook report for the sectors.

Fitch has a neutral sector outlook for state and local governments in the coming year despite slowing economic growth for the U.S. That said, the country should be able to avoid tipping into a technical recession in 2024, which is good news for state and local government fiscal dynamics as they are closely tethered to the macro environment.

"A combination of strong reserves, significant liability reductions and other prudent budget management measures leave state and local governments well positioned," said Senior Director Eric Kim.

Though the pace of tax policy changes slowed in 2023, it remains historically high with some measures altering the fundamental provisions of a tax code. "Tax cuts can have unexpected consequences for taxpayer behavior and economic response, particularly cuts that cover broad aspects of tax policy as Fitch observed in some states," said Kim. Revenue volatility that significantly exceeds a state's expectations could pose near- and medium-term fiscal risks.

Commercial real estate exposure, and particularly office exposure, is another area of increased focus for local governments, most of which have sufficiently diverse revenue structures and predominantly residential tax bases. “Larger urban centers with substantial commercial office space remain sensitive to secular changes in office policies and commuting patterns,” said Senior Director Michael Rinaldi.

Fitch’s ‘U.S. States and Local Governments Outlook 2024’ is available at ‘www.fitchratings.com’.

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[S&P U.S. Public Finance 2023 Year In Review: Better Than Expected]

Key Takeaways

- Credit fundamentals were relatively strong this year for most sectors, and we expect this to continue as we look ahead to 2024. Some sectors are facing credit pressure and their challenges will be detailed in our 2024 sector outlook publications.
- Higher interest rates and inflation, coupled with our expectations for slower economic growth in the year ahead, will create headwinds from a credit perspective.
- Proactive management and governance are key to credit stability, given the broad range of risks facing governments and not-for-profit entities such as extreme weather events, cyber attacks, demographic shifts, labor force imbalance, and workplace trends.

Continue reading.

12 Dec, 2023

NASBO State Expenditure Report.

View the NASBO report.

S&P U.S. State Ratings And Outlooks: Current List

View the S&P list.

15 Dec, 2023

S&P U.S. Public Finance Rating Activity, November 2023

Download S&P Report.

Fitch Rtgs 2024 Outlook: Strong Credit Profiles Support US CDSL Sector Despite Expected Slowdown

Fitch Ratings-Chicago/San Francisco/New York-13 December 2023: While the U.S. economy has remarkably averted recession thus far, the U.S. Community Development & Social Lending (CDSL) sector is not out of the woods just yet. Although Fitch is no longer forecasting a recession in 2024, the U.S. economy is expected to slow sharply as higher interest rates and a slowdown in bank credit weigh on consumer spending and private investment. However, Fitch believes that CDSL issuers are well-positioned to face these headwinds.

“Issuers in the CDSL sector have repeatedly demonstrated their resilience and adaptability during turbulent economic times,” says Karen Fitzgerald, Fitch Senior Director and Sector Head. “Given their strong financial profiles, conservative risk management practices, effective oversight, and successful track records, we expect CDSL issuers to remain steadfast as they face ongoing uncertainty and the continuing challenges of housing unaffordability and limited market access in 2024.”

Fitch made 19 downgrades and one upgrade to the sector’s ratings in 2023. Sixteen of the 19 downgrades were driven by direct linkages of U.S. housing finance agency (HFA) loan programs to the U.S. sovereign rating, which Fitch downgraded on Aug. 1. These 16 credits are primarily secured by mortgage-backed securities (MBS) issued by Ginnie Mae, Fannie Mae and/or Freddie Mac.

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Corporate and Municipal CUSIP Request Volumes Rise in November.

NORWALK, Conn., Dec. 14, 2023 (GLOBE NEWSWIRE) — CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for November 2023. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity over the next quarter, found a monthly increase in request volume for new corporate and municipal identifiers.

North American corporate requests totaled 5,907 in November, which is up 4.3% on a monthly basis. On a year-over-year basis, North American corporate requests closed the month up 15.9% over year ago totals. The monthly volume increase was driven by a 5.6% increase in request volume for corporate debt and a 3.1% increase in requests for U.S. corporate equity identifiers. November also saw a 5.1% increase in request volume for short-term certificates of deposit (CDs) with maturities of less than one year, while request volumes for long-term CDs (maturities greater than one year) fell 9.0%.

Municipal request volume rose for a second straight month in November. The aggregate total of identifier requests for new municipal securities – including municipal bonds, long-term and short-term notes, and commercial paper – climbed 2.7% versus October totals. On a year-over-year basis, overall municipal volumes are down 6.0%. Texas led state-level municipal request volume with a total of 146 new CUSIP requests in November, followed by California (72) and Indiana (70).

Continue reading.

Citigroup's Muni-Market Exit Sows Fears of a Wall Street Retreat.

- **Bank shuts down businesses, seeing it as a drag on growth**
- **Follows UBS, steady disappearance of local investment banks**

For years, small investment banks have been pulling out of the business of underwriting municipal bonds, leaving the job of raising money for US state and local governments dominated by Wall Street's giants.

Now, there's concerns that the big banks may start dropping away, too.

Citigroup Inc.'s announcement Thursday that it is shutting down its municipal-bond division highlighted the pressures on a corner of finance contending with diminished fees, a debt-sales slowdown and pushback from local Republican politicians intent on drawing banks into America's culture wars. Chief Executive Officer Jane Fraser indicated that underwriting state and local debt was, effectively, too big a drag on the bottom line, unable to compete with more lucrative lines of work. UBS Group AG made a similar decision in October.

Citigroup's departure is unlikely to have any immediate repercussions, since others will almost certainly fill the void, at least temporarily.

But it underscores the steady shift of capital away from the business. That’s raised concerns that a further retreat could make it more costly for local governments to finance infrastructure or increase the risk of a liquidity squeeze as big banks that backstop the market pull out. Broker dealers have already retreated sharply from that role as buyer of last resort, reducing their holdings of state and local government bonds sharply since the 2008 credit crisis.

“Over the next five to seven years, we are going to need more firms, not fewer, just to process all the bonds,” said Matt Fabian, a partner at Municipal Market Analytics, predicting that debt sales will rise as interest rates slide and governments step up borrowing for public works. “Citi leaving now is not just that firm walking away from this business upside – it also means the incremental cost to borrowers in the future will be higher.”

A spokesperson for Citigroup referred Bloomberg to the memo released on Thursday.

Citigroup has been a major force in the municipal-bond market and as recently as 2021 was the second-biggest underwriter, accounting for roughly 10% off all the new securities that were sold. It worked on landmark projects including the rebuilding of the World Trade Center site and the installation of 65,000 streetlights around the city of Detroit and was the envy of rivals.

But its longtime chief, Ward Marsh, left in 2019. Layoffs, retirements, and other departures shrank the public finance department to about 120 people, down from around 400 employees at one point, according to two former employees who declined to be identified. As the Fed’s rate hikes depressed debt sales, it continued to lose market share, sliding to the seventh biggest this year.

Still, the decision to shut down the business completely was a surprise, given its still prominent role. In 2022, it underwrote nearly $27 billion of long-term municipal bonds.

Washington State Treasurer Mike Pellicciotti said in a statement that the bank’s departure was unfortunate. “We’ve particularly appreciated Citi’s dependable participation in our competitive sales, where they have frequently provided the best bid,” he said.

The bank has also long been revered for its trading arm and its willingness to take risks during market dislocations.

“Citi has historically been a huge liquidity provider for a lot of the names that have shown up in headlines over the last ten or twenty years,” said Nicholos Venditti, senior portfolio manager at Allspring Global Investments. “It’s difficult to imagine that any combination of regional broker dealers, even cumulated, would have the same balance sheet power that Citi has.”

The decision comes as underwriting fees have been under continued pressure and banks have pulled back from trading in the securities.

While banks have often utilized their role in financing public-works projects to deflect criticism of casino capitalism, Republicans more recently have seized on it to drawn them into America’s culture wars.

Citigroup was banned from working on muni deals by Texas Attorney General Ken Paxton, who said the bank’s policies ran afoul of its law barring work with those who are hostile to the gun industry. Due to its fast-growing population, Texas is the biggest source of new municipal bonds, accounting for 16% of overall issuance in 2023.

Even though it's exiting the underwriting business, Citigroup will still be a buyer of municipal bonds, like other banks who invest in the securities. The Wall Street giant holds nearly $10 billion of state and municipal debt securities, according to regulatory filings. The vast majority of that is classified as held-to-maturity.

But the expectation on muni desks is that Citigroup will unload the inventory it holds as a broker-dealer. That won't likely have a major impact, since such dealers have steadily cut back their holdings and support of the market after the financial crisis ushered in new regulations.

Still, Citigroup still served as an important liquidity provider and was "one of our first phone calls when we were doing business," said Jason Appleson, head of municipals at PGIM Fixed Income.

"It's going to hurt," Appleson said. "People will step up and fill the void in some way, but I don't think it's going to be fully plugged."

Bloomberg Markets

By Amanda Albright, Skylar Woodhouse, and Nic Querolo

December 15, 2023

— With assistance from Jennifer Surane, Joseph Mysak Jr, Martin Z Braun, and Shruti Singh

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Citi Shuts Muni Business That Once Was Envy of Rivals.

- **Bank has plummeted in muni-bond underwriting rankings**
- **Decision comes as Fraser reshapes firm to meet profit goals**

Citigroup Inc. will shutter its municipal business, one of the most dramatic moves yet by Chief Executive Officer Jane Fraser as she seeks to squeeze better returns out of the Wall Street giant.

The bank decided the business, which has tumbled in the rankings for underwriting state and local debt, is "no longer viable given our commitment to increase the firm's overall returns," according to a memo to staff seen by Bloomberg News. Citigroup intends to complete the wind down by the end of the first quarter, which will mean most of the company's municipal sales, trading and banking staffers will be departing the bank in the coming months.

"We have made the difficult decision to wind down our municipal underwriting and market-making activities," the memo said.

Continue reading.

Bloomberg Markets

By Jennifer Surane, Sridhar Natarajan, and Amanda Albright

December 14, 2023

[Citigroup is Dismantling Another Piece of the Empire that Sandy Weill Built.]

Citigroup (C) was for decades a top underwriter of state and local government debt, making the bank a major financier of roads, bridges, and airports across the US.

Now it wants out of that business, dismantling yet another part of an empire amassed in the 1990s.

The decision, announced internally in a bank memo Thursday, is the latest example of how Citigroup is paring back its ambitions as it tries to revive its stock price and remove decades of bloat.

The municipal bond business — known for underwriting bonds that helped pay for everything from a makeover of Chicago's O'Hare Airport to the rebuilding of One World Trade Center following the 9/11 attacks — apparently was no longer delivering enough profits.

