Articles posted by

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[Introduction to ESG Ratings: Fitch Webinar](#)

22 September 2021 | 16:00 BST | 11:00 EDT

Join us on Wednesday 22 September, 4:00 PM BST, for a presentation of Sustainable Fitch's new ESG Ratings.

For this webinar we are pleased to offer translation into Spanish and Portuguese. Please choose your preferred language on the widget in the webinar console.

Fitch Group's new division, Sustainable Fitch, recently launched a comprehensive range of ESG Ratings products, at both an entity and instrument level, for all asset classes globally.

The ESG Ratings suite is designed to help market players to discriminate the ESG quality of both financial instruments and the entities that issue them. Our ESG Entity Ratings evaluate an entity's activities from an environmental and social perspective, as well as the quality and outcomes of its policies and governance. Our ESG Instrument Ratings assess the ESG credentials of individual bonds or loans in the context of the entity that is issuing them, and where there is a labelled or KPI-linked instrument also provide a standalone assessment of the quality of the framework. Fundamentally, the focus of our ESG Rating analysis is on actions, outcomes, impacts and activities rather than purely on policies and broader commitments. Our instrument analysis looks beyond the labelling to focus on the fundamentals.

The ESG Ratings suite can assess all types of debt instruments (bonds and loans), whether they are labelled, plain vanilla, or structured instruments, as well as any type of entity (corporate, leveraged finance, financial institution, sovereign, supranational and agency (SSA), project finance, public finance and structured finance).

In this session, Andrew Steel, Managing Director, Global Head of Sustainable Fitch, and Gianluca Spinetti, Senior Director, Head of Product Development, will detail the ESG Rating methodology, explain how ratings can be used and discuss findings from the first universe of ratings assigned.

Highlights Include:

- Addressing capital market needs and concerns
- Providing modularity and granularity
- Introduction to ESG Entity Rating, ESG Instrument Rating, and ESG Framework Rating
- Methodology and references used (EU Taxonomy, UN SDGs, EU Green Bond Standard, ICMA guidelines)
- Data and research output

- Facts and findings from assigned ratings

Questions can also be emailed in advance to aymeric.poizot@fitchratings.com

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Environmentally Sustainable Workforce Housing in OZs.

Environmentally Sustainable Workforce Housing in OZs, With Majesty Gayle

How can Opportunity Zones be leveraged to create more affordable housing that has a commitment to sustainability? Majesty Gayle is…

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opportunitydb.com

September 8, 2021

Coalition Building In Opportunity Zones.

Coalition Building In Opportunity Zones, With Bob Richardson

What are some of the biggest lessons learned from the first three years of the Opportunity Zones program? Bob Richardson…

CONTINUE READING »

opportunitydb.com

September 15, 2021

Cincinnati's Billboard Tax Declared Unconstitutional by Ohio Supreme Court Ruling.

The Ohio Supreme Court on Thursday blocked the city of Cincinnati's tax on billboard advertising, saying it violates the billboard operator's First Amendment rights.

The city enacted the tax on billboard advertising in 2018 to help close a $2.5 million budget gap.

Ohio Supreme Court Justice Sharon Kennedy wrote in the majority opinion that "a selective tax creates the intolerable potential of self-censorship by the press and abuse by governmental actors aimed to suppress, compel, or punish speech."

The high court's decision reverses a ruling by the First District Court of Appeals.

Cincinnati City Council imposed the billboard tax, which called for 7% on gross receipts generated by the billboard or an annual minimum fee based on the sign location and size. It was projected to raise $709,000 a year.

Lamar Advantage GP Co. and Norton Outdoor Advertising, which control 90% of Cincinnati's billboard signs, sued to block the tax. The companies said it'd make it unsustainable to operate their least-profitable billboards and 70 to 80 of the 865 signs the companies operate in Cincinnati would be removed.

So where does the First Amendment issue come in? Roughly 25% to 30% of the sign space is donated for public service announcements and the companies' own speech, such as tributes to notable public figures.

Kennedy said that the "press" includes not only newspapers, books, and magazines, but has been extended to many other media, including cable television.

by Laura A. Bischoff

September 16, 2021

Cincinnati Enquirer

[Chicago Finally Getting Serious About Where It Deposits City Cash.]

The city government of Chicago moves hundreds of millions of dollars in and out of the bank every few months. Taxes, fees, fines and bond sale proceeds come in; paychecks, contractor payments and other spending or investments go out.

Community Advocates Break Down Proposed Changes to Community Reinvestment Act Regs
As of December 31, 2020, Chicago had $725 million in the bank — multiple banks, actually, as the city typically designates more than a dozen banks every year as municipal depositories.

The City of Chicago requires banks seeking designation as municipal depositories to have an authorized representative sign a pledge every year that the bank will avoid discrimination in lending on the basis of neighborhood, race, national origin, sex, source of income, sexual orientation and other factors. The pledge notes that failure to comply can result in losing designation as a municipal depository. It's been this way since 1974, when Chicago passed its Responsible Banking Ordinance, the first such ordinance of its kind. Many cities across the country have since passed their own responsible banking ordinances — some more stringent, some less so.

[Continue reading.]

NEXT CITY

by OSCAR PERRY ABELLO

SEPTEMBER 14, 2021

Bitvore Announces Availability of Cellenus® ESG Dataset for the Municipal Bond Market.

New Cellenus ESG for Muni's dataset features ESG topics across all 1.5 million active CUSIP's to reduce investment risk

IRVINE, Calif., Sept. 14, 2021 /PRNewswire/ — Bitvore, the leading provider of AI-driven intelligence for third-party risk management, today announced availability of a new Cellenus Environmental, Social and Governance (ESG) dataset targeting the municipal bond market.

ESG refers to the three central factors in measuring the sustainability and societal impact of municipal bond debt issuances. These criteria help to better determine the future financial performance of issuers in terms of return and risk. Bitvore's continuously updated ESG topics are derived from over 60K quality unstructured data sources (including news, press releases, EMMA filings and more), and identify what nearly 50k issuers are doing regarding ESG transparency.

"We're excited to announce our new Bitvore Cellenus ESG Dataset for the municipal bond market," said Elizabeth Pritchard, CEO, Bitvore. "It is fast becoming a requirement for investors to evaluate the financials of a muni offering together with the sustainability impact. Our new ESG insights will allow municipal bond analysts to get the full picture of the value of a bond."

The Cellenus Muni ESG dataset is derived from more than 60K unique unstructured data sources, including both publicly available and licensed subscription sources. Using machine learning models and NLP, Bitvore derives 34 unique ESG Muni topics, allowing customers to quickly identify specific ESG topics of interest such as GHG emissions, Diversity & Inclusion, Climate Change, Cybersecurity and more. In addition to the continuously updated ESG topics, Bitvore allows existing customers to effortlessly request ESG topics be included into daily surveillance alerts. Bitvore's surveillance alerts assist in mapping out any potential ESG risk that may be found in a portfolio of municipal bonds or across a sector.

Bitvore's Cellenus platform provides continuous, AI-powered analysis of unstructured data sources, linking the right obligor to specific ESG events or topics and providing early warning of any potential ESG violations. It also offers the capability to monitor specific topics across the entirety of the municipal bond market. For example, monitoring the expanding drought across the western United States or monitoring which municipalities are meeting goals around recycling or net-zero emissions. The Cellenus Muni ESG dataset may also aid in complying with future regulatory requirements by surfacing relevant ESG related topics and mapping the content back to a relevant obligor for transparency purposes.

Bitvore Cellenus datasets are accessible via API, file downloads and full research applications.

For more information about Bitvore Cellenus, please visit https://bitvore.com/cellenus-intro/

- **Ed. Note:** We will be off next week. Double Dose O' Drivel 8/21.
- Which Side Are You On? Municipal Broker/Dealer Takes Both Sides.
- Billion-Dollar Muni Deals a Rarity as Free Cash, Revenue Pile Up.
- NFMA Recommended Best Practices in Disclosure for Toll Road Bonds.

- As Wildfires Burn, ICE Shows How Sophisticated ESG Tools Have Become.
- 'Solar Bond' Demand Goes Through the Roof.
- Telephonic TEFRA Hearings are Now Available Through March 31, 2022: Squire Patton Boggs
- *City of Marion v. London Witte Group, LLC* – Supreme Court of Indiana holds that the adverse domination doctrine, which tolled the statute of limitations as long as the corporate plaintiff was controlled by alleged wrongdoers, applied to both private and municipal corporations.
- *Indiana Municipal Power Agency v. United States* – Court of Federal Claims holds that statute providing funding for tax refunds to pay issuers of Direct Payment Build America Bonds (BABs), under American Recovery and Reinvestment Act (ARRA), did not constitute "appropriation Act," but rather authorized "direct spending," and thus, issuers' refunds of 35% of interest payable for their BABs were subject to sequestration, under Budget Control Act and American Taxpayer Relief Act, that permanently canceled budgetary resources, including direct spending, defined as budget authority provided by law other than appropriation Acts, since BABs were not statutorily listed as program exempted from sequestration.
- And finally, A Shameless Man With Nothing To Be Shameless About is brought to us this week by *Walker v. Agpawa*, in which a "[mayoral candidate] engaged in a scheme to defraud an insurance company while he was Markham Fire Department chief. He was sentenced to three years' probation and ordered to perform 200 hours of community service." (That penalty's in line with those meted out to non-violent drug offenders, right? Right?) Dude won his mayoral race and took the issue of whether one who had been convicted of an "infamous crime" is eligible for public office all the way to the Supreme Court of Illinois. Turns out they are. Best of luck, City of Markham!

IMMUNITY - ARIZONA

Dinsmoor v. City of Phoenix

Supreme Court of Arizona - August 6, 2021 - 50 Arizona Cases Digest 17 - 492 P.3d 313

Mother brought action against school district, city, and school officials, alleging negligence-based claims arising from female student's death after being shot by ex-boyfriend while the two were at a friend's house after school.

The Superior Court entered summary judgment for all defendants. Mother appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. District and officials petitioned for review, and the petition was granted.

The Supreme Court held that:

- A primary or secondary school's duty to protect students exists only while the school is fulfilling its roles as custodian, land possessor, and quasi-parental figure, and once students safely leave the school's control, the special relationship ends, and students are simultaneously released to their parents' or guardians' full custodial care, then the school is relieved of any duty to affirmatively protect students from any hazards they encounter, disapproving *Hill v. Safford Unified Sch. Dist.*, 191 Ariz. 110, 952 P.2d 754, and
- School did not owe duty to protect student from her ex-boyfriend.

UTILITIES - CALIFORNIA

Alameda County Waste Management Authority v. Waste Connections US, Inc.

Court of Appeal, First District, Division 2, California - August 18, 2021 - Cal.Rptr.3d - 2021

WL 3661201 - 21 Cal. Daily Op. Serv. 8550 - 2021 Daily Journal D.A.R. 8624

County waste management authority sued three out-of-county landfills that disposed of waste originating in the county, petitioning for injunctive or declaratory relief to enforce its authority to inspect specified records kept by the landfills.

The Superior Court granted county authority's motion for judgment on the pleadings and compelled landfills to allow inspection. Landfills appealed.

The Court of Appeal held that:

- The Integrated Waste Management Act authorized county authority to inspect and copy the records it sought without precondition, and
- County authority was entitled to judgment on the pleadings.

The language "as necessary to enforce the collection of local fees" in subsection of the Integrated Waste Management Act which governed local governments' rights to inspect and copy specified records related to waste originating in their jurisdiction did not impose as a precondition any factual showing of necessity; that language stated just one purpose for which local government entities could use the records, the mechanism provided for government entities to enforce their authority to inspect indicated inspection was a power or a right, "as necessary" did not inevitably mean "essential," and read in the context of the entire section and its legislative history, that language meant that local agencies with fee ordinances were entitled to inspect and copy the records without precondition.

County waste management authority was entitled to judgment on the pleadings in case in which county authority sued landfills to enforce its statutory authority to inspect and copy specified records kept by the landfills related to waste originating in the county, where the only issue where there was a real dispute was a legal one, regarding the interpretation of a subsection of the Integrated Waste Management Act which governed local governments' rights to inspect and copy such records, and the statute required no showing of factual necessity for county authority to be authorized to inspect and copy the records.

ELECTIONS - ILLINOIS

Walker v. Agpawa

Supreme Court of Illinois - August 26, 2021 - N.E.3d - 2021 IL 127206 - 2021 WL 3776296

Objectors sought review of decision of municipal officers electoral board finding that mayoral candidate was duly qualified candidate for office despite federal felony conviction for mail fraud.

The Circuit Court affirmed. Objectors appealed. The Appellate Court reversed. Candidate petitioned for leave to appeal, which was allowed.

The Supreme Court held that:

- Governor's certificate to restore rights restored right to hold municipal office;
- Statutory amendment concerning restoration of rights as to public office following conviction was not void for vagueness;
- Statutory amendment did not violate First Amendment rights to object to a candidacy; and
- Statutory amendment did not violate separation of powers principles.

STATUTE OF LIMITATIONS - INDIANA

[City of Marion v. London Witte Group, LLC]

Supreme Court of Indiana - June 17, 2021 - 169 N.E.3d 382

City brought action against company that provided financial advice to city regarding financing for a construction project and alleged claims for negligence, breach of fiduciary duty, and constructive fraud and unjust enrichment.

The Superior Court granted in part and denied in part financial advisor's motion for summary judgment. City appealed and financial advisor cross-appealed. The Court of Appeals affirmed in part, reversed in part, and remanded with instructions. City sought transfer, and transfer was granted.

The Supreme Court held that:

- As a matter of first impression, the Supreme Court would adopt the equitable tolling doctrine of adverse domination;
- The adverse domination doctrine applied to both private and municipal corporations; and
- Genuine issues of material fact existed as to whether mayor adversely dominated the city, and whether company that provided financial advice to city contributed to it, precluding summary judgment.

The Supreme Court would adopt the equitable tolling doctrine of adverse domination, which was an equitable doctrine that tolled statutes of limitations for claims by corporations against its officers, directors, lawyers and accountants for so long as corporation was controlled by those acting against its interests, as a logical corollary of its discovery rule.

The adverse domination doctrine, which tolled the statute of limitations as long as the corporate plaintiff was controlled by alleged wrongdoers, applied to both private and municipal corporations.

Genuine issues of material fact existed as to whether mayor adversely dominated the city, and whether company that provided financial advice to city contributed to it, precluding summary judgment based on the adverse domination doctrine on company's statute of limitations defense in negligence, breach of fiduciary duty, and constructive fraud action.

BUILD AMERICA BONDS - INDIANA

[Indiana Municipal Power Agency v. United States]

United States Court of Federal Claims - July 23, 2021 - Fed.Cl. - 2021 WL 3123777 - 128 A.F.T.R.2d 2021-5316

Public-sector power providers filed suit against United States, claiming violation of statutory duty, under American Recovery and Reinvestment Act (ARRA), and breach of contract by IRS failing to refund 35% of interest payable under their Direct Payment Build America Bonds (BABs) that they had issued under authority of ARRA.

Government moved to dismiss for failure to state claim.

The Court of Federal Claims held that:

- Claims were within Tucker Act jurisdiction;
- Refunds of interest under BABs were subject to sequestration;
- Issuers' characterizations of payments could not prevent sequestration;
- Sequestration reduced amount of refunds owed to issuers; and
- Government contract was not formed for refund payments.

Issuers of Direct Payment Build America Bonds (BABs), under American Recovery and Reinvestment Act (ARRA), asserted claims against United States that were within Tucker Act jurisdiction, for alleged violation of statutory duty under ARRA and breach of contract by failing to refund 35% of interest payable under BABs, since ARRA was separate money-mandating statute that created payment obligation on government, and issuers alleged nonfrivolous claim of contract with United States.

Statute providing funding for tax refunds to pay issuers of Direct Payment Build America Bonds (BABs), under American Recovery and Reinvestment Act (ARRA), did not constitute "appropriation Act," but rather authorized "direct spending," and thus, issuers' refunds of 35% of interest payable for their BABs were subject to sequestration, under Budget Control Act and American Taxpayer Relief Act, that permanently canceled budgetary resources, including direct spending, defined as budget authority provided by law other than appropriation Acts, since BABs were not statutorily listed as program exempted from sequestration.

Issuers of Direct Payment Build America Bonds (BABs), under American Recovery and Reinvestment Act (ARRA), could not preserve from sequestration full payment of tax refunds of 35% of interest under their BABs, by characterizing payments as "overpayment" of taxes or as "obligated funds," since payments to bond issuers were funded through statute that was subject to sequestration with respect to tax refunds to issuers of BABs, and government did not obligate funds for life of BABs, as obligation arising from BABs arose not when they were issued but only after IRS timely received and processed government form from issuers, so government's payment obligation did not extend beyond year processed.

Government was statutorily required to reduce its payment obligations for tax refund of 35% of interest payable to issuers of Direct Payment Build America Bonds (BABs), under American Recovery and Reinvestment Act (ARRA), due to subsequent enactment of Taxpayer Relief Act, imposing sequestration that permanently canceled budgetary resources, including direct spending such as funding for tax refunds to pay issuers of BABs, since spending cuts implemented by later-enacted Taxpayer Relief Act and Budget Control Act were irreconcilable with ARRA's 35% payment rate and reduced government's payment obligation by sequestration.

Government did not intend to create contract to be bound to pay tax refund of 35% of interest payable to issuers of Direct Payment Build America Bonds (BABs), under American Recovery and Reinvestment Act (ARRA), that did not frame authorized payments under BABs as contractual obligation, but rather, merely set forth payment program for issuers of qualifying BABs.

Issuers of Direct Payment Build America Bonds (BABs) waived any argument based on additional documents to establish existence of contract with United States, where issuers did not plead contract based on those documents in their amended complaint, they did not raise that argument in opposition to government's motion to dismiss, and they disclaimed that argument at oral argument.

POLITICAL SUBDIVISIONS - NORTH CAROLINA

Southern Environmental Law Center v. North Carolina Railroad Company

Supreme Court of North Carolina - August 13, 2021 - S.E.2d - 2021-NCSC-84 - 2021 WL 3575673

Requester brought action requesting the entry of an order declaring that the North Carolina Railroad Company was an agency of the State of North Carolina for purposes of the Public Records Act, declaring that the records requested from the railroad constituted public records, and ordering the railroad to make those records available for inspection.

After the case was designated a mandatory complex business case, the Superior Court granted railroad’s motion for summary judgment, and requester appealed.

The Supreme Court held that Railroad was not an agency of North Carolina government or a subdivision of such an agency.

North Carolina Railroad Company was not an agency of North Carolina government or a subdivision of such an agency as defined by the Public Records Act, although the State was the Railroad’s sole shareholder and the Railroad enjoyed a number of benefits due to its relationship with the State, where both the General Assembly and other governmental entities consistently treated the Railroad as a private corporation rather than a public agency or subdivision, the State lacked a sufficient degree of control over the day-to-day operations of the Railroad, and the Railroad consistently maintained its separate corporate identity and structure and made decisions independently of any directives that it might receive from governmental officials, and owned its own property and paid taxes to counties and the State.

ZONING & PLANNING - OHIO

State ex rel. Donaldson v. Delaware County Board of Elections

Supreme Court of Ohio - August 26, 2021 - N.E.3d - 2021 WL 3821901 - 2021-Ohio-2943

Relator filed petition for writ of mandamus, seeking to require county board of elections to include referendum on zoning amendment on ballot.

The Supreme Court held that:

- Referendum petition’s summary of zoning amendment failed to present issue fairly and accurately, rendering petition invalid, and
- Petition’s reliance on public-hearing notices and zoning-commission language did not render summary sufficient.

Relator lacked adequate remedy in ordinary course of the law, as required for relator to obtain writ of mandamus ordering county board of elections to place referendum relating to zoning amendment on ballot, due to proximity of election, which was approximately two months away.

Referendum petition’s summary of township zoning amendment relating to planned overlay district, which described amendment in general terms and stated that zoning amendment would include sections detailing permitted uses, open spaces, and prohibited uses, and that zoning resolution and map would be amended to designate the planned overlay district area, failed to present issue fairly and accurately to those being asked to sign petition, and thus petition was rendered invalid; summary did not identify location of land being rezoned, and it did not describe proposed zoning changes by indicating current use of property or uses that zoning amendment would permit.

Referendum petition's reliance on language from township zoning commission's public-hearing notices and zoning commission's resolution recommending denial of proposed zoning amendment regarding planned overlay district did not satisfy requirement that zoning amendment, as adopted by township, be fairly and accurately described in petition; notices did not summarize zoning amendment passed by township, but instead informed public of hearings that were scheduled to take place on proposed amendment prior to its enactment, notices were not required to contain summary of proposed zoning amendment, zoning commission's resolution was recommendation to township, not summary of amendment, and resolution related to previous version of planned overlay district.

BANKRUPTCY - PUERTO RICO

In re Financial Oversight and Management Board for Puerto Rico.

United States Court of Appeals, First Circuit - August 12, 2021 - 7 F.4th 31

In the jointly administered restructuring cases of the Commonwealth of Puerto Rico and various governmental instrumentalities pursuant to Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), the Puerto Rico Electric Power Authority (PREPA), PREPA's fiscal agent, and the Financial Oversight and Management Board for Puerto Rico (FOMB) moved for entry of order allowing administrative expense claim for the costs of certain "front-end transition services" that private consortium with which PREPA had contracted to assume control over PREPA's power transmission and distribution system (T&D system) had agreed to perform.