"The economics of these activities are no longer viable given our commitment to increase the firm's overall returns," Citigroup executives Andy Morton and Peter Babej said in the Thursday memo. Morton is the company's head of markets and Babej is interim head of banking.

The move, which came after months of review, will result in a wind-down of the unit by the end of the fourth quarter. Roughly 100 employees in the municipal sales, trading, and banking unit are expected to leave over the coming months.

The unwinding of a financial supermarket

There was once a time when municipal bond business was a key part of Citigroup's billing as a "financial supermarket" that could offer any and all services needed by consumers, businesses, and governments.

The high point of this model was an era-defining 1998 merger between Citicorp and Travelers that shattered a Depression-era division between retail banking and investment banking and cemented Citigroup's status as the world's largest financial institution.

The deal, engineered by Sandy Weill, gave Citigroup the investment banking operations of Salomon Brothers, which at the time was the industry's largest underwriter of municipal bonds and famously had a hand in helping New York City avoid bankruptcy during the 1970s.

In the decades since 1998, the colossus built by Weill proved to be too complex and unwieldy to manage effectively, and the 2008-2009 financial crisis dealt another blow to its sweeping ambitions. The company began to slowly unwind parts of the empire.

The muni bond exit is yet another step in that direction as CEO Jane Fraser tries to focus the company on serving big, multinational corporations, shed what isn't profitable, and operate more efficiently.

She is pulling back from consumer banking in various parts of the world, with plans to exit 14 consumer franchises in Asia, Europe, the Middle East, Africa, and Mexico.

She is also cutting jobs and reorganizing business lines as part of an internal restructuring that Fraser has called the "most consequential" change to how Citigroup operates in nearly two decades.

Layoffs associated with that restructuring began in November. Citigroup CFO Mark Mason said at a Goldman Sachs conference last week that the bank anticipates a charge of "a couple hundred million dollars" related to these restructuring efforts.

The hope is that these moves will revive Citigroup's stock. Over the past decade, it has fallen more than 2%, significantly lagging Big Bank peers and even the wider KBW US bank index (^BKX), which has risen 44% over the same period.

Muni challenges

During much of that same period, Citigroup held a dominant position in the muni world. From 2015 until 2021, it was the country's second-biggest underwriter of municipal bonds. But its ranking has slipped some in the last two years.

New capital requirements from regulators could make that business less profitable going forward. There are also government efforts at state levels to restrict the ability of certain banks to participate in muni bond offerings if they don't comply with local preferences.

In Texas, for example, the bank found itself unable to conduct muni business after the attorney general's office in January determined that Citigroup had "a policy that discriminates against a firearm entity or firearm trade association."

The response followed a decision made by Citigroup to restrict its banking services to gun retailers that sold firearms to people under 21, which came as a response to the 2018 Parkland shooting in a Miami suburb.

The state has a law in place barring certain government contracts with companies that have anti-gun business practices.

Citigroup said in its memo Thursday that it will still work with state and local governments on infrastructure projects via public-private partnerships and the private placement market.

And the bank, according to the memo, will still purchase muni bonds and finance affordable housing projects in the US.

"We do think banks are likely to be less present in the muni market," Pimco's head of municipal bonds David Hammer told Yahoo Finance Friday when asked about Citigroup's retreat.

Yahoo Finance

by David Hollerith

December 16, 2023

David Hollerith is a senior reporter for Yahoo Finance covering banking, crypto, and other areas in finance.

Citi's Exit Carries Costs for Issuers, Market Liquidity, But Industry Expected to Weather It.

A tough year for Wall Street municipal underwriting firms culminated Thursday with Citigroup's (C/PN) announcement it would exit the business, a stunning move that market participants warned would raise state and city financing costs and that Citi would come to regret as headwinds calm and business rebounds.

“It’s a major disappointment,” said Matt Fabian, a partner at Municipal Market Analytics Inc. “Near term, municipals already lack liquidity and dealer capital, and Citi was a major provider of those, so their removal makes things tighter, makes the market more prone to excess volatility in both up and down trends,” Fabian said.

“In the longer term, when we expect municipal bond issuance to see substantial growth because of climate change and legacy infrastructure issues, our industry is going to need to expand as well to minimize the pricing impact on our issuers,” he said. “So a major underwriter withdrawing now will add to that challenge, further stretch personnel and committed dollars. Frankly, Citi passing up on that opportunity – of much more product, much more spread – seems to be a massive unforced error.”

George Friedlander, Citi’s former head of strategy for 41 years, called the firm a “dominant force in the municipal bond market,” and one that “played an extremely important role keeping the market liquid during its most difficult times.”

Citi’s announcement, just days before the holidays, comes after CEO Jane Fraser in October pledged “relentless execution” of restructuring across the firm and a month after rumors of the muni group’s demise began to float across the market. The memo that went out to employees Thursday expressed regret for the termination of “municipal sales, trading and banking colleagues” but said the “economics of these activities are no longer viable given our commitment to increase the firm’s overall returns.”

The move ends a year of layoffs at several Wall Street firms, including the October decision by UBS to exit the negotiated underwriting business. The industry has weathered its second year of declining volume that increased competition for fewer deals and tightened underwriting spreads. Cheapening bond valuations have challenged balance sheets. The March banking crisis and political dynamics in Texas, one of the market’s largest issuers and previously one of Citi’s top clients, was another pressure point. UBS and Citi have both been banned from underwriting state, city, county, school, and other government debt in Texas since the state passed a pair of laws in 2021 aimed at protecting the fossil fuel and firearm industries against boycotts or discrimination.

Some market sources also blamed Citi’s own mismanagement under Fraser’s restructuring rather than industry pressures.

“This is a Citi problem, it’s not a muni problem,” said a sell-side source, saying management decisions had cut into profitability.

“It’s a complicated business and you can’t have a half-hearted approach; you have to be all in,” the source said. The muni market finances the “fabric of our nation, and now, because of Citi’s exit, the cost of financing for state and local governments is going to go up,” the source added.

While noting industry-wide pressures, Friedlander said it was “sad” that after senior talent left the firm “Citi decided just to move away from the municipal market function entirely.”

Citi decided that “rather than generating the kind of talent necessary to manage a very senior municipal market function, they were just going to say, ‘never mind,'” Friedlander said. “But in saying ‘never mind,’ they left the market with some holes – in terms of liquidity, the management of a number of functions in the market and various subcategories like hospitals, airports, power [and] housing.”

One prominent issuer called the move “terrible” for local governments.

“Municipal expertise is already limited when it comes to bankers sending good ideas to issuers and creating creative financing structures that save issuers and taxpayers money,” the official said.

Nikolai Sklaroff, the capital finance director of the San Francisco Public Utilities Commission, called the news “unfortunate” for issuers.

“The loss of any firm focused on municipal bond issues, and any reduction in the competition for bonds or financing ideas is regrettable,” Sklaroff said. “One could imagine it could negatively impact competition for competitive sales, or cause less frequent issuers to see less coverage.

“It should also serve as an important reminder for all issuers that our access to financing and the markets relies on the health of our financial partners and the value in keeping polarizing politics out of financial decisions,” he added.

The move comes less than two weeks after Citi priced an upsized $2 billion deal for John F. Kennedy International Airport. The firm is also listed as a senior managing underwriter for an upcoming $2.5 billion deal of sewer revenue warrants from Jefferson County, Alabama, set to price on Jan. 14, according to MuniOS. The firm is also listed as a senior manager for a deal of undetermined size from the Regents of the University of California, also set to price in January 2024.

The bank said it would continue to work on public-private partnerships and private placements, and to buy muni bonds.

Two years of declining issuance have increased pressure on underwriters who have spent years complaining about compressed spreads on deals. That’s an industry problem, said a banker, who added that Citi was often one of the low-bidding culprits.

“It’s people killing each other for market share, which makes zero sense,” the banker said. “Bidding a dollar a bond on a $1 billion California deal just to make sure you’re going to get the next deal doesn’t make sense,” they said. “Until we, as an industry, can start worrying less about the rankings and more about where we are adding value and about being paid for the risk we are taking when we are underwriting, this is going to keep happening.”

Firms of all sizes are reviewing their muni business to make sure they are sustainable, said Ajay Thomas, head of public finance at FHN Financial Capital Markets.

“Compensation to execute has continued to narrow and thin, so if you don’t right size the business, a firm can have challenges,” Thomas said. “Strategically this is very beneficial to the regional firms,” he added. “Fundamentally it’s a sound business. I’m very bullish on munis and so are we as a firm.”

Citi’s exit means the market could face “lower lows” in times of stress and outflows, said James Pruskowski, chief investment officer at 16Rock Asset Management.

“Citi was a known provider of lines of credit and liquidity to select mutual funds complexes, which lessened the impact of forced sales, the municipal derivatives market – mainly rate-locks where Citi is still a top market-maker – and high-yield munis,” Pruskowski said.

But the muni market has always “proven more resilient, always larger than any one firm or person,” he added.

“Citi’s going to look back in a couple of years and behind closed doors regret shuttering the department,” Pruskowski said. “The municipal market runs much deeper than any other sector, with public, private and government issuers and investors. We’re financing key U.S. essential service infrastructure we all use and appreciate every day."

By Jessica Lerner

BY SOURCEMEDIA | MUNICIPAL | 12/15/23 03:27 PM EST

Karen Pierog contributed to this report.

Citi Plans to Shut Down Municipal Business.

Citigroup decided its municipal business, which has tumbled in the rankings for underwriting state and local debt, is "no longer viable given our commitment to increase the firm's overall returns," according to a memo to staff seen by Bloomberg News. Sridhar Natarajan reports.

Continue reading.

Bloomberg Markets: The Close – Muni Moment

December 15th, 2023,

KBRA Releases Research – 2024 Public Finance Sector Outlook: U.S. Airports Navigate Strong Post-Pandemic Landing

KBRA believes the U.S. airport sector has successfully weathered the COVID-19 pandemic and the accompanying sharp decrease in passenger activity that began in March 2020. The combination of generally robust pre-pandemic balance sheet resources, federal recovery payments together with expenditure reductions, as well as support of airlines/concessionaires all contributed to financial stability. Also crucial were cost recovery mechanisms embedded in airline use and lease agreements that ensured coverage of debt service requirements. Significant federal aid (~$18.5 billion) was provided to airport operators as economic assistance to prevent, prepare for, and respond to the pandemic and to offset the loss of revenues.

Key Takeaways

- Passenger activity approached, and in many instances exceeded pre-pandemic volume, although recovery was uneven across airports.
- Federal recovery funds, airport operator actions, and balance sheet resources assisted in maintenance of stable financial postures.
- Significant infrastructure needs remain to be addressed and financing source adequacy is ongoing.
- Environmental issues as well as potential reputational and cybersecurity risks remain prominent.

Click here to view the report.