Creditors objected. The United States District Court for the District of Puerto Rico granted motion in part and denied it in part. Creditors appealed.

The Court of Appeals held that:

- Addressing an issue of apparent first impression for the court, the subsection of the Bankruptcy Code providing administrative expense priority for the actual, necessary costs and expenses of preserving the estate applies in Title III cases;
- The Title III court did not abuse its discretion in finding that the front-end transition services satisfied the requirements for administrative expense treatment; and
- The Title III court correctly determined that it was not authorized to review challenges to FOMB's decision to certify a fiscal plan and budget for PREPA that included the front-end transition service fee.

Subsection of the Bankruptcy Code providing administrative expense priority for the actual, necessary costs and expenses of preserving the estate applies in cases under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA); Congress incorporated the entirety of the Code's administrative expense section into PROMESA, such that each provision of that section must be given effect, and though there is no "estate" to preserve in Title III proceedings, reading "estate" in the context of the administrative expense provision to mean "property of the debtor" is sensible in light of the text and structure of Title III and the Code.

In case under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), the Title III court did not abuse its discretion in finding that "front-end transition services" which private consortium with which the Puerto Rico Electric Power Authority (PREPA) had contracted to assume control over PREPA's power transmission and distribution system (T&D system) had agreed to perform satisfied the requirements for administrative expense treatment; the court correctly recognized that burden was on movants to show that payments at issue qualified to administrative expense priority, the court permissibly credited declaration submitted by movants indicating that services in question were necessary prerequisites to private consortium assuming control over the T&D system and so were beneficial to PREPA, and objectors did not provide any contrary factual evidence that services did not benefit PREPA.

In case under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), the Title III court correctly determined that it was not authorized to review challenges to decision of the Financial Oversight and Management Board for Puerto Rico (FOMB) to certify a fiscal plan and budget for the Puerto Rico Electric Power Authority (PREPA) that included fees for certain “front-end transition services” that private consortium with which PREPA had contracted to assume control over PREPA’s power transmission and distribution system (T&D system) had agreed to perform; PROMESA insulated FOMB’s certification determinations from judicial review in the federal courts.

In case under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), appellants’ argument that the Title III court’s interpretation of the PROMESA provision insulating decisions of the Financial Oversight and Management Board for Puerto Rico (FOMB) from judicial review violates the nondelegation doctrine was waived where appellants never raised the issue before the Title III court, and no exceptional circumstances warranted consideration of the argument for the first time on appeal.

How Well Did the Fed’s Intervention in the Municipal Bond Market Work?

The beginning of the COVID-19 pandemic strained many sectors of the economy, including the municipal bond market, prompting an unprecedented intervention by the Federal Reserve. This post summarizes the latest research on the effectiveness of the Fed’s response to COVID-related distress in the muni market, which finances more than 50,000 local and state governments and other entities.

HOW DID COVID-19 AFFECT THE MUNI BOND MARKET?

Prior to the pandemic, the muni market was ebullient. According to Morningstar, between the beginning of 2019 and February 2020, investors put $105 billion into muni mutual funds and exchange-traded funds, the largest annual influx in the muni sector in 25 years.

COVID-19 hit nearly every sector of the financial market. In the muni market, investors apparently feared that state and local government revenues would fall and spending would increase, hurting governments’ ability to service their debt.

Continue reading.

The Brookings Institution

Sophia Campbell and David Wessel

August 31, 2021

Billion-Dollar Muni Deals a Rarity as Free Cash, Revenue Pile Up.

- **Average muni offering was $34 million from Jan. through July**
- **15 deals of $1 billion or more is fraction of corporate tally**

U.S. states and localities have sold 15 bond deals of at least $1 billion this year, on pace to surpass the total of 18 offered in 2020 and potentially even challenge the record 26 issued in 2018, data compiled by Bloomberg show.

And yet, it's still a far cry from the hundreds of megadeals sold in the world of U.S. corporate bonds this year. Muni investors may be looking to the corporate-debt space with envy, amid a dearth of trading activity in the state and local-government market.

The conditions are right: The amount that municipalities are paying to borrow is at rock-bottom generational lows. Their credit has never been better because it has been rendered almost irrelevant by free money from the federal government aimed at bolstering the economic rebound from the pandemic. And investor demand is seemingly insatiable.

Two primary forces are holding them back from issuing larger sums, analysts say. The first is, they don't need to, in part as many states and cities are refilling their coffers more quickly than they'd anticipated.

"Tax revenues have surged with the economy re-opening this year and when combined with the stimulus funds from the American Families Plan and more coming from the Infrastructure Investment and Jobs Act, they're simply flush with cash," said Matt Buscone, co-head of portfolio management at Breckinridge Capital, in an email last week.

Some municipalities may use part of the federal money for deferred maintenance; others will tap it for debt reduction and fund more of their capital budgets on a pay-as-you-go basis, Buscone added.

Size Mismatch

A second key reason why states and localities aren't bringing more extra-large deals is that size matters.

It's "primarily attributable to the size of corporations versus municipalities," said Cooper Howard, director of fixed-income strategy at the Schwab Center for Financial Research. "There are many more bonds in the muni index, but they are much smaller on average than the corporate market."

To illustrate, he said there are a bit fewer than 7,000 bonds in the Bloomberg Corporate Bond Index, compared to more than 55,000 in the Bloomberg Municipal Bond Index. The size of the average bond in the muni index is a little over $30 million, compared with around $1 billion for the corporate index, according to Howard.

The average size of new muni deals was $34 million from January to July, according to the Municipal Securities Rulemaking Board. More than half were for $10 million or less.

So for every Texas Municipal Gas Acquisition & Supply Corp III (which sold $1.06 billion in bonds in January) or California State University ($1.66 billion in July), there are hundreds of issuers more like Cimarron, Kansas (population around 2200; borrowed $975,000 in February), and Pomeroy, Iowa (population roughly 660, borrowed $995,000 in March).

But a more fundamental reason may be at work, which is that most of the nation's 90,126 units of government — the tally in the Census of Governments 2017 data — don't seem to like debt.

That may explain why they pay some of it off every year and why 31% of it will mature or be called by the end of 2026, according to a study by Municipal Market Analytics.

Bloomberg Markets

By Joseph Mysak Jr

August 31, 2021

— With assistance by Danielle Moran

Even With Covid, Muni Bonds Report Shows Defaults Remain Rare.

Summary

- While they may have become more common over the last 10 years, municipal defaults and bankruptcies still remain rare overall.
- The five-year all-rated cumulative default rate of municipal bonds throughout the study period (1970-2020) was unchanged at 0.08% and still remains very low.
- Municipal credits remain strong.

Continue reading.

Seeking Alpha

Sep. 03, 2021

NFMA Recommended Best Practices in Disclosure for Toll Road Bonds.

The Disclosure Committee is pleased to release the final version of the Recommended Best Practices in Disclosure for Toll Road Bonds, dated August 2021.

To view this paper and other work products of the Disclosure Committee and the Industry Practices Committee, go to Best Practices in Disclosure and Position Statements under Resources.

Main Street Pensions Take Wall Street Gamble by Investing Borrowed Money.

Municipalities have assumed about $10 billion in debt this year to shore up retirement obligations

Many U.S. towns and cities are years behind on their pension obligations. Now some are effectively planning to borrow money and put it into stocks and other investments in a bid to catch up.

State and local governments have borrowed about $10 billion for pension funding this year through the end of August, more than in any of the previous 15 full calendar years, according to an analysis of Bloomberg data by Municipal Market Analytics. The number of individual municipalities borrowing for pensions soared to 72 from a 15-year average of 25.

Among those considering what is known as pension obligation borrowing is Norwich, a city in southeastern Connecticut with a population of 40,000. Its yearly payment toward its old pension debts has climbed to $11 million in 2022—four times the annual retirement contribution for current workers and 8% of the city's budget. The city will vote in November on whether to sell $145 million in 25-year bonds to cover the pensions of retired police officers, firefighters, city workers and school employees.

Norwich's rating from Moody's Investors Service is in line with the median for U.S. cities, and officials expect to pay about 3% in interest. Norwich's pension consultant, Milliman, projects investment returns of 6.25%.

Comptroller Josh Pothier said that spread helped him overcome his initial hesitation. "It's pretty scary; it's kind of like buying on margin," he said he thought to himself. "But we've had a long run of interest rates being extraordinarily low," he added.

Milliman forecasts that Norwich would save $43 million in today's dollars over the next 30 years.

Over the past few decades, state and local governments across the country have fallen hundreds of billions of dollars behind on savings needed to pay public employees' future promised pension benefits. Officials have been trying to catch up by cutting expenses from annual budgets and making aggressive investment bets.

With big pension payments looming and Covid-19-era federal stimulus pushing municipal borrowing costs to record lows, local officials are taking a gamble: that their retirement plans can earn more in investment income on bond money than they pay in interest.

Here is how a pension obligation bond works: A city or county issues a bond for all or a portion of its missed pension payments and dumps the proceeds into its pension coffers to be invested. If the returns on pension investments are higher than the bond rate, the additional investment income will translate into lower pension contributions for the city or county over time. (The $10 billion in pension borrowing captured by the Municipal Market Analytics analysis also included some money used directly for pension benefits, rather than being invested, and at least one borrower directed some bond proceeds to other uses.)

Pension obligation bonds can backfire. If investments don't perform as expected and returns fall below the bond interest rate, the city can end up paying even more than if it hadn't borrowed.

Norwich is one of many smaller municipalities venturing into pension borrowing. This summer local governments issued 24 pension obligation bonds with an average size of $112 million, according to data from ICE Data Services. That compares with 11 deals with an average size of $284 million during the same period last year.

The Government Finance Officers Association, a trade group, in February reaffirmed its recommendation against the practice. "Absolutely nothing has changed," said Emily Brock, director of the group's federal liaison center. "It's still not a good choice."

In 2009, Boston College's Center for Retirement Research examined pension obligation bonds issued since 1986 and found that most of the borrowers had lost money because their pension-fund investments returned less than the amount of interest they were paying. A 2014 update found those losses had reversed and returns were exceeding borrowing costs by 1.5 percentage points.

By swapping out their pension liability for bond debt, local pension borrowers give up the budgetary flexibility to skip a retirement payment in an acute crisis. Pension obligation bonds have contributed to the chapter 9 bankruptcies of Detroit, Stockton, Calif., and San Bernardino, Calif. Chicago three years ago considered, and then scrapped, plans for a big pension borrowing deal.

Other local officials are starting to educate themselves about the deals. More than 200 people attended the webinar "How to Explain Pension Obligation Bonds to Your Governing Board," hosted by the law firm Orrick, Herrington & Sutcliffe last month.

For investors, the bonds can be more of a mixed bag. A pension obligation bond approved by Houston voters in 2017 earned praise from analysts because the city paired it with benefit cuts.

Howard Cure, director of municipal bond research at Evercore Wealth Management, said that though he occasionally purchases the securities, the decision to issue them raises red flags. "I have a lot more questions about how an entity is governed if they're using this tactic," Mr. Cure said.

The Wall Street Journal

By Heather Gillers

Sept. 4, 2021

[As Wildfires Burn, ICE Shows How Sophisticated ESG Tools Have Become.]

Wildfires are raging across the western United States, destroying homes, commercial buildings and entire towns. The biggest is the Dixie Fire, which has spread across more than 700,000 acres in Northern California and turned more than 1,200 buildings to ash.

"My defiantly quirky, beautiful adopted hometown turned into a ghost town last night," reporter Meg Upton wrote on Aug. 5 in the Plumas News. In an unstoppable march of heat and flame, the Dixie Fire erased the bulk of Upton's hometown of Greenville from existence.

As with many of the more than 150 wildfires burning today, the Dixie Fire was fueled by dry timber and high temperatures amid a changing climate.

A nation away, experts at Atlanta-based Intercontinental Exchange, known as ICE, and climate and ESG data provider risQ, headquartered in Boston, work to help identify and quantify the risk associated with such potentially disastrous events. Their efforts power a young service called ICE Climate Risk, developed for those who invest in the trillions of dollars in bonds that municipalities have sold to pay for hospitals, power plants, schools and other critical infrastructure.

ICE Climate Risk sits at the cutting edge of modern ESG tools, with the most advanced growing remarkably sophisticated in recent years as those who invest in a variety of asset classes pay rapt attention to environmental, social and governance issues.

"ESG is definitely evolving," says Mark Heckert, who oversees ICE's fixed income and data services products.

ICE Climate Risk works by dividing the nation's 48 contiguous states into 100-square-meter cells and analyzing each for its risk from different climate events. Comprising more than 1.3 billion cells in total, the data set quantifies risk for events including flooding, hurricane, heat stress, drought and, of course, wildfire.

Climate risk can be particularly important to investors in municipal bonds, as these securities are tied to the locations of the projects they fund. For example, a bond sold to pay for a new library in an area with a high risk of flooding may warrant a different price than a similar bond in a location with little threat from the climate.

“We can tell you for every patch of dirt in the U.S., what debt is sitting on it,” says risQ CEO Evan Kodra.

Indeed, ICE Climate Risk had identified Plumas County, where Upton’s hometown of Greenville is located, as falling in the 98th percentile of wildfire risk across the United States and the 86th percentile in the fire-prone state of California. Of course, the database could not predict when the Dixie Fire would occur. It can and did, however, quantify the likelihood of such an event.

“It was way at the top end of the percentile in that risk,” says ICE’s Spencer Gallagher, who helped develop ICE Climate Risk together with Kodra.

ESG investing has been around for some time, with the United Nations launching its Principles for Responsible Investment in April 2006 at the New York Stock Exchange, which is owned by ICE. Yet, demand for high-tech ESG tools like ICE Climate Risk has grown most rapidly in recent years as investors have demonstrated a keen interest in projects and organizations whose values and approaches align in these areas.

In addition to climate risk, ICE is involved in many other areas of ESG investing. “ICE was an early investor in this space and has been helping develop these markets for many years,” says Brookly McLaughlin, who oversees ICE’s sustainability efforts.

In some ways, the company’s offerings represent a microcosm of the modern ESG universe.

For equity investors, ICE’s ESG Reference Data tracks about 500 ESG metrics across publicly traded companies including carbon emissions, renewable energy, diversity and inclusion, and board profile. The NYSE leverages this data as it works with its 2,400 listed companies to help them adopt best practices in ESG standards and disclosure.

The NYSE Arca exchange lists more than $23 billion of ESG-focused ETFs. ICE also lists numerous climate-related futures contracts in Europe and North America, allowing companies and other organizations to offset their carbon footprints.

In early August, ICE, together with risQ, announced that municipal bond investors can now receive data to help evaluate the potential social impact of an investment, an area of fast-growing interest. Similar to ICE Climate Risk, they can use this information to analyze poverty, employment, racial diversity and other factors in the geographies where the bonds’ underlying projects live.

Growth in the importance of ESG investing doesn’t seem likely to disappear anytime soon. Earlier this month, the U.N.’s Intergovernmental Panel on Climate Change published a report that received wide media coverage, finding that temperatures will continue to rise globally “until at least the mid-century.” This almost certainly will make the ability to identify the risk of climate events like the Dixie Fire even more critical in the years ahead.

“When we first started, a lot of the market originally was skeptical that a lot of this stuff was ever going to matter," Kodra recalls. "That clearly changed."

By NYSE

August 31, 2021

By Farrell Kramer, Head of NYSE Communications, New York Stock Exchange

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The World of Alternative Revenues: Low Carbon Fuel Standard Credits.

In a normal public finance transaction to raise capital, local governments often have to pledge some form of revenue stream that's both reliable and enough to meet the debt service for the capital raised.

For most municipal debt issuances, these revenue streams are often limited to sales tax, property tax, some form of utility user tax, or a combination of all three. However, with the constantly evolving capital markets and its investor base, issuers are demanding more creative ways to pledge alternative revenue sources to take the pressure off their other revenue streams.

In this article, we will take a closer look at the world of Low Carbon Fuel Standard Credits (LCFS) and how some transportation agencies are pledging them as a revenue source to issue green debt for their respective capital needs.

Continue reading.

municipalbonds.com

by Jayden Sangha

Sep 01, 2021

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 August) $309.1 billion, +2.5% Y/Y
- Trading (as of August) $8.8 billion ADV, -33.0% Y/Y
- Outstanding (as of 1Q21) $4.0 trillion, +2.7% Y/Y

Download.

September 2, 2021

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

View the list.

2 Sep, 2021

S&P U.S. Public Finance Rating Activity, July 2021.

Rating Activity

S&P Global Ratings took the following rating actions in U.S. public finance in July 2021:

25 downgrades
58 upgrades
372 outlook revisions to stable
15 outlook revisions to positive
13 outlook revisions to negative

These data were prepared by individuals on behalf of the USPF group of S&P Global Ratings and are current as of Sept. 1, 2021. For the most up to date, accurate, and complete information on any credit ratings referenced here, visit www.spratings.com. For these purposes we represent as one rating action a change in the rating of linked ratings. For example, we reflect as one rating action a change in the rating on a general obligation (GO) issuer and its related appropriation issues if the rating change on the GO led to rating changes for linked appropriation issues. In certain other publications, linked ratings actions may be represented or counted as separate rating actions.

Continue reading.

3 Sep, 2021

'Solar Bond' Demand Goes Through the Roof.

Larger investors are starting to buy up the debt behind loans to homeowners who want to reduce their dependence on vulnerable electric grids

Investment firms are buying record amounts of so-called solar bonds, debt issued to help U.S. individuals finance the purchase of rooftop solar panels to power their homes.

Sales of solar bonds hit around $2 billion in the first six months of the year, roughly double levels during the same period in 2020 and 2019, according to deal tracker Finsight.com. The bonds, which are backed by bundles of loans made to homeowners for panel purchases, are being issued by a handful of financing companies that specialize in residential solar panels, including GoodLeap LLC, Sunnova Energy Corp. and Solar Mosaic Inc.

By tapping bond markets, the companies are connecting fund managers looking for eco-friendly investments with homeowners who want to get cheaper—and potentially more reliable—electricity while cutting their carbon footprints.

“It came down to cost and the environment,” said Josh Rudin, a 34-year-old real-estate attorney who took out a 10-year loan from Solar Mosaic to install solar panels on the house his family bought in Woodbury, N.Y., this year. “We just started a week ago, and even with the bad weather, the system is producing 82% of our electricity.”

The solar panels cut the cost of his electricity purchases from the grid by 95% and qualify him for about $15,000 in federal and state tax credits. Even after accounting for loan payments, his monthly power expenditure will fall, saving him about $8,500 over the life of the loan, according to EmPower Solar, the company that sold him the equipment. Payments on the loan will remain fixed, and when the panels produce more electricity than he uses, Mr. Rudin can sell the excess to his local power grid, he said.

Demand for the loans is accelerating this year amid more violent and unpredictable weather patterns, said Tanguy Serra, president of GoodLeap LLC, the largest issuer of solar bonds. “The wildfires in California, the Texas winter, the outages in Louisiana, they’re all large-scale advertising for the product,” he said.

Hurricane Ida cut power to roughly one million customers in New Orleans and Mississippi and 200,000 people in New York, New Jersey and Pennsylvania this past week.

Bond investors like debt backed by solar loans because the borrowers must own their homes and have good mortgage track records to qualify, said Katrina Niehaus, head of corporate structured finance at Goldman Sachs Group Inc., which arranges solar bonds. Buying the securities also helps asset managers meet environmental, social and governance, or ESG, investing targets required by their clients.

Growing appetite for the bonds is lowering borrowing costs for companies like GoodLeap. Investors bought the bulk of the firm’s most recently issued bonds at a yield of 1.94%, compared with 2.77% on a deal done in July 2020, according to Finsight.com.

Solar energy systems can cost $30,000 or more, and until recently, most homeowners had two choices when purchasing them: pay cash or sign a lease. Over the past five years, solar financing companies scaled up operations by borrowing money from banks and credit unions, then lending it out to customers of panel vendors like EmPower.

The companies use algorithms to rapidly assess and approve borrowers, collect fees on the loans and then sell them to fund managers. Loans accounted for 63% of solar financing in 2020, up from 21% in 2015, Mosaic Chief Executive Billy Parrish said.

Initially, finance companies sold much of their loans and bonds to hedge-fund managers. Alternative fund manager CarVal Investors LP has purchased more than $500 million worth of loans from GoodLeap and Blackstone Group Inc. bought large quantities from the company when bond markets seized up in the summer of 2020, people familiar with the matter said.

The solar bond market is still small, but it is now starting to attract larger traditional investors, said Rob Camacho, co-head of structured credit at Blackstone. “This market is going to grow a lot, so you have money managers willing to spend time on it,” he said.

BlackRock Inc., the largest fund management company in the world, has begun buying solar bonds, a person familiar with the matter said.

As the market expands, so could the risk in the loans backing solar bonds. The average FICO score of solar loan borrowers is roughly 745, but "there's definitely the possibility that the industry will expand to borrowers that are in the lower credit spectrum," said Melvin Zhou, an analyst at Kroll Bond Rating Agency LLC.

Increased government support is playing a part in the industry's growth, said Bryan White, a solar analyst at market research firm Wood Mackenzie. The 26% federal investment tax credit on residential solar panels is slated to expire fully in 2024, but the Biden administration and Democrats in Congress are working on extending that by as much as eight years through the current budget reconciliation process, he said.