December 12, 2023

[S&P U.S. Not-For-Profit Retail Electric Sector Update And Medians: Despite Some Deterioration, Resilient Metrics Support Ratings]

Key Takeaways

- Nearly 60% of S&P Global Ratings' not-for-profit retail electric utility ratings are in the 'A' category, with a median and modal rating of 'A+', reflecting our view of healthy operations and finances amid utility-specific and industrywide challenges.
- Largely stable outlooks reflect our expectation that most issuers are well positioned to manage the challenges facing the sector, yet we are seeing that inflationary pressures are affecting some utilities where retail rates are not increasing in lockstep with cost increases or are exhibiting rising delinquent accounts.
- Median financial metrics for fixed-charge coverage and debt to capitalization have held for the past three years, and we attribute this to widespread rate-setting autonomy, the general practice of passing through power and fuel costs to ratepayers, and credit-supportive management policies and practices.
- However, even as the median nominal amount of available financial reserves has increased over the past three years, median days' liquidity has slightly declined as utility operating expenses have increased.
- We lowered the rating on seven credits while raising the rating on three credits in 2023 through November. We revised four outlooks to negative from stable and two to positive from stable.

Continue reading.

13 Dec, 2023 | 19:34 United States of America

[Fitch: Federal Funds Ease US Water Utilities' Capex Burden but Gap Remains]

Fitch Ratings-New York/Austin-12 December 2023: The American Rescue Plan Act (ARPA) and the Bipartisan Infrastructure Law (BIL) provide important funding support to water and sewer utilities to address needed infrastructure improvements and maintenance, Fitch Ratings says. Despite the significant infusion of funds, Fitch estimates a funding gap in excess of $85 billion over the next five years that will need to be covered by paygo or additional debt.

Federal funding under ARPA and the BIL is supportive of water utility credit quality as it helps maintain and improve existing infrastructure, thereby moderating increases in Fitch's life cycle ratio, a measure of the age of capital assets. Federal grants under these laws also offset some of the need for new debt funding and significant rate increases to address capital plans, supporting overall affordability.

Utilities face increasing capex costs given inflation, aging infrastructure, and Environmental Protection Agency (EPA) mandates and proposed rules, namely per- and polyfluoroalkyl substances (PFAS) remediation, Lead and Copper Rule Revisions (2021) and Lead and Copper Rule Improvements (2023), which would require most water systems to replace lead service lines within 10 years.

Water supply and sewer construction spending were up 15.3% and 27.2%, respectively, in October 2023 from a year ago, according to Census data. Within the Fitch-rated portfolio, five-year capex/depreciation ratios have been increasing year over year, exceeding 150% since 2019, reflecting sustained, robust capital spending. This spending has kept the Fitch-calculated life cycle ratio relatively stable at around 37% for the last several years.

The EPA estimates $625 billion of total water infrastructure needs over 20 years for states and territories, according to the September 2023 Drinking Water Infrastructure Needs Survey and Assessment (DWINSA), based on 2021 data. This represents an increase of 32% from the last survey based on 2018 data. Distribution and transmission compose the largest need at 67% of total infrastructure needs. Lead line replacement alone is estimated to cost between $50 billion and $80 billion, per the DWINSA.

The BIL provides $35.7 billion in funding through 2026, the majority of which will be grants or principal forgiveness loans, specifically for water infrastructure ($50 billion total inclusive of wastewater funding). ARPA funding separately supports an estimated $55 billion of additional water/sewer investments through 2026. Much of this funding will flow through State Revolving Funds (SRFs). Funding eligibility is not solely based on capital needs, as a significant portion of federal grant amounts are set aside for disadvantaged communities.

The EPA also provides a standard annual SRF allotment via the drinking water ($1.1 billion in 2023) and clean water ($1.6 billion in 2023) SRFs with each receiving an additional 20% state match. Recent use of congressional earmarks benefiting certain states over others and proposals to cut annual SRF funding could limit this resource in the future. However, the proposed cuts do not appear to have broad support and may not make it into the final federal budget.

The funding gap between infrastructure needs as assessed by the EPA and annual SRF allocations (inclusive of state match requirements), ARPA and BIL funding is likely to widen after ARPA and BIL programs expire. It may need to be filled by additional borrowing or deferring discretionary capital projects.

Federal and state financing options may also be available, but most will be in the form of loans instead of grants. This includes low-cost loans provided through the Water Infrastructure Finance and Innovation Act (WIFIA) program and state programs such as the State Water Implementation Fund for Texas. The municipal water systems of Chicago and Philadelphia received significant WIFIA loans to replace lead pipes, and Orange County Water District, CA received funding to address PFAS contamination.

S&P: Pending Federal Regulation Could Significantly Affect Thousands Of U.S Water Utilities

Key Takeaways

- Per-and-polyfluoroalkyl substances (PFAS) contamination could pressure liquidity reserves and affordability in the U.S. water utilities sector, as the costs will likely be passed through to consumers
- Small utilities would be more vulnerable to credit deterioration due to the effects of the proposed regulation
- S&P Global Ratings views the impact of PFAS regulation on health and safety positively given heightened public awareness around potential forever chemical contamination

Proposed federal regulation related to emerging contaminants could affect the credit quality for thousands of U.S. water utilities, given the potential for increased capital and operating costs that could pressure rate flexibility.

In March 2023, the Environmental Protection Agency (EPA) proposed a national primary drinking water regulation for PFAS, otherwise known as forever chemicals, which is expected to be finalized in the next several months. For water utilities across the U.S., the proposed MCL might result in costly treatment upgrades, ongoing monitoring and asset replacement, disposal, and staffing.

S&P Global Ratings anticipates these costs will require meaningful rate increases in a rising-cost environment. Regulatory pressure, rising interest rates, and inflationary cost pressures are expected to weaken affordability for some utilities, especially smaller providers with vulnerable demographic characteristics. Failure to pass through mandated costs could weaken financial margins and credit quality.

Annual Financial Impact On Sector Could Approach $3 Billion

Initial costs might be limited to simple testing and ongoing monitoring of the water supply, but at the most stringent proposed MCL, the EPA estimates 4,300 water utilities will be affected by one or more PFAS contaminant. The American Water Works Association estimates that could grow to 7,000 utilities, with a total financial impact on the sector of nearly $3 billion annually in additional operating and maintenance costs. Disposal of toxic biosolids, carbon filters, and any other contaminated treatment bioproducts is estimated to add $3.5 billion in annual costs for U.S. utilities. In our view, these costs are substantial, but we view favorably the effects to health and human safety, with advanced treatment providing higher water quality and customer confidence in addition to upgrading technology, which can be used to meet further regulatory requirements.

We view smaller utilities and those with vulnerable economic metrics as particularly at risk, given the more limited ability to pass-through costs and thinner operating margins and nominal liquidity. We expect that if the proposal is implemented, utilities might seek regional partnership or consolidation to better manage capital expenses and leverage economies of scale, which we view favorably. Higher cost burdens will fall on utilities with less-diversified water-supply or have large watersheds exposed to industrial use. In addition, identifying and sourcing a new water supply, if PFAS detections occur, can have significant cost implications for utilities. The proposal’s three-year implementation period for utilities means demand for granular activated carbon, certified operators, and construction bids will grow and potentially escalate costs, exposing utilities to supply chain and inflationary challenges.

Many utilities have successfully implemented remediation efforts ahead of the finalized MCL, incorporating the capital and operating costs associated with enhanced treatment. We believe utilities that demonstrate strong relationships with major industrial customers and their rate-base will fare better in the long term as installation of pretreatment and timely adoption of rate increases assist in maintaining stable operating margins through the capital-intensive period. We believe transparency and accountability are critical to ratepayer trust, incorporated within our view of rate-setting flexibility through our Operational Management Assessment. Furthermore, financial costs could be defrayed by successful litigation against primary polluters such as 3M and Dupont, which are currently expected to pay approximately $12 billion and $1 billion, respectively. The U.S. government is also expected to provide grants and additional funding opportunities, which we view favorably. However, we note federal funding will not be available for operating costs past initial design and build.

11 Dec, 2023

S&P U.S. Not-For-Profit Health Care Rating Actions, November 2023

S&P Global Ratings maintained 16 ratings without revising the outlooks, took three positive rating actions and three negative rating actions in the month of November. In addition, we revised two outlooks favorably, revised two outlooks unfavorably, and placed one issuer on CreditWatch with negative implications, all without changing the ratings in the U.S. not-for-profit health care sector.

There were three new debt issuances in the month, with two ratings maintained and one raised on H. Lee Moffitt Cancer Center & Research Institute. In addition, Novant Health was placed on CreditWatch with negative implications due to a definitive agreement to purchase three hospitals for $2.4 billion, which is likely to be fully financed by debt.

The 10 rating actions and outlook revisions consisted of the following:

- Three upgrades on one system and two stand-alone hospitals all in the ‘A’ category;
- Three downgrades on one system and two stand-alone hospitals in the ‘A’, ‘BBB’, and ‘BB’ categories;
- Two favorable outlook revisions on stand-alone hospitals with both revised to positive from stable; and
- Two unfavorable outlook revisions on one long-term care facility to negative from stable and one stand-alone hospital to stable from positive.

Continue reading.

13 Dec, 2023

Hospitals Creeping Toward Recovery Grapple With ‘Out of Control’ Costs.

- **Facilities are still grappling with labor shortages, expenses**
- **Investors are bullish on the sector as returns rebound**

During the depths of the pandemic, hospital operator Main Line Health managed to keep all of its beds open and avoid layoffs. But the suburban-Philadelphia system struggled like the rest of the industry with spiraling costs and shortages, and had to bring in 250 outside nurses to cope with pressing demand.

Today, most of those agency nurses are gone and a bump in payments from private insurers points to better fortunes for Main Line and its four hospitals. Things “are a little better and they will get better this year,” President and Chief Executive Officer Jack Lynch said.

Yet even as the bottom line looks set to improve, Lynch frets over pressures old and new, including expenses that remain significantly higher. “Inflation is literally out of control,” he said in an interview. It’s a familiar story.

Continue reading.

Bloomberg

By Lauren Coleman-Lochner

December 13, 2023

[Charter Schools Get Squeezed in Retreat From Low-Rated Debt.]

A slowdown could add to pressure on a sector facing belt-tightening

At the Academy for Sciences & Agriculture, highlights of 2023 include improved reading scores and a high-school play based on the board game Clue. Investors are chewing over a less upbeat development at the Minnesota charter school, though: a missed bond payment.

At charter schools, as elsewhere, boom times have given way to belt-tightening, raising questions about who will survive. Higher salaries and dwindling federal Covid aid are stretching revenues and squeezing budgets. Repayment problems are rising in the $30 billion market for the low-rated bonds sold by K-12 public charter schools, according to research firm Municipal Market Analytics.

At the same time, higher rates on ultrasafe bonds have sapped investor interest in risky charter-school debt, limiting stressed schools' access to new financing. Charter-school bond issuance dropped to $2.8 billion this year through Dec. 13 after averaging $4 billion to $5 billion since 2019, according to a Municipal Market Analytics analysis of Bloomberg data.

Continue reading.

The Wall Street Journal

By Heather Gillers

Dec. 15, 2023

[Why Hackers Are Targeting Schools and Hospitals: WSJ Podcast]

You've seen the headlines. High-profile companies are hit by a cyberattack, and customer information is stolen. But some hacks don't make headlines. These days, hackers are holding data hostage from public sector organizations like schools, hospitals and utilities. This means that local governments are spending big to clean up after these attacks and prevent new ones. It's not just bad news for students and patients. Municipal bond holders can also take a hit. WSJ reporter Brenda León joins host Alex Ossola to talk about how municipalities are looking to protect themselves against future breaches.

[Listen to the podcast and read the transcript.]

The Wall Street Journal

12/11/2023

[Fitch: California Retains Ample Tools to Address Deep Revenue Shortfall]

Fitch Ratings-New York-14 December 2023: The state of California has the fiscal capacity to address an emerging revenue shortfall, estimated at $58 billion over three years by the state's Legislative Analyst Office (LAO), says Fitch Ratings. California is much better positioned than the last time it faced a similarly deep revenue decline during the Global Financial Crisis (GFC), and Fitch anticipates the state will take steps to close the budget gap while maintaining very strong financial resilience.

While the estimated revenue decline is significant, California's general fund revenues increased by $78 billion (54%) between fiscal 2020 and fiscal 2022, without a concurrent increase in ongoing spending. Furthermore, institutional changes made by the state during and following the GFC, such improved liquidity management and simple majority approval of the budget, materially improved its ability to address economic and revenue cyclicality.

As Fitch previously noted, the state's fiscal 2024 budget included an uncertain revenue forecast due to the deferral of the final personal income tax and corporation tax filing deadline from April to November 2023. At the time of budget enactment in June 2023, the state estimated the delayed receipt of $42 billion of fiscal 2023 tax revenue. It is now becoming evident that tax receipts were well below estimate, although the detailed reconciliation of tax revenues between the two fiscal years has not been released.

The LAO attributes $26 billion of the revenue gap to fiscal 2023 (FYE June 30), with the balance divided approximately evenly over the current year (fiscal 2024) and the next budget year (fiscal 2025). The state Department of Finance will formally revise its revenue forecast prior to release of the governor's fiscal 2025 budget proposal in January. Fitch anticipates the governor will address the prior year and current year gaps in his budget proposal for fiscal 2025 through a mix of spending cuts and reserve draws. Fitch will assess the sustainability of budget solutions for fiscal 2025 following its release. The current 'AA' Issuer Default Rating assumes the state will maintain reserves that are robust compared to past practice to provide a cushion in case of further economic weakening.

In total, the state holds $37.8 billion in dedicated reserves. It seems likely that the state will apply a significant portion, if not all, of its special fund for economic uncertainty (SFEU) to closing the prior year gap. The SFEU held $3.3 billion as of the end of fiscal 2023. Another source of gap closing capacity is the state's rainy day fund, the Budget Stabilization Account (BSA), which contains $22 billion, or 10% of state revenues. Both funds were built up through a combination of revenue surpluses and structural budget changes that mandated deposits.

The state has other gap closing measures available on the expenditure side. The enacted budget for fiscal 2024 incorporated one-time or temporary spending that can be delayed or curtailed in light of lower revenues, estimated by the LAO at $8.6 billion. Further, the state's school funding requirements under Prop 98 also decline relatively quickly when revenues decline, acting as a form of automatic stabilizer during a downturn. The LAO estimates the state's Prop 98 school spending will be $4.3 billion lower than previously estimated over the three-year budget window. Since the state is funding schools in excess of the minimum constitutional requirement, California could theoretically reduce school spending by up to another $16.7 billion for a total $21 billion cut and still be within its Prop 98 guarantee. Fitch considers such a drastic reduction in school aid highly unlikely. Instead, the state could combine reductions in education spending with draws on its $8.1 billion Prop 98 reserve.

[Will CA AB 50 and SB 410 Actually Result in Faster Electric Service for Data Centers (and Everything Else) in California? Davis Wright Tremaine]

Utilities struggle to meet increased electric service demand while tech companies build massive data centers

California is in a rush to electrify everything. The rapid conversion of appliances such as furnaces, water heaters, ovens, and dryers from natural gas to electricity and the proliferation of electric vehicles (EVs) – including both individual EVs in residential settings and large fleets in commercial settings – has led to significant concerns about the ability of the current grid to accommodate these new energization requests. And major tech companies that are headquartered in Silicon Valley and operate new data centers throughout California are looking to construct additional data centers throughout the state. It's no surprise California utilities are facing challenges keeping up with energy demands.

To take one example, the Silicon Valley Power (SVP), the City's municipal utility, will need to almost double in size to provide enough power capacity to the 13 data centers currently approved for service. SVP's October 10th Quarterly Update indicated 15 additional data center projects seeking service, seven of which have completed System Impact Studies. The considerable amount of energy required and the current capacity constraints on the SVP and CAISO infrastructure have left the utility unable to serve new or expanding data centers. As a consequence, SVP issued a memo last month telling all developers to halt plans for data center development projects.

SVP stated that the 13 data centers currently in the pipeline have reserved all the upgraded capacity being created through internal expansion projects and the construction of the CAISO High Voltage Direct Current transmission line project currently slated to come on-line in 2028 or 2029. Until the construction of system expansion and transmission projects is further along, SVP is unclear when it will be able to accommodate additional new projects.

Economic Stakes

There are significant economic consequences if Californians fail to get the new or upgraded service connections in a timely manner. California is not unique in this problem – utilities in primary data center markets across the nation are having trouble keeping up with industry needs. Northern Virginia's utility, Dominion Energy, delayed power to multiple data center projects on account of transmission problems. With energy demand anticipated to grow, partly driven by powerful processors running technologies like generative artificial intelligence, data center providers nationwide have begun looking into generating their own electricity supply.

Following the past legislative session, Governor Newsom approved AB 50, which directs the California Public Utilities Commission (CPUC) to determine the criteria for customers to receive timely electricity service when requesting new service connections or upgraded service, known as "energization." The bill was drafted in response to increasing backlogs for utilities to fulfill customer requests for energization – especially in the service territory of the largest California utility, Pacific Gas and Electric Company (PG&E). This would not, however, solve the problems faced by municipal utilities like Silicon Valley Power. AB 50 applies only to energization of customers and does not include interconnection of generation resources to either the distribution or transmission grid. Similarly, Governor Newsom approved SB 410, which would require that the Commission establish the reasonable average and maximum target energization time periods and require that investor-owned utilities take actions to meet those targets.

What's Next

We expect the CPUC to initiate a rulemaking proceeding (or open a new phase in an existing rulemaking) to implement AB 50 and SB 410. Stakeholders will have an opportunity to become parties to the proceeding and participate in the development of the CPUC's energization criteria. Members of the public will also have an opportunity to participate in CPUC workshops once the electric utilities begin to file reports with the CPUC.

We'll all need to stay tuned to see if AB 50 and SB 410 actually result in faster electric service energization in California, especially when combined with some of the other efforts to accelerate the deployment of both behind-the-meter on-site generation and microgrids. Traditionally the data center industry has used diesel or natural gas generators as backup on-site generation. More recently, there has been a boom in the adoption of cleaner on-site generation technologies and the use of microgrids. Microgrids would allow data centers to operate their own power grid incorporating energy from a variety of sources and reduce strain on the utility's transmission or generation capabilities. This of course only creates more incentive for California to speed up the regulatory structures necessary to allow for the adoption of microgrids.

Davis Wright Tremaine LLP – Anna Fero, Vidhya Prabhakaran and Chasity Hendren

December 11 2023

AI Is Coming Soon for Governments' Information. What's It Worth?

States and localities may have hidden treasure in their data that can be profitably unearthed by commercial interests. Governments need to be able to realize the value of their data while still protecting the public.

Recent developments in artificial intelligence are likely to make it possible for data scientists to probe public-sector information sources for a variety of commercial interests. Just as hedge funds looking to exploit information advantages now pay for satellite imagery of parking lots, farmland crop progress and oil rigs, there will soon be new ways for private investors and marketing wizards to glean a competitive edge from information now stored in public-sector computers.

For an obvious example, governmental financial data now stored in various databases will hold keen interest for municipal bond investors. Such information is collected now by the Municipal Securities Rulemaking Board in its electronic database. Other organizations own complementary pieces of the puzzle, which could have commercial value when combined by an analytical engine to provide insights into potential bond ratings changes, default risks and subtle improvements in financial measures. Those could change the market valuation of billions of dollars of tax-exempt securities. And that is just one use case.

Other state and metropolitan public information sources are likely to offer similar treasure troves of raw data that can now be compiled into analytical warehouses by scraping information from public websites. There are likely to be dozens of other types of governmental data files routinely maintained for internal use, but not presently posted on the Internet, which could still be searchable under Freedom of Information (FOI) requests.

Continue reading.

governing.com

OPINION | Dec. 12, 2023 • Girard Miller

Best Practices in Debt Issuance and Management: GFOA In-Person Training

April 10 & 11, 2024 | 8:30 am – 4:30 pm CT

Hyatt Regency Bloomington – Minneapolis
3200 E 81st St
Bloomington, Minnesota

Details:
This course, focused on GFOA's Best Practices in Debt Management, will help participants better understand how to develop appropriate policies and procedures for issuing debt and overall debt management. In addition to the best practices, the course will feature practical examples, details on recent federal rulemaking, including how it impacts governments, and interactive discussion on the following topics:

- Debt Issuance
- Selecting Municipal Finance Professionals
- Disclosure Practices and Investor Relations
- Financing Instruments and Techniques
- Federal Securities and Tax Laws Applicable to Issuers of Municipal Debt
- Ongoing Debt Management

Click here to learn more and to register.

Revenue Policies: GFOA In-Person Training

January 23, 2024 | 8:30 a.m.-4:30 p.m. ET

Grand Hyatt DC
1000 H Street
Washington, District Of Columbia

Details:

When we talk about developing a budget that supports a thriving community, we often spend most of our time and energy thinking about the expenditure side of the equation: what are the local government's priorities and goals and how much is it going to spend to achieve those goals? The revenue side of the equation is just as important to building a strong financial foundation that supports a thriving community, though. In this course, learn how to evaluate your local government's revenue portfolio using the five pillars of the Financial Foundations Framework.

Please note that this course is *not* focused on the technical aspects of forecasting revenue.

Click here to learn more and to register.