"It's a great day for solar today," Mr. Rudin said on Thursday as blue skies replaced Ida's torrential downpour. "I'm exporting five kilowatts to the grid and it's only 9 a.m."

The Wall Street Journal

By Matt Wirz

Sept. 4, 2021

Climate Change Is Bankrupting America's Small Towns.

Repeated shocks from hurricanes, fires and floods are pushing some rural communities, already struggling economically, to the brink of financial collapse.

FAIR BLUFF, N.C. — It's been almost five years since Hurricane Matthew flooded this small town on the coastal plain of North Carolina. But somehow, the damage keeps getting worse.

The storm submerged Main Street in four feet of water, destroyed the town hall, the police and fire departments, and flooded almost a quarter of its homes. After two weeks underwater, the roads buckled. The school and grocery store shut, then didn't reopen. When Hurricane Florence submerged the same ground two years later, in 2018, there was little left to destroy.

What started as a physical crisis has become an existential one. The town's only factory, which made vinyl products, closed a few months after Matthew. The population of around 1,000 fell by about half. The federal government tried to help, buying the homes of people who wanted to leave, but those buyouts meant even less property tax, tightening the fiscal noose.

Continue reading.

The New York Times

By Christopher Flavelle

Sept. 2, 2021

NTIA Releases Interactive Federal Funding Guide.

Today, the National Telecommunications and Information Administration (NTIA) released the Interactive Federal Funding Guide as an enhancement to BroadbandUSA's "one-stop" federal funding site. The Guide provides an interactive, step-by-step approach for users to filter through more than 90 broadband related programs compiled from 12 federal agencies and the Federal Communications Commission. These programs were included in the BroadbandUSA FY21 website update, which was recently updated with EDA's American Rescue Plan Programs. It highlights general information about each program, including program descriptions, important dates, contact information, and links to program websites. Developed in response to feedback from users of the federal funding site, the Interactive Guide can be used offline and across multiple platforms, including tablets and mobile devices, providing an option for users with limited access to the internet or digital devices.

Feedback on the site overall and this Interactive Guide is welcomed; please contact BroadbandUSA@ntia.doc.gov to provide input.

Fitch: Multifamily Housing Cushioned Against End of Aid and Eviction Ban

Fitch Ratings-New York-30 August 2021: Multifamily mortgage delinquency levels have remained low throughout the pandemic, up only slightly from pre-pandemic levels for both Fitch-rated affordable housing and market-rate housing loans in commercial mortgage backed securities (CMBS), Fitch Ratings says. The end of federal unemployment aid that provides support to individuals may lead to increased rent delinquencies, negatively affecting multifamily loan performance. Both affordable housing transactions and CMBS have robust overcollateralization to protect against multifamily loan performance deterioration.

Occupancy levels may see some volatility with the end of the Centers for Disease Control and Prevention's (CDC) eviction moratorium, which applied to those counties experiencing substantial and high community transmission virus levels, covering over 90% of the country. The Supreme Court of the United States ruled on August 26 that the CDC did not have the authority to impose the moratorium. Only a fraction of federal aid for rental assistance has been dispersed, and it is unclear how quickly remaining funds will be made available.

The impending expiration of federal supplemental unemployment benefits in September presents a significant income cliff for millions of unemployed and increased coronavirus cases are expected to drag on jobs recovery for lower wage earners. Lower wage sectors saw the biggest hit to employment during the pandemic and employment has not rebounded for these sectors to the same extent as other wage brackets.

We would expect delinquencies and evictions to be higher for lower-income individuals, although some affordable housing properties lack the ability to evict tenants. For the week ending August 2, 70% of renters who were delinquent on rent payments have an annual household income of less than $35,000, according to the US Census Bureau. This is a material jump up from a range of 60% to 63% during the 1H21. The National Multifamily Housing Council Rent Payment Tracker indicates that 94.9% of apartment renters made a full or partial rent payment in July, down 0.7% from June and 0.8% yoy.

Fitch-rated affordable housing programs maintained sufficient cushion along with liquidity and reserves sized to cover short-term cash flow disruptions without eroding the overcollateralization sufficient to cover debt service payments and provide cushion for higher ratings. Fitch's stress scenario models a hit of 10%-50% to NOI for rated affordable housing pools. This assumes 30% of each unsubsidized property may experience non-payment or payment lag in addition to a 10%-20% increase in operating expenses, due to coronavirus containment efforts during a six-month period, resulting in a total discount to the debt service coverage ratio (DSCR) of 40%-50%. We assume full, on-time rental payments for government subsidized properties and an increase in operating expenses of 10%-20%, resulting in a 10%-20% discount to the DSCR.

Multifamily mortgages securitized in Fitch-rated conduit CMBS and Freddie Mac transactions are typically 10-year loans backed by properties with historically strong performance. CMBS multifamily delinquencies remained low, ticking up slightly to 0.49% in July 2021, compared with 0.41% prior to the pandemic. Master servicers for CMBS transactions are obligated to advance against missed principal, interest, taxes and insurance, thus providing liquidity if there are payment shortfalls.

Multifamily cash flow performance throughout the pandemic significantly outperformed our expectations and we have removed additional coronavirus stresses for CMBS multifamily loans. The expiration of the eviction moratorium is not expected to cause disruptions to landlords of properties securitized in CMBS, as multifamily property-level NOI for conduit and Freddie Mac loans in our rated portfolio saw an overall positive NOI growth rate of 1.4% in 2020. Some of the Negative Outlooks previously assigned were revised to Stable based on performance stabilization.

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The above article originally appeared as a post on the Fitch Wire credit market commentary page. The original article can be accessed at www.fitchratings.com. All opinions expressed are those of Fitch Ratings.

[Fitch: Children's Hospital Sector Remains Strong in the Midst of Coronavirus Operating Pressures]

Fitch Ratings-New York/Austin-31 August 2021: Fiscal 2020 was a very challenging operational year for children's hospitals, but the medians confirmed that the sector's specialized service mix and high acuity of care translated into favorable profitability compared to adult hospitals. That being said, Fitch Ratings' analysis shows that stimulus relief provided significant support as the 2021 median operating margin and operating EBITDA of 3.8% and 9.8% would have decreased significantly to negative 0.8% and 7.1% without the support of CARES Act funding.

Management teams did not halt their focus on strategic efforts as many children's hospitals took advantage of low interest rates to fund upcoming projects using tax-exempt and taxable debt issuances, resulting in increased liquidity and leverage. "Capital spending was lower in the past fiscal year, but this is expected to be a temporary reaction to conserve liquidity given the unknown risks of the pandemic during the March/April 2020 timeframe," said Fitch Director Richard Park. 2021 median cash-to-adjusted debt decreased to 229.6% from 240.9% in the prior year. Yet days cash on hand improved to 396.1 days, compared with 350.4 in the prior year.

The 2021 medians largely reflect the reduction in patient care revenues with children's hospitals being forced to temporarily cease elective procedures and caretakers deferring care even though COVID-19 has not had the same physical effect on children as it has had on adults. Fitch believes the coronavirus pandemic remains a significant operating risk as the Delta variant appears to be more easily spread than other coronavirus variants to the pediatric population and children under the age of 12 are still not eligible for vaccination.

Fitch's '2021 Median Ratios for Not-for-Profit Children's Hospitals' is available at www.fitchratings.com.

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

Fitch Ratings-New York/London/Moscow-01 September 2021: Fitch Ratings has updated the Public Sector, Revenue-Supported Entities Rating Criteria report (the Revenue Master Criteria) as part of the routine criteria review process. Revisions to the criteria are mostly editorial in nature and there is no impact on existing ratings.

This update describes in criteria the effect on ratings of a distressed debt exchange event and adds consideration of management's ability to protect cyber and other infrastructure adequately as an asymmetric risk factor. Other minor and editorial revisions to the report include clarifying the application of these criteria to government-owned financial institutions and updating various references consistent with changes in other criteria and definitions.

This new criteria report replaces the criteria report of the same name dated Feb. 23, 2021.

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Fitch Ratings Updates U.S. Military Housing Rating Criteria.

Fitch Ratings-New York-01 September 2021: Fitch Ratings has published an updated criteria report titled 'U.S. Military Housing Rating Criteria.' The report replaces the existing criteria dated July 2, 2020.

Primary revisions to the criteria include the publication of category-specific assessments for each key rating driver (revenue defensibility, operating risk and financial profile). The key rating drivers were updated in line with the master revenue criteria, 'Public Sector, Revenue-Supported Entities

Rating Criteria.'

The revised criteria report also describes the explicit forward-looking approach for military housing surveillance reviews, which, similar to the initial rating assignment, considers revenue and expenses stresses, and the potential impact on a project's debt service coverage ratio (DSCR). The magnitude of the revenue and expense stresses are evaluated in the context of the revenue defensibility and operating risk assessments. The financial profile DSCR ranges in the criteria were also updated, as supported by fourteen-years of financial performance of this ratio for all Fitch-rated military housing projects.

Additionally, the updated criteria references Fitch's 'Completion Risk Rating Criteria' for the analysis of construction risk (if present).

No changes to the ratings of existing transactions are anticipated as a result of the application of the criteria.

The criteria report is available at 'www.fitchratings.com/criteria/us-public-finance.'

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[Infrastructure Bill Could Influence How States Select Transportation Projects.]

Virginia's 'Smart Scale' program offers an example of how a more-calibrated approach can work—and generate controversy

Included in the bipartisan infrastructure bill now before the U.S. House of Representatives are a pair of provisions that could spur states to rethink how they allocate scarce transportation dollars.

One new program would offer $2 million grants to help planners set up a formal and more open process to determine which projects should get funding. The other gives officials access to new data sources to help set those priorities.

The grants, pushed by Sens. Tom Carper (D., Del.) and Tammy Duckworth (D., Ill.), were modeled on a Virginia program that shows how such a system could work—and how it can generate controversy.

In 2014, Virginia lawmakers on a bipartisan basis changed the way the state's transportation department allocates funds to road, transit and pedestrian projects.

Before, transportation officials would release a list of their top projects and then work their way down as money became available. But they didn't discuss in detail what criteria they used to devise their ranking.

The ranking was closely watched by local officials and residents, anxious to get money for projects such as widening a traffic-choked highway or calming a dangerous intersection.

Many states use a similar process. In some cases the legislature, rather than the department of transportation, determines the list of projects to fund.

Under Virginia's new system, dubbed "Smart Scale," officials score projects based on six criteria. They examine a project's effect on congestion, safety and environmental quality. They also look at how it fits into regional land-use plans and whether it would contribute to local economic development efforts.

Finally, they assess how a project, such as a widened road, would make the region more accessible, defined as whether people would be able to more easily move around their neighborhoods, even if they don't use the road in question.