GFOA 2023 Awards for Excellence Winners Announced.

The six winners are examples, above all, of what comes from embracing change. These include stories of resilience, financial stewardship, and community consensus that help one town recover after a natural disaster, while another makes a generational investment in the future.

LEARN MORE

Prep School Loomis Chaffee's Muni Deal Showcases Soaring Demand.

- **School's acceptance rate shrinks to 17%, an all-time low**
- **Henry Kravis's alma mater charges boarders $68,420 per year**

This week an exclusive Connecticut prep school is selling a small bond issue with a big story.

It's about the growing demand for admission to elite institutions from parents striving to give what many view as the gateway to the good life for their children.

The Loomis Chaffee School was chartered in 1874 and has alumni including KKR & Co. co-founder Henry Kravis and George Shultz, secretary of state during the Reagan Administration. It's seeking to raise $13.9 million in revenue bonds via the Connecticut Health and Educational Facilities Authority.

Continue reading.

Bloomberg Markets

By Joseph Mysak Jr

December 13, 2023

Bloomberg Muni Market Breakdown.

Nick Venditti, Senior Fixed Income Portfolio Manager at Allspring Global Investments, joins to discuss the bond market and gives his Fed outlook. Hosted by John Tucker and Bailey Lipschultz.

Listen to audio.

Dec 15, 2023

Muni Market's Mega Rally 'Likely Unsustainable,' BlackRock Says.

BlackRock Inc. says the municipal-bond market's rip-roaring rally is probably unsustainable.

US state and local debt posted a historic return of more than 6% in November and another 0.7% already in the first part of December. Those types of gains are very unusual for the traditionally staid muni market where investors are accustomed to monthly returns less than 1%.

After the rally that began in November, US state and local debt has gotten expensive compared to US Treasuries. BlackRock's muni team said in a note that the "trajectory of the rally is likely unsustainable" and noted the high valuations.

Continue reading.

Bloomberg Markets

By Amanda Albright

December 11, 2023

Municipal Bond Funds Are Hemorrhaging Cash Due to This Tax-Cutting Trade.

- **Muni mutual funds see outflows despite strong November gains**
- **Investors can reduce tax bills by selling holdings at a loss**

It's vexing for managers of municipal bond funds: The market just had its biggest monthly rally in 41 years, yet investors keep pulling out their cash.

Blame the taxman.

Even after the November rebound, the deep losses that piled up since 2022 have left the prices of some bonds still deeply in the red. That's creating an opportunity for investors to reduce tax bills by cashing out of mutual funds at a loss — providing a tax write down — and then reinvesting the proceeds.

Continue reading.

Bloomberg Wealth

By Amanda Albright

December 11, 2023

Massachusetts Municipal Wholesale Electric Co. Project 202A (Cotton Solar

Project): Fitch New Issue Report

The ‘AA–’ rating reflects the credit quality of the two largest of the six participants in the Massachusetts Municipal Wholesale Electric Company (MMWEC) Project 2020A (the Cotton Solar Project): Ipswich Electric Light Department (34.8%) and Peabody Municipal Light Plant (29.0%). Payments from the project participants — all municipal electric utilities operating in Massachusetts — are made pursuant to identical take-or-pay power sales agreements (PSAs) with MMWEC that are absolute and unconditional, irrespective of whether the project is completed or operable. The rating is capped by the credit quality of the two largest participants given the sizable share of the project each of those participants holds, and the limited 25% step-up provision in the PSAs. Amounts collected from the remaining participants would be insufficient to meet either of those utilities’ obligations in the event of a default.

ACCESS REPORT

Dallas, Texas: Fitch New Issue Report

Key Rating Drivers Revenue Framework: ‘aaa’: Strong revenue growth prospects are based on expectations for continued economic expansion. The assessment also reflects the city’s high independent legal ability to increase operating revenues. Expenditure Framework: ‘a’: The city’s pace of spending is expected to be marginally above revenue growth given ongoing service demands and inflationary pressures. Increased pension contributions will keep carrying costs at an elevated level; a rapid debt amortization rate also contributes to the elevated carrying costs. Long-Term Liability Burden: ‘aa’: The long-term liability burden currently represents a moderate 12% of personal income. Recent pension reforms to both the civilian and uniform plans have reduced the combined total liability and, in conjunction with continued economic growth, are expected to keep the long-term liability burden within the current range. Operating Performance: ‘aaa’: The city of Dallas’ gap-closing capabilities and healthy reserves position it to maintain the highest financial resilience through future business downturns. Elevated debt and retiree benefit outlays will maintain a certain amount of pressure on the city’s budget management practices.

ACCESS REPORT

Fri 15 Dec, 2023

TAX - VIRGINIA

Martin v. Lafountain

Court of Appeals of Virginia, Richmond - December 12, 2023 - S.E.2d - 2023 WL 8587795

Taxpayer who owned residential property near a for-profit halfway house, which was operated in residential neighborhood, filed petition for declaratory relief against city’s commissioner of revenue, seeking declaration that the business run by owner and lessee of the property at issue was subject to business tax and that the business tax should be applied retroactively.

The Roanoke Circuit Court sustained commissioner’s demurrer and dismissed taxpayer’s petition with prejudice. Taxpayer appealed.

The Court of Appeals held that taxpayer did not have local taxpayer standing to challenge commissioner's failure to impose business taxes on owner and lessee of the property at issue.

Taxpayer did not have local taxpayer standing to bring petition for declaratory relief to challenge failure of city's commissioner of revenue to impose business taxes on owner and lessee of neighboring residential property on which a for-profit halfway house was operated; local taxpayer standing was limited to challenging expenditures, and even if commissioner's inaction could be treated as an expenditure, taxpayer made only speculative assertions that city expenditures would have to decrease or city taxes would need to increase in order to meet city's expenses if commissioner failed to collect business taxes from the owner and lessee of the property at issue.

Goldman Sachs and abrdn Optimistic on Muni Bonds in 2024.

This year proved a difficult one for bonds as the Federal Reserve aggressively hiked rates for much of the year. With the rate narrative changing moving into 2024, investors moved back into bonds in a big way beginning in October, including municipal bonds. Alexa Gordon of Goldman Sachs and Jonathan Mondillo of abrdn discussed the performance of muni bonds this year as well as opportunities heading into 2024 at VettaFi's 2024 Market Outlook Symposium.

Attendees were asked if they believed municipal bonds are attractive compared to U.S. Treasuries. Of the advisors participating in the survey, 78% reported they believe municipal bonds are attractive in comparison.

It's an insight that reflected the majority of this year's muni performance according to Alexa Gordon, PM and head of muni ESG at Goldman Sachs. In an environment of rising interest rates, munis offered outperformance compared to U.S. Treasuries. There are still tailwinds for munis heading into the new year, particularly given low supply and high nominal rates.

"I think there's a real potential for munis to continue to get more attractive as we head into 2024," Gordon explained.

Both Gordon and Jonathan Mondillo, head of U.S. fixed income at abrdn, agree that municipal bond attractiveness depends greatly on the time frame. Currently, Mondillo sees less opportunity in high-grade municipal bonds compared to U.S. Treasuries.

"When we dip down into… single A-rated municipals, BBB-rated municipals, and you look at it on a spread basis after tax, we think things look extremely attractive," said Mondillo.

Muni Bonds Prove Resilient in a Difficult Rate Environment

This year proved challenging for bonds in the face of continued and aggressive Fed rate hikes. In the last 30 years, municipal bonds have only generated a negative annual return four times. Munis looked on track to end negatively for the year until October when the inflation and rate narrative changed. Since then, munis have bounced back and look to continue the uptrend heading into 2024.

The outlook for rates appears more favorable looking ahead to 2024. In an environment of interest rate stability, bonds benefit as flows return. "Munis benefit from this even more, given the retail client base," Gordon explained.

Despite aggressive rate hikes and resultant impacts on performance for the majority of the year, the recovery and performance of muni bonds exemplify the value of the asset class. “The fact that we can still end the year with positive returns — it speaks to not only the to the resiliency of the asset class more broadly, seeing the increasing demand, but also the importance of carry,” Gordon explained.

“The short to intermediate range is where we see most of those clients in the retail space playing

Retail investors are primarily concentrated in short to intermediate muni bonds for now. It makes sense, given that yields in municipal bonds between 1-10 years are currently around 3%. That’s 70 basis points above the 20-year average of the related index according to Gordon.

Municipal Bonds: “This is a Great Time to Put Money to Work”

What’s more, muni credit proved resilient this year. Given the strong credit fundamentals, Gordon believes “this is a great time to put money to work” to capture potential highs in muni bonds, even as they retreat from October peaks.

Challenges do exist next year, with many major cities forecasting budget deficits in 2024. However, municipal bonds are well fortified to ride out any economic slowing according to Mondillo. Munis currently carry high rainy day balances and “heavy reserve fund balances”.

In the face of economic slowdown, “municipalities will actually be able to weather that storm quite well,” Mondillo explained. “The asset class overall should insulate investors.”

Looking to the second half of 2024, the potential for rate cuts could prove a tailwind for munis. Investors sought refuge in money market funds and short-duration Treasuries while interest rates soared. Now with markets pricing in rate cuts beginning next year, yields continue to fall and bond prices rise. Increasingly more investors are moving money back into long-duration core bonds, including munis.

The rate path may deviate from current market expectations around Fed rates. That 2024 is also an election year will bring its own volatility to markets.

“There’s a lot of timing questions that are still to be seen,” Gordon explained. It makes predicting the medium-term difficult. For now, Goldman Sachs believes that munis will continue their trend of positive returns moving into 2024. The Goldman Sachs Community Municipal Bond ETF (GMUN) is passive and seeks to generate tax-efficient income. The strategy focuses on higher credit quality within investment grade munis with maturities between 1-15 years.

The abrdn National Municipal Income Fund (VFL) is a closed-end fund. It offers a longer duration strategy within munis and is offering distributions close to 4% tax-exempt.

ETFTRENDS.COM

by KARRIE GORDON

DECEMBER 14, 2023

Munis Are Thankful for November

November update

- Municipal bonds posted historic total returns of 5.90% in November.
- Rallying interest rates led the way, while strong demand aided outperformance versus Treasuries.
- Although valuations are tight, favorable seasonal dynamics still warrant optimism into the new year.

Market overview

Municipal bonds posted their strongest month in over 40 years in November. Falling interest rates provided leadership as slowing economic growth, moderating inflation, and a second-consecutive pause from the Federal Reserve prompted more dovish forward monetary policy expectations and pushed 10-year Treasury yields lower by 61bps. The asset class further outperformed comparable Treasuries, as investors positioned for improved demand and a dearth of supply into the new year. The S&P Municipal Bond Index returned a whopping 5.90%, bringing the yearto-date total return to 3.58%. Longer-duration bonds (i.e., more sensitive to interest rate changes), lower-rated credits, and the tobacco, Puerto Rico, hospital, and housing sectors performed best.

Issuance remained elevated in November at $36 billion, 11% above the five-year average, bringing the year-to-date total to $337 billion. However, supply was easily absorbed as investors raced to lock in high absolute yields as opportunities dwindle. As a result, deals were oversubscribed 6.3 times on average, above the year-todate average of 4.2 times. At the same time, mutual fund outflows slowed as performance rebounded. Late in the month, the asset class posted its first weekly inflow since August — notable given that November typically contends with sizable tax-loss harvesting.

[Continue reading.]

advisorperspectives.com

by Peter Hayes, James Schwartz, Sean Carney of BlackRock, 12/13/23

[Madison Sells Millions Worth Of Bond Anticipation Notes.]

Proceeds of the bonds will be used to finance the Town's new elementary school.

MADISON, CT — On Thursday, December 7th the Town of Madison sold $10,500,000 in 20-year bonds and $30,000,000 in one-year bond anticipation notes through a competitive bid process. The bonds were purchased by FHN Financial Capital Markets at an effective interest rate of 3.322%. The Town received a total of fourteen (14) binds on the bonds with rates ranging from 3.322% to 3.706%. The notes were purchased by Jefferies LLC at an effective interest rate of 3.213%. The Town received a total of six (6) bids on the notes with rates ranging from 3.213% to 3.369%.

According to the Town's municipal advisor, Munistat Services, Inc., the Town's debt is attractive to municipal bond investors because of the Town's superior bond rating and strong reputation in the market.

In connection with the sale, Moody's Investors Service affirmed the Town's "Aaa" long-term bond rating and applied the same rating to the new bonds. Moody's gave the notes its highest short-term rating, "Moody's Investment Grade 1 or MIG 1". In its rating report, Moody's described the Town as having "a strong suburban economy anchored by very high resident income, well above average home values". Moody's listed the Town's location, strong resident wealth, consistent financial operations and low long-term liabilities and fixed costs, as credit strengths.

Continue reading.

Patch.com

by Alfred Branch

Sun, Dec 10, 2023 at 11:04 am ET

[Arizona Sports-Complex Bondholders Are Nearly Wiped Out in Sale.]

- **Financed with $280 million of munis, park sold in bankruptcy**
- **Chad Brownstein's RMR invests in sports and infrastructure**

A bankrupt Arizona youth-sports complex was sold in a transaction that will virtually wipe out bondholders, capping a collapse that marks one of the biggest municipal-debt defaults since the pandemic.

The project was financed with $280 million of bonds issued through the Arizona Industrial Development Authority in 2020 and 2021, when still rock-bottom interest rates were fueling demand for high-yield debt.

But the sprawling sports-field venue outside of Phoenix, known as Legacy Park, faltered as the pandemic upended the sports industry and interest in the facility proved lackluster. It subsequently defaulted on the debt and filed for bankruptcy in May.

Continue reading.

Bloomberg Markets

By Martin Z Braun

December 14, 2023

[Pennsylvania Supreme Court Holds City Wage Tax Not Required to Credit Delaware State Income Tax.]

The Pennsylvania Supreme Court held that the City of Philadelphia is not required provide a city wage tax credit for income tax payments that a resident made to another state. For the purposes of a dormant Commerce Clause analysis, the court found that state and local taxes do not need to be considered in the aggregate. Therefore, Philadelphia did not violate the dormant Commerce Clause by imposing its wage tax on a resident who worked exclusively in Wilmington, Delaware, and crediting her for Wilmington Earned Income Tax payments while not providing an additional credit for the resident's payments of Delaware Income Tax. In reaching its decision, the court first concluded that the wage tax was a "purely local tax … promulgated by Philadelphia's City Council and … collected … for the sole benefit of the City and its residents," and not a "state tax masquerading as a local tax" that would require the two taxes to be considered in tandem. The court then held that Philadelphia's tax scheme did not discriminate against interstate commerce because it was internally consistent as any excess tax paid was a result of Delaware's higher income tax rate rather than any inherent discrimination in Philadelphia's tax scheme itself and externally consistent as the imposition was justified by the City's provision of municipal benefits and services to its residents and of a full credit for the local Wilmington tax.

Diane Zilka v. Tax Review Board City of Philadelphia, No. 20 EAP 2022 and 21 EAP 2022 (Pa. Nov. 22, 2022).

Eversheds Sutherland (US) LLP – Timothy A. Gustafson and Dennis Jansen

December 13 2023

State of New York: Fitch New Issue Report

Dedicated Tax Key Rating Drivers PIT Structure Enhances Appropriation Incentive: An annual appropriation requirement caps the rating at the state's 'AA+' IDR. A statutory provision that deprives the state's operating funds of at least $12 billion (about 11% of fiscal 2023 state operating funds tax revenue) in the event of non-appropriation effectively eliminates appropriation risk. Solid Growth Prospects: Pledged PIT receipts over time are likely to grow above the long-term rate of inflation, similar to Fitch's expectations for the broad-based, wealthy and service-dominated New York State economy and consistent with a 'aa' growth prospects assessment. Ample Cushion Despite Economic Sensitivity: While the PIT receipts are economically sensitive, reliance on residual receipts for general operations and the 2x ABT prevent overleveraging of the pledged revenue stream and provide ample cushion to absorb potential volatility, warranting a 'aaa' resilience assessment.

ACCESS REPORT

Mon 11 Dec, 2023

- Cybersecurity Disclosure Guidance for Municipal Bonds: Cozen O'Connor
- A Hidden Risk in the Municipal Bond Market: Hackers
- Two Recent Cyberattacks on Water Systems Highlight Vulnerability of Critical Infrastructure.
- GFOA: Distinguishing Between Internal Cash Flows and Internal Resource Flows
- MSRB Seeks Feedback on Impact of Municipal Market Regulation on Small Firms.
- RBC Is Getting More Resumes as It Becomes No. 2 Muni Underwriter.
- And Finally, You Have The Right To Remain …. Oh, Never Mind is brought to us this week by *City of Tallahassee v. Florida Police Benevolent Association, Inc.*, in which the court began its opinion thusly, "This case arises from two unrelated but contemporaneous episodes in which a Tallahassee police officer, asserting self-defense, used lethal force in detaining a suspect." (Not sure about you, but that hardly strikes us as particularly benevolent.). If there is one thing that we can all agree upon in this crazy mixed-up world of ours – one thing that can unite us – it's that shot dead equals thoroughly and completely detained.

PUBLIC UTILITIES - CALIFORNIA

Villarroel v. Recology, Inc.

Court of Appeal, First District, Division 3, California - December 1, 2023 - Cal.Rptr.3d - 2023 WL 8291665

Customers brought putative class action against refuse collection company for violations of Unfair Competition Law (UCL) and Consumers Legal Remedies Act (CLRA), intentional and negligent misrepresentation, fraudulent concealment, breach of contract, and other claims, seeking restitution, injunctive relief, and compensatory and punitive damages based on allegations that company bribed city official to facilitate approval of its application for increased refuse collection rates.

Company demurred, and trial court sustained demurrer in part and overruled it in part. Customers filed amended complaint, and company again demurred. The Superior Court sustained demurrer without leave to amend, finding claims were precluded by filed rate doctrine. Customers appealed.

The Court of Appeal held that:

- Filed rate doctrine did not preclude claims for injunctive relief;
- Concerns of nondiscrimination did not warrant applying filed rate doctrine to preclude claims for restitution;
- Concerns of nonjusticiability did not warrant applying filed rate doctrine to preclude claims for restitution; and
- Doctrine of res judicata did not preclude customers' claims based on prior judgment in law enforcement action.

PUBLIC UTILITIES - FEDERAL

PJM Power Providers Group v. Federal Energy Regulatory Commission

United States Court of Appeals, Third Circuit - December 1, 2023 - F.4th - 2023 WL 8291307

Electricity generators, nonprofit associations representing electricity generators, Pennsylvania Public Utility Commission, and Public Utilities Commission of Ohio petitioned for review, under Federal Power Act (FPA), of Federal Energy Regulatory Commission's (FERC) order approving electricity tariff, filed by regional transmission operator (RTO), which took effect by operation of law after FERC commissioners deadlocked two-to-two and failed to issue order accepting or denying change in tariff within 60 days.

The Court of Appeals held that:

- Petitioners had associational standing to challenge FERC's order;
- FERC's constructive action by operation of law was reviewable under same deferential standards of FPA and Administrative Procedure Act (APA) as for actual action;
- Judicial review encompassed commissioners' mandatory statements explaining their reasons for approving or denying tariff; and
- FERC's rationale for approving tariff was neither arbitrary nor capricious and was supported by substantial evidence.

Electricity generators had associational standing to seek review, under FPA, of Federal Energy Regulatory Commission's (FERC) order approving regional transmission operator's (RTO) tariff that took effect by operation of law, even though generators did not articulate any injuries in their opening briefs, since joint appendix incorporated records from generators' protest before FERC that demonstrated their members suffered economic losses from new tariff that became effective by operation of law due to FERC commissioners deadlocking and failing to issue order accepting or denying change within 60 days, and affidavit attached to one generator's reply brief elaborated on those harms, so generators articulated redressable concrete and particularized injury traceable to FERC approving tariff.

Pennsylvania Public Utility Commission and Public Utilities Commission of Ohio had associational standing to seek review, under FPA, of Federal Energy Regulatory Commission's (FERC) order approving regional transmission operator's (RTO) new tariff that took effect by operation of law due to FERC commissioners deadlocking and failing to issue order accepting or denying change within 60 days, since state entities established cognizable injury by demonstrating they represented states' interests in protecting their citizens and electric ratepayers in traditional government field of utility regulation, their injury was traceable to FERC's approval of tariff by operation of law, and their injury was redressable because vacating or rescinding order would reinstate prior tariff.

Federal Energy Regulatory Commission's (FERC) order accepting electricity tariff that took effect by operation of law, after FERC commissioners deadlocked two-to-two and failed to issue order accepting or denying change in tariff within 60 days, was reviewable under same deferential substantial evidence standards set forth in FPA and Administrative Procedure Act (APA) for FERC's orders that took effect by FERC's actual action rather than constructive action by operation of law, and thus, Court of Appeals was not required to review de novo whether new tariff was just and reasonable as predicate to deciding whether FERC's discretion to approve was properly exercised, since FPA and APA prohibited court from substituting its judgment for that of FERC.

Judicial review of Federal Energy Regulatory Commission's (FERC) order accepting electricity tariff that took effect by operation of law, under FPA, after commissioners deadlocked two-to-two and failed to issue order accepting or denying change in tariff within 60 days, encompassed entire record, including commissioners' statements explaining their reasoning; commissioner's statements did more than record each individual rationale for affirming or rejecting rate filing, as they played integral role in judicial review by collectively illuminating FERC's reasons for inaction construed as affirmative order, so thorough consideration of entire record was required to ensure commissioners who did not find tariff unlawful engaged in decisionmaking that was reasoned, principled, and based on record.