"It ties the benefits to people rather than to how well an individual road is performing," said Chris McCahill, director of the State Smart Transportation Initiative, a research group at the University of Wisconsin that helped Virginia set up its program.

Academics have focused on such accessibility measures for decades. But only in the past few years have planners begun to incorporate them into transportation decisions, in part because they can get much more detailed data now than in the past, said Andrew Owen, a research fellow at the Center for Transportation Studies at the University of Minnesota.

For instance, planners can now map out how long it takes for people on every block to get to destinations such as jobs, grocery stores, schools or doctors' offices and estimate how those travel times would change under different scenarios.

Focusing on those details could change how planners invest their money, said Mr. Owen.

"One of things that we might see is more attention being paid to projects that are smaller-scale but that have an outsized impact on people's ability to get to destinations," he said.

A provision in the infrastructure bill would make that data more widely available.

Virginia officials publish a project's scores on all the criteria, and weigh the results against the costs. They then recommend the top projects for funding from the state's transportation board. The board can adopt or reject the agency's recommendations.

"In the past there was a sense the process was opaque," said Nick Donohue, Virginia's deputy transportation secretary. "Now we have a much more transparent and accountable process. I would like to think that we're picking much more effective projects."

But Virginia's effort has its critics. For instance, a $115.5 million request to widen the northbound lanes of Interstate 95 over the Rappahannock River didn't score high enough to receive money through the program, even though widening the southbound lanes was approved under the program. That upset local officials who say that stretch of highway is among the state's most congested.

Matthew Kelly, a city council member in nearby Fredericksburg, said that although he agrees with the principle behind Virginia's Smart Scale program, he has problems with its execution.

"It's the metrics that they use to determine what gets funded that creates a problem," he said. "Everybody would agree we are the most screwed-up section of 95 in the freaking world."

The project eventually received funding through other sources.

Dave LaRock, a Republican who represents Loudoun County in the Virginia House of Delegates, said the department of transportation's criteria put too little emphasis on reducing congestion, which he called "the most fundamental need for roads."

Mr. LaRock has introduced legislation to overhaul Smart Scale, so far without success.

Other states, such as North Carolina and Utah, have similar processes in place. In Utah, planners evaluate how projects will affect safety, economic growth, air quality, the possibility of walking or biking and whether the project would fit into the existing community, said Carlos Braceras, executive director of the Utah Department of Transportation.

"When I started here in 1986 the attitude was we're the experts, get out of the way," Mr. Braceras said. "The focus on transparency, on being clear how and why decisions are made, I don't think was as big a focus."

Asking transportation officials to publicly spell out their priorities is a significant shift, said Mr. McCahill. "You've got to change the way you've been doing things and commit to some level of staffing to get it right," he said. "The pilot program in the bill would enable a lot more folks to take that step."

Mr. Braceras said the grants included in the infrastructure bill could help states overcome the fear of trying something new.

"There's so much risk," he said. "If it's done in partnership with the federal government and it's done with a pilot [program], it gives you a lot of cover."

The Wall Street Journal

By David Harrison

Sept. 4, 2021

The Rich Rush to Muni Bonds.

As Biden's tax hikes loom, cities and states see a tax-exempt boom.

The biggest winners of the 2020 election have turned out to be state and local governments, especially those run by Democrats. Democrats in Congress have showered them with federal largesse, and President Biden is now reducing their borrowing costs by driving a stampede of investors into tax-exempt municipal bonds.

Demand for muni debt has surged this year even from last year's high levels as well-to-do Americans seek protection from the expected income and capital gains tax increases. Investors have plowed a record $69 billion into muni-bond mutual and exchange traded funds during the first seven months of this year, driving yields to historic lows.

The yield on the S&P Municipal Bond Index this summer fell below 1% for the first time and is now about half of what it was two years ago. BlackRock's California and New York Muni Bond ETFs (which include bonds from municipalities and local public agencies) are yielding 0.83% and 0.86%, respectively, versus 1.29% on the 10-year Treasury.

Try to wrap your head around this: The U.S. government has been issuing hundreds of billions of dollars in debt to help states and localities that are rolling in record tax revenue and can borrow at negative real rates. Now Congress plans to borrow even more for public works that many states could finance more cheaply. Only in Washington does this make any sense.

Munis have become more attractive because their interest is exempt from federal income tax, unlike Treasurys and corporate bonds. Most states also exempt debt issued by their localities from income taxes. This makes muni ETF and mutual funds especially popular among wealthy Americans in states with high tax rates like California and New York.

Now Mr. Biden wants to raise the top income tax rate to 39.6% from 37%. After adding the 3.8% investment tax, couples making more than $509,000 would pay 43.4% on interest income and dividends. High earners currently pay 23.8% on long-term capital gains, but Democrats also want to tax their capital gains as ordinary income.

The tax bill for wealthy Americans in many states could soon exceed 50% on stock sales, dividends and interest income. Tax-exempt munis are a port in this tax storm. Despite the paltry yields on munis, Americans may still net more than they would buying corporate bonds or Treasurys.

The gusher of cash from Congress to the states has also reduced muni-bond risk. Illinois recently received its first credit rating upgrade in more than 20 years, though the state's spendthrift policies and public-union stranglehold on Springfield haven't changed. The difference is the federal bailout cash.

The biggest, if unseen, cost of this investment in munis is misallocation of capital. Muni bonds do finance some needed public works improvements. But today's extraordinary rush to munis means that many investors are looking for tax avoidance rather than investing for higher returns in new ventures or productive private enterprises.

All of this finances bigger government, not the wealth creation that is essential to long-term growth and higher living standards.

The Wall Street Journal

By The Editorial Board

Sept. 2, 2021 6:48 pm ET

SEC Fines Ex-Broker for Retail Order Period Scheme.

A former broker has agreed to be barred from the industry and pay a $40,000 penalty to settle Securities and Exchange Commission charges he dishonestly obtained new-issue bonds meant for retail customers, instead placing orders on behalf of broker-dealers.

The settled proceeding against Anthony Falsetta, announced Tuesday, is the latest in a string of SEC cases targeting violations of retail order periods. Some of that conduct has been labeled "flipping," though that is not an official legal term, because of the practice of "flipping" the bonds to other broker-dealers at a profit. Falsetta did not admit nor deny the SEC's findings.

"Between January 2016 and April 2018, Falsetta violated retail order period priority provisions in certain new-issue municipal bond offerings by placing orders for broker-dealers, who were attempting to buy bonds for their inventory, as retail customer orders," the SEC found. "Falsetta did so despite knowing that pursuant to issuer priority rules, orders on behalf of broker-dealers do not qualify for retail priority."

According to the SEC, Falsetta earned about $122,353 in commissions on 106 retail allotments he sold to Hilltop and Wells Fargo (WFC) while acting as a broker at Philadelphia-based Drexel Hamilton. As an institutional sales representative, Falsetta marketed new-issue municipal bonds that Drexel Hamilton was offering.

The SEC found that Falsetta in January 2016 contacted Daniel Tracy, a Hilltop representative who was the subject of a separate SEC action in July, and invited him to submit orders for new-issue bonds. Falsetta had previously worked together with Tracy at a different firm, and Falsetta knew the orders would be for Hilltop's inventory, the SEC said. Falsetta had a similar arrangement with an unnamed Wells Fargo (WFC) representative, the SEC found.

"Falsetta understood that the stock orders he received from Tracy and Trader A did not qualify for retail priority," the SEC found. "Falsetta submitted these orders as retail to create the false appearance that they were submitted on behalf of an individual rather than on behalf of a broker-dealer."

The SEC has been worried about this and similar conduct for several years now, in part because it risks crowding legitimate retail purchasers out of offerings. In perhaps the most significant of these cases, the SEC in 2018 charged two firms and 18 individuals with operating a wide-ranging scheme to circumvent retail order restrictions.

Further cases followed, some linked to that initial case. Last year Roosevelt & Cross Inc. and its CEO agreed to pay some $1 million to settle the SEC's charges linked to that flipping investigation.

The SEC said Falsetta took certain steps to conceal his activity, including delaying writing the sales tickets for the orders until the bonds were "free to trade." This created the false appearance that the bonds were sold in the secondary market, the SEC alleged.

Falsetta's conduct violated the anti-fraud provisions of the securities laws, as well as Municipal Securities Rulemaking Board rules G-17 on fair dealing and G-11 on primary offering practices.

Falsetta signed a statement attesting to his inability to pay disgorgement, though under the terms of the settlement he will pay the $40,000 civil penalty in installments. He can reapply to be eligible for a securities license after three years.

By Kyle Glazier

BY SOURCEMEDIA | 08/31/21

These Charts Show Which States Will Get the Most Money from Biden’s Infrastructure Bill.

KEY POINTS

- California, Texas and New York will likely cash in big on the trillion-dollar infrastructure package if the bill makes its way to President Joe Biden’s desk.
- But far less populous states — such as Montana and Alaska — will get the most money per capita.
- The Senate overwhelmingly approved the $1 trillion infrastructure bill earlier this month. The House aims to pass the bill by October.

Continue reading.

cnbc.com

by Thomas Franck & Nate Rattner

AUG 31 2021

Why Didn’t Covid-19 Wreck State And City Budgets? Federal Spending.

When the Covid-19 recession hit hard in spring 2020, people feared that state budgets would collapse, driving cities and states to bankruptcy and crippling public services. Although we still must keep investing in public goods, the feared budget disaster didn’t happen. Why? Prompt government action, including unprecedented steps by the Federal Reserve and massive federal spending.

Remember the headlines? In May 2020, the New York Times NYT -1.3% saw state services decline “as virus ravages budgets.” The US Conference of Mayors put a “Fiscal Pain Tracker” on the internet, detailing the cuts being made across America’s cities, big and small. In August, National Public Radio said “States Are Broke And Many Are Eyeing Massive Cuts.”

I was among those fearing deep harm from the Covid-19 recession. In May 2020, I endorsed a $1 trillion spending package for states and cities, arguing that “collapsing” tax revenues were undercutting public sector jobs and threatening the macroeconomy.

Continue reading.

Forbes

by Richard McGahey

Sep 1, 2021

State, Local Job Recovery Stalls Out Amid Virus's Resurgence.

- **Combined payrolls fell in August for first time since February**
- **Employment levels still below pre-pandemic levels despite aid**

State and local governments shed employees in August, underscoring the impact of the latest surge in U.S. coronavirus infections and the cautious approach municipalities have been taking with their windfall from federal aid.

August payrolls for nonfarm state and local government employees fell by about 11,000, according to Bureau of Labor Statistics data released Friday. The decline followed steady gains for most of 2021 and represents the first drop since February.

The losses took place against a backdrop of a weak overall hiring across the economy in August, which produced the smallest job gains in seven months.