FPA's provision, stating that if Federal Energy Regulatory Commission (FERC) permitted 60-day period to expire without issuing order accepting or denying change in rates filed by public utilities because commissioners were divided two against two as to lawfulness of change or if FERC lacked quorum, then failure to issue order accepting or denying change "shall be" considered to be order issued by FERC accepting that change, did not contradict FERC's enabling statute, stating that FERC's actions "shall be" determined by majority vote of members present, since FPA provision concerned only how agency inaction should be construed for limited purposes of rehearing and review but did not illuminate what constituted agency action per se.

Even if Federal Energy Regulatory Commission's (FERC) enabling statute, stating that FERC's actions "shall be" determined by majority vote of members present, were contradicted by FPA's provision, stating that if FERC permitted 60-day period to expire without issuing order accepting or denying change in rates filed by public utilities because commissioners were divided two against two as to lawfulness of change or if FERC lacked quorum, then failure to issue order accepting or denying change "shall be" considered to be order issued by FERC accepting that change, specific FPA's terms prevailed over general terms of enabling statute, as Congress identified narrow circumstances in FPA under which to construe FERC's inaction, in particular way, for specific purpose.

Federal Energy Regulatory Commission's (FERC) rationale set forth in joint statement by two commissioners, construing FERC's deadlocked vote by articulating their reasons for approving as just and reasonable regional transmission operator's (RTO) new electricity tariff that took effect by operation of law, under FPA, was neither arbitrary nor capricious and was supported by substantial evidence, including that new tariff permissibly reflected shift away from regime embraced in prior tariff, to address concern that some market participants might have incentive to depress market clearing prices by offering supply at less than competitive level, and commissioners determined that investors' reliance on prior tariff did not tilt balance against those policy concerns.

EMINENT DOMAIN - FEDERAL

Barlow v. United States

United States Court of Appeals, Federal Circuit - November 22, 2023 - F.4th - 2023 WL 8102421

In rails-to-trails case, owners of property abutting railroad line filed suit against United States, seeking compensation for alleged Fifth Amendment taking effected by Surface Transportation Board (STB) issuing notice of interim trail use (NITU) for railroad line, pursuant to National Trails System Act, thereby allowing railroad and Illinois Department of Natural Resources (DNR) to negotiate railbanking and interim trail use agreement for railroad line.

The Court of Federal Claims granted government summary judgment. Property owners appealed.

The Court of Appeals held that:

- Right-of-way agreements conveyed easements to railroad limited to railroad purposes;
- Deeds that included words "for railroad purposes" conveyed easements to railroad;
- Railroad at most held easements on property for which deeds were lost; and
- Owners held fee simple interests to centerline of property for which deeds were lost.

Under Illinois law, right-of-way agreements conveyed easements to railroad, rather than fee simple estates, thus supporting takings claims by owners of parcels abutting railroad line converted to trail use, pursuant to National Trails System Act; right-of-way agreements rebutted statutory presumption that fee simple estate was conveyed to railroad, by expressly conveying "RIGHT OF WAY" as object of grant in granting clause, agreements were titled "RIGHT OF WAY" and granted right of way for railway "over or across" and "on or across" parcels, consistent with intent to convey easement, and agreements promised to "make all proper and necessary deeds to convey in fee simple to said Company, said RIGHT OF WAY," meaning railroad acquired a fee in the easement or right-of-way.

Under Illinois law, deeds that included words "for railroad purposes" conveyed easements to railroad, rather than fee simple estates, in property conveyed for railroad line, thus supporting takings claims by owners of parcels abutting railroad line that was converted to trail use, pursuant to National Trails System Act, since deeds rebutted statutory presumption, under Illinois Conveyances Act, that fee simple estate was conveyed to railroad, by language in granting clause of deeds that restricted right of conveyance to lesser estate, in other words, "for railroad purposes."

Under Illinois law, owners of property abutting railroad line established that written instruments conveying property to railroad for railroad line, if such instruments ever existed, were lost or destroyed, thus shifting burden to government to establish contents of those instruments in defending against owners' claims seeking just compensation for alleged taking effected by Surface Transportation Board (STB) issuing notice of interim trail use (NITU) for railroad line, pursuant to National Trails System Act, since owners produced evidence of diligent search, including valuation schedules, written requests, and subpoenas to acquire documents related to railroad's acquisition of use rights, but owners were unable to locate conveyance instruments.

Under Illinois law, government failed to demonstrate, with clear and convincing evidence, content of lost or destroyed deeds conveying property to railroad for railroad line, and thus, deeds were presumed to be void, in evaluating property owners' claims seeking just compensation for alleged taking of their property abutting railroad line effected by Surface Transportation Board (STB) issuing notice of interim trail use (NITU) for railroad line, pursuant to National Trails System Act, even though government pointed to valuation schedules in attempt to establish that specific instruments existed as to conveyance of property for railroad line, since valuation schedules did not specify interests acquired by railroad and instead merely noted type of instrument as contract or deed memo.

In Illinois, railroad could have at most obtained prescriptive easements on property conveyed to railroad for railroad line, pursuant to Illinois Constitution, providing that fee of land taken for railroad tracks, without consent of owners, was required to remain in such owners, subject to use for which it was taken, thus supporting takings claims by owners of property abutting railroad line after Surface Transportation Board (STB) issued notice of interim trail use (NITU) for railroad line, pursuant to National Trails System Act, since there were no valid conveyance instruments expressly conveying property to railroad, as lost or destroyed deeds were presumed to be void due to government's failure to establish their contents.

Under Illinois law, owners of property abutting railroad line held fee simple interests to centerline of railroad corridor, thus supporting their claims seeking just compensation for alleged taking of their property effected by Surface Transportation Board (STB) issuing notice of interim trail use (NITU) for railroad line, pursuant to National Trails System Act, since presumption that owners had fee simple interests to centerline of railroad corridor was unrebutted because railroad could at most obtain easements, not fees, due to voided lost instruments of conveyance.

PUBLIC RECORDS - FLORIDA

[City of Tallahassee v. Florida Police Benevolent Association, Inc.]

Supreme Court of Florida - November 30, 2023 - So.3d - 2023 WL 8264181

Two city police officers who fatally shot suspects threatening them with deadly force brought action, along with their union, against city, seeking declaratory judgment, writ of mandamus, and injunctive relief in connection with city's intent to publicly disclose officers' identities at media's request.

Various media organizations intervened, asserting that city police department had failed to respond to their request for public records identifying the two officers.

Following a hearing, the Circuit Court denied the officers' and the union's requests for relief. Union appealed. The First District Court of Appeal reversed. City and intervenors appealed.

The Supreme Court held that:

- Victim confidentiality provision of Florida Constitution does not guarantee a generalized right of

- anonymity to crime victims, and
- Victim confidentiality provision of Florida Constitution did not preclude city from disclosing officers' names and identities to media.

Victim confidentiality provision of Florida Constitution does not guarantee to a crime victim the categorical right to withhold his or her name from disclosure or a generalized right of anonymity.

Victim confidentiality provision of Florida Constitution did not preclude city from disclosing to media names and identities of two city police officers who had fatally shot suspects who had threatened officers with deadly force.

MUNICIPAL GOVERNANCE - LOUISIANA

Caldwell v. City of Shreveport

Supreme Court of Louisiana - November 17, 2023 - So.3d - 2023 WL 7983824 - 2023-00182 (La. 11/17/23)

City marshal petitioned for writ of mandamus or, in alternative for damages, based on claim that city had violated its statutory obligations to fund office of marshal for more than ten years.

Following bench trial, District Court issued judgment awarding marshal $1,527,371.58. Marshal appealed, and the Court of Appeal vacated in part and rendered judgment increasing award to marshal to $4,587,572.85. City petitioned for writ of certiorari.

The Supreme Court held that:

- City marshal had no cause of action against city to retroactively recover expenses accrued by marshal's office over period of years, and
- City's statutory obligation to fund office of city marshal was limited to physical office of marshal and its maintenance and expenses, which could be defrayed under statute that created special account for city marshal funded by revenues generated by costs assessed in city court criminal matters.

EMINENT DOMAIN. - MISSISSIPPI

United States Upon Relation of Tennessee Valley Authority v. Easements and Rights-of-Way Over Land in DeSoto County, Mississippi

United States District Court, N.D. Mississippi, Oxford Division - November 9, 2023 - F.Supp.3d - 2023 WL 7412938

United States, upon relation and for use of Tennessee Valley Authority (TVA), filed condemnation action to acquire permanent easements and rights-of-way across parcels of owner's golf course property, in order for TVA to build and maintain electric power transmission line project.

Government moved to exclude testimony by owner's retained expert offering his appraisal of value of property rights in order to determine just compensation.

The District Court held that:

- Expert's methodology for determining just compensation was not reliable;

- Expert's appraisal methodology violated unit rule;
- Expert improperly determined highest and best use of easement area was residential;
- Expert improperly valued taking of easement area as fee take;
- Expert improperly opined that owner should be compensated for frustration-of-purposes damages;
- Expert's calculation of cost-to-cure damages was improper; and
- Expert's ipse dixit opinion of incurable damages to remaining property was unsupported.

MUNICIPAL GOVERNANCE - NEW YORK

Rochester Police Locust Club, Inc. v. City of Rochester

Court of Appeals of New York - November 20, 2023 - N.E.3d - 2023 WL 8007121 - 2023 N.Y. Slip Op. 05959

Police union, its president, and an individual officer commenced hybrid article 78 proceeding and declaratory-judgment action against, among others, the city, the mayor, and the city council, alleging that newly enacted local law illegally transferred virtually all authority over police discipline to a police accountability board (PAB).

The Supreme Court determined that portions of the local law were invalid and unenforceable. City council appealed. The Supreme Court, Appellate Division, affirmed as modified.

The Court of Appeals held that:

- City's repeal of its charter's provision that granted the commissioner of public safety, among other things, cognizance, jurisdiction, supervision and control of the police bureau, including the officers and members thereof, meant that, in the absence of a collective-bargaining agreement permitting it, city could not enact a local law transferring virtually all authority over police discipline to a PAB; and
- Even if that charter provision had not been repealed, the provision would not have permitted the challenged local law.

ZONING & PLANNING - VIRGINIA

Calway v. City of Chesapeake

Court of Appeals of Virginia, Norfolk - November 28, 2023 - S.E.2d - 2023 WL 8192080

In zoning enforcement proceeding, the City of Chesapeake General District Court entered judgment in favor of property owner and dismissed action.

City appealed. The Circuit Court entered judgment in favor of city. Owner appealed.

The Court of Appeals held that:

- As a matter of first impression, notice of zoning violation was insufficient to comply with statutory requirement that such a notice, to be valid, include a statement informing recipient "that the decision shall be final and unappealable if not appealed within 30 days";
- Failure to comply with statutory notice requirements renders a zoning enforcement action voidable; and
- Defective notice was not rendered harmless by city's inclusion of a full notice of appeal rights in subsequent determination letter.

Notice of zoning violation sent to property owner arising from unpermitted car port was insufficient to comply with statutory requirement that such a notice, to be valid, include a statement informing recipient “that the decision shall be final and unappealable if not appealed within 30 days,” where notice stated that zoning decision could be appealed to zoning board of appeals within 30 days, that appeal would cost $175, and that further information could be obtained on city’s website, but notice did not include any explicit language about the finality of a zoning determination if it was not appealed.

City’s defective notice to property owner of alleged zoning violation due to unpermitted car port, which notice failed to contain necessary information about the finality of a zoning determination if it was not appealed, was not rendered harmless by city’s inclusion of a full notice of appeal rights in subsequent determination letter, where determination letter did not include required next steps, such as correcting the violation by a specified date, or the impending risk of enforcement action if the carport was not removed, but rather simply pointed back to original defective notice.

PUBLIC CONTRACTS - WASHINGTON

Alexandria Real Estate Equities, Inc. v. University of Washington

Court of Appeals of Washington, Division 2 - December 5, 2023 - P.3d - 2023 WL 8401868

Developer, as taxpayer and disappointed bidder on real estate development contract with public university, brought action against university, contending university lacked statutory authority to enter into transaction with successful bidder and that university failed to use competitive bidding procedures required under public works law.

University moved for summary judgment, and during pendency of motion, developer filed amended complaint adding claim that university’s developer selection process was arbitrary and capricious.

The Superior Court granted summary judgment on first two claims, and following bench trial on third claim, entered judgment in favor of university, finding developer lacked standing and university did not act arbitrarily and capriciously. Developer appealed.

The Court of Appeals held that:

- University had statutory authority to enter into ground lease transactions for non-enumerated type of campus building;
- University was not required to competitively bid project under statute that would apply if it incurred at least $90,000 in costs;
- Developer failed to establish contracts at issue were never executed, for purposes of disappointed-bidder standing; and
- Damages developer allegedly incurred solely as disappointed bidder did not constitute special injury supporting taxpayer standing.

BALLOT INITIATIVE - WASHINGTON

Jewels Helping Hands v. Hansen

Court of Appeals of Washington, Division 3 - December 7, 2023 - P.3d - 2023 WL 8462609

Advocates for unhoused persons brought action against local voter, city, and county seeking declaratory and injunctive relief against local initiative placed on general election ballot that sought to expand city ordinance list of locations in city where camping was banned regardless of whether shelter space was available, on grounds that initiative exceeded scope of local initiative power.

The Superior Court dismissed the complaint. Advocates appealed and asked for an emergency injunction prohibiting the initiative from appearing on the ballot. After Court of Appeals commissioner granted the motion, the emergency injunction was lifted and appeal was set for accelerated review.

The Court of Appeals held that:

- Initiative did not improperly seek to exercise power reserved solely to city council;
- Initiative did not conflict with controlling state law; and
- Initiative was legislative, not administrative in character.

Scope of local initiative that sought to expand city ordinance list of locations in city where camping was banned regardless of whether shelter space was available applied only to public property, for purposes of determining whether initiative sought to exercise powers delegated exclusively to city council or was an appropriate subject for electorate's involvement in subject matter challenge brought by advocates for unhoused persons; purpose of municipal code to which initiative would add was to regulate control and obstruction of public rights-of-way in the city, and initiative limited application to city-owned property.

Local initiative that sought to expand city ordinance list of locations in city where camping was banned regardless of whether shelter space was available sought to regulate those who used city property regularly, and not the property owner or holder, and therefore, was not a zoning ordinance, for purposes of determining whether initiative sought to exercise powers delegated exclusively to city council or was an appropriate subject for electorate's involvement in subject matter challenge brought by advocates for unhoused persons; initiative did not impose any penalties on any owner or holder of property who ran afoul of its provisions, but rather, the only people who could suffer penalties were those whom the law would characterize as guests or trespassers.

Local initiative that sought to expand city ordinance list of locations in city where camping was banned regardless of whether shelter space was available fell within city's general police powers, and as such, did not improperly seek to exercise power reserved solely to city council, for purposes of subject matter challenge brought by advocates for unhoused persons, because initiative addressed public safety concerns regarding camping and storage of personal property in public areas.

Local initiative that sought to expand city ordinance list of locations in city where camping was banned regardless of whether shelter space was available did not conflict with controlling state law on homeless response planning, as the state law did not say anything about what cities may or may not do about individuals who were currently unhoused and even if initiative overlapped with section of the state law that required each county's homeless housing task force to develop a five-year homelessness housing plan, the law did not require cities or their legislative authority to implement the county task force guidelines.

Local initiative that sought to expand city ordinance list of locations in city where camping was banned regardless of whether shelter space was available qualified as legislative, as opposed to an administrative matter falling outside scope of local initiative power, because it was permanent, not temporary, and applied generally throughout the city, not just to specific parcels of land.

PREEMPITON - WEST VIRGINIA

SWN Production Company, LLC v. City of Weirton

West Virginia Intermediate Court of Appeals - November 1, 2023 - S.E.2d - 2023 WL 7178284

Natural gas exploration and production company filed petition for writ of certiorari seeking review of city board of zoning appeals' denial of its application for conditional use permit to operate a drilling site within city, and separately filed complaint seeking declaration that West Virginia Oil and Gas Act or Natural Gas Horizontal Well Control Act preempted city zoning ordinances that regulated location of oil and gas drilling sites.

After the two matters were consolidated, the Circuit Court entered order dismissing the preemption claim. Company appealed.

The Intermediate Court of Appeals held that:

- Appeal was not rendered moot by city's repeal of ordinance;
- Ordinances were not expressly preempted;
- Repealed ordinance was subject to implied preemption; and
- Horizontal Well Act preempted city's drilling permit approval scheme under ordinance that regulated location of oil and gas drilling sites.

City's repeal of development ordinance that increased drilling site setback from 200 feet to 2,500 feet from any residential, church, or school use and removed oil and gas extraction as permitted conditional use anywhere in city except industrial-zoned districts did not moot natural gas exploration and production company's appeal of circuit court's dismissal of its claim that the ordinance and the previous development ordinance were preempted by the Oil and Gas Act or the Horizontal Well Act, even though the repealed ordinance appeared to have eliminated the primary setback requirement at issue in the case, where there were still additional steps and regulatory requirements under re-enacted previous development ordinance before company could proceed with drilling.

City zoning ordinances that regulated site location for oil and gas development were not expressly preempted by Oil and Gas Act or Horizontal Well Act, where there was no provision in Land Use Planning Act, which gave municipalities ordinances authority to enact zoning ordinances, that exempted oil and gas development from zoning laws, while it did contain express preemptions for other uses, such as group residential facilities and essential utilities and equipment.

Under repealed city zoning ordinance regulating oil and gas development, there was direct conflict with Horizontal Well Act and thus, ordinance was subject to implied preemption, where ordinance's and state statute's setback requirements could not be reconciled, as ordinance imposed setback requirement on drilling sites that was 2,500 feet, while the state statute only required setback requirement of 625 feet.

City's drilling permit approval scheme under zoning ordinance which regulated location of oil and gas drilling sites could not be reconciled with language of state's Horizontal Well Act, which vested West Virginia Department of Environmental Protection (WVDEP) with sole and exclusive authority to regulate permitting and location of horizontal gas wells, and thus, conflict preemption applied to city's zoning approval scheme, so that city could not hinder natural gas exploration and production company's ability to begin drilling after WVDEP approved a permit under state's permitting program.

[SIFMA US Municipal Bonds Statistics.]

SIFMA Research tracks issuance, trading, and outstanding data for the U.S. municipal bond market. Issuance data is broken out by bond type, bid type, capital type, tax type, coupon type and callable status and includes average maturity. Trading volume data shows total and average daily volume and has customer bought/customer sold/dealer trade breakouts. Outstanding data includes holders' statistics. Data is downloadable by monthly, quarterly and annual statistics including trend analysis.

YTD statistics include:

- Issuance (as of November) $352.6 billion, -4.9% Y/Y
- Trading (as of November) $12.9 billion ADV, -7.7% Y/Y
- Outstanding (as of 3Q23) $4.0 trillion, -0.3% Y/Y

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December 7, 2023

S&P CreditWeek: What Are The Biggest Risks To Credit Markets In 2024?

View S&P's CreditWeek.

7 Dec, 2023

GFOA: Distinguishing Between Internal Cash Flows and Internal Resource Flows

Many governments incorrectly recognize inflows and outflows in the fund from or to which the initial cash flow occurs, rather than treating it as simply the cash conduit, effectively "grossing-up" the reported resource flows in that fund.

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Government Finance Officers of America

Publication date: October 2023

Author: Michele Mark Levine

RBC Is Getting More Resumes as It Becomes No. 2 Muni Underwriter.

- **RBC rose three spots, managing $32 billion in debt this year**
- **Resumes hit muni head Spangler's inbox amid industry upheaval**

RBC Capital Markets is having its best year on record, propelling the Canadian bank to become the No. 2 underwriter of US state and local debt.

Its public finance team led by Bob Spangler has risen three spots this year on Bloomberg's ranking of underwriters to its highest position ever and the best performance of a foreign bank. The top slots have been historically reserved for American behemoths including Bank of America Corp., JPMorgan Chase & Co. and Citigroup Inc.

RBC has been credited with managing over $32 billion of long-term municipal bonds this year, amounting to more than 9% of overall sales, according to data compiled by Bloomberg. That's up 2.7 percentage points from last year, one of the largest gains of any bank, the data shows.

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Bloomberg Markets

By Danielle Moran and Amanda Albright

December 7, 2023

US Tries to Contain Hacking Campaign Targeting Water Systems.

- **Hacking group behind attacks is tied to Iranian government**
- **Aliquippa water authority had to switch to manual systems**

US authorities are working to contain a campaign by Iranian hackers against multiple drinking water and sewage systems around the country.

"We are aware of active targeting by these actors and exploitation," Eric Goldstein, executive assistant director for cybersecurity at the Cybersecurity and Infrastructure Security Agency, told reporters in a call on Monday. A "small number" of water utilities have been compromised, he said, and he urged operators to bolster security.

There has been no known impact on safe drinking water or operational systems, Goldstein said.

Continue reading.

Bloomberg Technology

By Katrina Manson

December 4, 2023