The lethargic rebound at the state and local level — in particular in education, where pandemic-related staffing fluctuations are roiling hiring — is significant, though: The state and local areas combined account for about 12% of total employment.

"The pandemic is weighing on the labor market again," said Teryn Zmuda, chief economist at the National Association of Counties. "Overall the jobs report did not perform as we hoped for or expected."

Municipalities received $350 billion from the federal government to ease the blow of the pandemic and to stave off the sort of cuts that hampered growth in the years after the 2008 financial crisis.

Education Losses

Still, the 466,000 jobs gained in the sector since January 2021 leaves states and localities 780,000 positions short of their January 2020 levels, according to the BLS data. Of note, around half of that deficit is from education jobs.

The gap should continue to close as the governments build and implement programs to spend the unprecedented federal aid distributed as part of the American Rescue Plan. States have spent or appropriated at least $81 billion of the $200 billion they received, according to data compiled by Bloomberg. The measured approach is evident at the local level as well, Zmuda said.

The fact that state and local job losses have been concentrated in education is a promising sign for recovery, said Mikhail Foux, head of municipal strategy at Barclays Plc. He sees next month showing a bigger rebound as schools reopen and resume in-person activity.

"We expect September job numbers to be substantially stronger," he said.

Bloomberg Economics

By Fola Akinnibi

September 3, 2021

— With assistance by Amanda Albright, and Olivia Rockeman

Munis In Focus: Ida Impact And Rescue Funds (Radio)

Joe Mysak, Editor of Bloomberg Brief: Municipal Market, discusses the latest news from the muni market. Hosted by Paul Sweeney and Matt Miller. (Taylor Riggs fills in for Paul Sweeney)

Play Episode

Bloomberg Radio

September 3, 2021

Telephonic TEFRA Hearings are Now Available Through March 31, 2022: Squire Patton Boggs

On November 4, 2020, we all thought that the COVID-19 pandemic was going to be long over by now. We certainly did not think we were going to get so far down the Greek alphabet of variants of this virus. And, this author certainly did not think that she was going to have to keep looking up what the next letter of the Greek alphabet is. Now we are at mu, and there does not seem to be an end in sight.

It seems like when the IRS issued Revenue Procedure 2020-49, it thought that the COVID-19 pandemic was going to be over by now too. As a reminder, on November 4, 2020, the IRS issued Revenue Procedure 2020-49, which allowed telephonic TEFRA hearings to continue through September 30, 2021. Specifically, during this period, a governmental unit can meet the TEFRA requirement that the public hearing be held in a convenient location for affected residents by affording the general public access to the hearing by toll-free telephone call.[1]

With September 30th right around the corner, public finance tax attorneys were starting to get nervous[2] about whether these hearings were going to have to be in-person as cases are back on the rise. We can all breathe a sigh of relief because yesterday the IRS has further extended the period during which telephonic TEFRA hearings can be held in lieu of in-person TEFRA hearings until **March 31, 2022** through issued Revenue Procedure 2021-39.

Hopefully this will be the last extension that we need and we won't have variants that start sounding like sororities.

[1] The authors of this blog are still explaining to people what constitutes a toll-free number.

[2] More nervous than we usually are.

By Taylor Klavan on September 1, 2021

Squire Patton Boggs

Hawkins Advisory: Rev. Proc. 2021-39 - Extension of Ability to Hold

Telephonic TEFRA Hearings

In response to the ongoing COVID-19 public health concerns and the continuation of local restrictions on public gatherings, the Internal Revenue Service has issued Revenue Procedure 2021-39, extending the period during which issuers may hold telephonic hearings to March 31, 2022.

Read the Hawkins Advisory.

TAX - CONNECTICUT

Boardwalk Realty Associates, LLC v. M & S Gateway Associates, LLC

Supreme Court of Connecticut - August 13, 2021 - A.3d - 2021 WL 3610351

Court-appointed receiver of rents brought action car dealership operators seeking to collect unpaid rent as well as use and occupancy payments as part of town's effort to collect unpaid property taxes on parcel of commercial property that was abandoned by its owner.

The Superior Court entered summary judgment for operators. Receiver appealed.

The Supreme Court held that as a matter of first impression, receiver did not have statutory authority to impose or collect rent or use and occupancy payments where the property had been abandoned prior to his appointment.

Receiver who was appointed under statute that permitted appointment of a receiver of rents when real property taxes due to a municipality were delinquent was not statutorily authorized to impose or collect rent or use and occupancy payments where the property had been abandoned by the owner prior to the appointment of the receiver and there was no existing obligation for the receiver to enforce

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Citigroup Sees Pain for High-Yield Munis After Nuveen Shuts Fund.

- **Fund manager plan to close to new money may signal overheating**
- **Citi sees high-yield muni spreads widening, valuations falling**

The riskiest part of the $4 trillion municipal bond market may see demand fade as the largest fund devoted to buying that debt closes its doors to new investors, according to Citigroup Inc. strategists.

Nuveen's plan to limit new money in its high-yield muni fund signals to investors that the market for riskier tax-free bonds may be overheating, strategists led by Vikram Rai wrote this week, in a report that doesn't mention the asset manager by name.

In addition to the signaling effect, Nuveen's fund accounts for almost a fifth of the assets under management by high-yield muni asset managers, according to Citigroup. Even if existing holders keep adding money, and new investors hand their dollars over to other firms, the fund is big enough to have an impact on the overall market as its demand slows.

"You can expect spreads to cheapen because one, people will buy less and secondly the largest mission fund manager will also buy less," Rai said in an interview.

The strategists estimate that the Nuveen fund's demand for new securities will drop by about 50%. But it's unusual for muni funds to close their doors to new investors, so it's hard to know what the net decline will be for demand overall in the market as at least some investors pour money into other funds, they wrote.

In addition to high-yield municipal bonds getting weaker relative to Treasuries, valuations will likely fall overall, Rai wrote. Any declines would come after the securities lost 0.2% in August on a total return basis, the first monthly decline since February, according to a Bloomberg index. The debt has still gained 7.2% this year.

Nuveen said last month that its High Yield Municipal Bond Fund, run by John Miller, plans to close to new investors at the end of September. It has returned around 15% over the past year, better than all but 2% of its peers, according to data compiled by Bloomberg.

Junk and unrated munis can fund a range of issuers, including airline-linked projects and convention centers. Investors have poured nearly $18 billion into funds buying these securities this year, as an improving economy and federal bailouts for state and local governments have made many fund buyers more willing to take risk.

Meanwhile, there are only so many opportunities to buy high-yield muni bonds now, Citigroup strategists wrote, noting "demand far exceeds supply." Buying investment-grade securities would depress returns for these funds.

Nuveen's move came after Invesco in May said it was closing its high-yield muni fund to new investors.

Bloomberg Markets

By Skylar Woodhouse

September 1, 2021, 11:48 AM MDT

— With assistance by Romy Varghese

'Can't Go Up Forever': Muni Bonds See First Loss Since February.

- **Bloomberg benchmark shows tax-free debt down 0.37% in August**
- **Market still up for the year, beating Treasuries, corporates**

State and local government debt is poised for the first monthly drop since February, stepping back from a rally that made it one of the best performing corners of the bond market.

The securities have posted a loss of 0.37% since the start of August, according to Bloomberg's benchmark index, as yields rose on speculation about when the Federal Reserve will start tightening monetary policy.

The decline is a shift after five straight months of gains that have allowed tax-exempt bonds to eke out a positive return so far this year, in contrast the overall losses for both Treasuries and investment-grade corporate debt.

"The market just can't keep rallying," said Vikram Rai, head of municipal strategy for Citigroup Inc.

He said the returns are not "deeply negative," so the dip isn't likely to shake up investor sentiment or cheapen heady valuations that have frustrated investors for much of the year. "August is just a minor correction."

The advance this year came as investors plowed record amounts of cash into mutual funds, fueling high demand for the bonds. That helped hold down yields and earlier this year pushed a key measure of valuations to an all-time high. That influx has continued to hold up despite the price retreat.

James Iselin, a portfolio manager at Neuberger Berman Group, said that tax-exempt bonds have been extremely expensive relative to Treasuries and it's natural to see "a modest pullback" as trading slows at the end of the summer.

"Things can't go up forever," he said.

"A lot of people in the market aren't upset to see a little backup in yields off these levels," he added. "The market got a little bit tired and, with Treasuries stopping the huge rally that they had and going the other way, it makes sense that munis came a little off their highs."

Bloomberg Markets

By Danielle Moran and Skylar Woodhouse

August 31, 2021, 11:33 AM MDT

Which Side Are You On? Municipal Broker/Dealer Takes Both Sides.

On Aug. 26, 2021, the U.S. Securities and Exchange Commission ("SEC") instituted enforcement proceedings against Rush F. Harding III, the 65-year-old co-founder of Crews & Associates, Inc. ("Crews"), a Little Rock, Arkansas, broker/dealer and municipal advisor, and against Crews for unfair dealings in the bonds of Ohio County, West Virginia. County offices are in Wheeling, West Virginia. In 2006 the County issued $81 million of bonds bearing interest at 8.25%, and which had a make-whole provision, making calling them prohibitively expensive. In 2007 Crews began a business relationship with the County, and by 2015 had underwritten nine bond offerings for the County.

Municipal Broker
Harding, on behalf of Crews, organized two tender offers (in 2012 and 2014) to purchase the outstanding 2006 bonds, as market interest rates had fallen significantly since 2006, making an offer at a price higher than the market for the 2006 bonds, an attractive way for the County to reduce its debt service costs. The County funded the buybacks by issuing new lower interest rate bonds underwritten by Crews. Crews then purchased approximately $1 million of the 2006 bonds on the open market at 106.69% of par. It then sold those bonds to two Crews customers.

In 2015 Crews again bid on the 2006 bonds, buying $3.12 million at 107.2% of par, $2.5 million of which it sold to a Crews affiliate of which Harding was also the CEO. The County did not in any of these transactions retain a municipal advisor to represent its interests, "relying instead (per the SEC) on its relationship with, and the expertise of, Crews."

As required by Municipal Securities Rulemaking Board ("MSRB") Rule G-17, on Dec. 14, 2015, Crews sent the County a disclosure letter that documented the relationship between Crews and the County and acknowledged its obligations to deal fairly with the County. That letter asserted that it "had not identified any potential or actual material conflicts that required disclosure." Crews did not disclose that it had acquired through its affiliate $2.5 million of the 2006 bonds. Before the tender offer urged by Crews, Crews continued to purchase 2006 bonds for the affiliate.

Dealer Takes Both Sides
In December 2015, the tender offer was priced at 110% of par. When the tender closed in February 2016, the affiliate tendered 71% of the 2006 bonds tendered to the County. The SEC noted that the tender resulted in "significant savings" for the County. In connection with the tender, the SEC also found that Harding and Crews violated MSRB Rule G-27 for failing to have adequate supervisory systems. Crews made a net profit of $34,631; Harding was paid $36,524 in commissions; and the affiliate made a net profit of $27,153.

Harding and Crews consented to the entry of the SEC enforcement proceedings. As a result, Harding was censured and ordered to pay disgorgement of $36,524, as well as a civil penalty of $100,000. Crews was also censured, ordered to disgorge $44,072, and ordered to pay a civil penalty of $200,000. Ohio County and the rest of the capital markets might benefit not only from considering the way in which it and its tax-paying citizens were victims, but also from considering the frequency of abuses in the offering of municipal securities. See my Sept. 29, 2020 Blog "What if the Advice is Suspect? Municipal Securities Advisor Registration and Dereliction."

Thursday, September 2, 2021

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MSRB Compares ATS And Broker's Broker Trading Platforms: Cadwalader

The Chief Economist for the MSRB analyzed the effect of electronic trading technology by comparing trading activity on alternative trading systems ("ATSs") with broker's broker platforms.

The author drew the following conclusions:

- ATS platforms (i) are more likely to include inter-dealer trades that are smaller and involve municipal securities with "complex features" (g., insured bonds and bonds with call features) and (ii) provide more robust search functions as compared to broker's broker platforms.
- ATS platforms appear to promote "visible liquidity and price discovery," particularly for municipal securities that are not commonly traded or well-known.
- Broker's broker trading platforms may be geared more towards trading for institutional investors and dealer's principal positions.

The MSRB emphasized that the analysis was "preliminary" and the results "may warrant further investigation."

31 August 2021

by Cadwalader, Wickersham & Taft LLP

[Javits Center Debt Downgraded as NYC Tourism Struggles to Revive.]

- **Moody’s lowers credit ratings on about $1 billion of bonds**
- **Javits senior bonds lowered to A2, subordinate to Baa2**

New York’s Jacob K. Javits Convention Center, which was turned into an emergency hospital during the first wave of Covid-19, had about $1 billion of municipal bonds downgraded by Moody’s Investors Service as tourism struggles to recover from the pandemic.

Moody’s lowered ratings on $770 million of senior debt issued by the New York Convention Center Development Corporation one level to A2 from A1. The rating on $220 million of subordinate debt was lowered two levels to Baa2, the second-lowest investment grade, from A3. The outlook on the bonds is negative.

“The continuing impact of the coronavirus pandemic has created severe and ongoing disruptions in the New York City travel and tourism market and therefore pledged revenue receipts,” Moody’s said in a news release. “As the world continues to grapple with new virus variants, an uncertain recovery path faces travel and tourism as well as New York City’s office occupancy and business travel.”

Debt issued for the Javits Center is payable from a $1.50 per-night fee on occupied hotel rooms in New York City and the senior bonds also get backing from a state agency that finances mortgages. The city’s convention and visitors bureau projects tourism won’t return to pre-pandemic heights of 66.6 million visitors until 2025 In late July almost 100 were closed to tourism, according to Costar.

The New York International Automobile Show, normally held at Javits, was canceled this month for the second year in a row because of concerns about the Covid-19 delta variant.

Bloomberg Markets

By Martin Z Braun

September 1, 2021

[S&P U.S. Local Governments Credit Brief: California School Districts]

Overview

Despite the effects of the COVID-19 pandemic, California school districts demonstrated generally stable credit quality in fiscal years 2020 and 2021, and S&P Global Ratings expects this will continue in fiscal 2022. State revenue significantly outperformed budget during fiscal 2021, and the enacted budget for fiscal 2022 provides the highest funding per pupil in the state’s history. Nevertheless, if school districts that are more reliant on state funding and have experienced enrollment declines do not prepare accordingly, they could face budgetary challenges in fiscal 2023 with the expiration of provisions that have held them harmless against enrollment declines during the pandemic.

S&P Global Ratings maintains general obligation (GO) ratings on 662 school districts in California. Fifty-seven percent of California school districts are in the ‘A’ category, 42% are in the ‘AA’ category or above, and fewer than 1% are in the ‘BBB’ category or lower. In addition, 97% of the ratings have a stable outlook, while approximately 2% have a negative outlook. One school district has a positive outlook.

Continue reading.

30 Aug, 202

Novogradac Private Activity Bond and 4% LIHTC Overview Recording.

Monday, July 26, 2021 – 7:43am

On-Demand Training

The Novogradac Private Activity Bond and 4% LIHTC Overview Webinar Recording presents an overview of the major accounting concepts associated with the use of private activity bonds and 4 percent low-income housing tax credits (LIHTCs) to finance affordable multifamily rental housing properties. The recording focuses on the 50% Test, the 95-5 Test and challenges of complying with bond rules and LIHTC rules.

Click here for the recording.

Muni-Bond Buyers Shrug Off California Governor's Recall Peril.

- **Newsom faces gubernatorial recall, state's second, on Sept. 14**
- **Bond sale set same day underscores lack of investor concern**

Municipal-bond investors are seemingly unfazed by the prospect that voters this month may toss out the governor of California, the most prolific issuer of such debt, and replace him with a popular conservative talk-radio host.

In fact, California's 10-year general-obligation bonds are yielding about 0.06 percentage point over benchmark munis, a smaller premium than the 0.11 percentage point seen at the beginning of the year. California's credit ratings are at the highest in about 20 years and demand for munis is soaring, especially for the state's debt as wealthy residents seek tax-exempt bonds.

Gavin Newsom, a first-term Democrat, is facing a rare recall election Sept. 14. While polls shows he's got a good chance of keeping his seat, Democrats worry that he could lose and a political neophyte like Larry Elder, a Republican who's opposed to mask and vaccine mandates, could end up in the governor's office.

Though Elder or any of the other 45 candidates on the ballot could upend state policies through executive orders and political appointments, Democrats would still control both chambers of the legislature. And Newsom's replacement would be up for election next year in a state where Democrats outnumber Republicans nearly two to one.

"We just don't think it's going to be a large impact on credit, even if the recall is successful," said Jennifer Johnston, director of research for Franklin Templeton Fixed Income's municipal bond team. "I don't think there's much damage, so to speak, that a new governor could do in this time frame."

Propping up Wall Street's confidence in the world's fifth-largest economy are California's booming technology industry and other lucrative sectors and its progressive tax system that have led it to notch a record $75.7 billion surplus. Revenue collections are again running ahead of projections this fiscal year. Not only has California weathered a gubernatorial recall election before, but its finances are even better than in 2003, when voters expelled Democrat Gray Davis and tapped Republican Arnold Schwarzenegger as his successor.

“The state’s credit is very strong. Revenue receipts this summer have exceeded expectations,” said Parker Colvin, a managing director at underwriter Raymond James. “The market is in need of large, liquid, benchmark transactions.”

In a testament to how little the political furor has impacted bonds, the California treasurer’s office has scheduled a sale of $2.1 billion of tax-exempt general-obligation bonds the day of the recall election.

Bloomberg Markets

By Romy Varghese

September 2, 2021

Act Before Year End to Maximize Opportunity Zone Benefits.

If you are planning to acquire or build a senior living facility that is located in an opportunity zone, there are many tax benefits that are available to you. One of these benefits is that 10% of the capital gains that you defer when you make your investment in an opportunity zone will be forgiven, provided your investment is made by December 31, 2021, and held for at least 5 years.

Time is running out on when you can make your investment. However, while the investment must be made before year end, your acquisition can occur after this date if you properly structure your transaction to take advantage of the working capital safe harbor.

For a discussion of the tax benefits associated with opportunity zone investments and the requirements to qualify for them, download our brief primer.

If you cannot make your investment until after December 31, do not fret. You can still qualify for the other tax benefits available to opportunity zone investments. It is only the forgiveness of 10% of deferred gain that ceases to be available after year end.

Lowndes

August 27, 2021

Turbocharging OZ Returns with Historic Tax Credits, with John Blatchford.

Can opportunity zones be leveraged for historic renovation projects? How does the combination of historic tax credits and the opportunity…

CONTINUE READING »

OpportunityDb

September 1, 2021

NFMA Accepting Applications for At-Large Seats on the 2022-2023 Board of Governors.

We are accepting applications for At-Large seats on the 2022-2023 Board of Governors

Applications are due by October 1, 2021.

To apply, click here.

Please contact Lisa Good at lgood@nfma.org if you have questions.

Visualizing Data for Residents of Los Angeles: GFOA

The Office of the Controller for the City of Los Angeles, California manages vast amounts of data—particularly open data and financial data. The team's work is based on three Ts: Transparency, Trust and Transformation, with the goal of making Los Angeles the most transparent city in the United States. Years ago, organizations that rank the transparency of governments placed Los Angeles at the bottom of the list. Today, the city is ranked at the top. Greater transparency, which creates greater accountability, can help build the public's trust, which is vital to continuing democracy. And then, of course, there's transformation.

Thanks to technology, the daily activities of city departments have changed and are changing radically, increasing efficiency in operations and in the delivery of vital services. We must continue to be innovative and bring technology to city government, along with different ways of thinking about it.

Publication date: August 2021
Author: Ron Galperin

DOWNLOAD

- Muni Underwriters Cut Fees in Takedown Race-to-Bottom.
- Another Climate Risk for Cities: Higher Borrowing Costs.
- Cities and States on the Frontline of Climate Change Aren't Always Upfront about Risks. Does the Municipal Bond Market Care?
- Bond Insurance on Pace for Best Market Share Since 2008.
- The Dedication Doctrine vs. The Project Influence Rule – Which Valuation Methodology Applies? – Nossaman
- How to Explain Pension Obligation Bonds to Your Governing Board: Orrick On-Demand Webinar
- BDA's Fixed Income Leadership Three-Part Webinar Series is NEXT WEEK.

- *Rosenberg v. JPMorgan Chase & Co.* – Supreme Judicial Court of Massachusetts holds that remarketing agents alleged misrepresentations that they would comply with their obligations to Commonwealth to determine applicable rate of interest on long-term, tax-exempt, variable rate bonds that financed long-term public projects and infrastructure that, in their judgment, was lowest rate that would permit sale of bonds bearing interest at applicable interest rate at par plus accrued interest as of applicable rate determination date, was in public domain, for purposes of "public disclosure" bar to qui tam action against agents under Massachusetts False Claims Act (MFCA).
- And finally, Great Moments in Tragicomic Topography is brought to us this week by *Doe v. Town of Madison*, in which a high-school English teacher was arrested, convicted, and sentenced. to two years for sexually explicit contact with three students. A female teacher. With the football team. Her extremely bewildered/mortified husband testified that she was, "a woman who was teetering on the precipice of being kind of unhealthy and making some bad decisions and being very unhealthy and making some bad decisions." It had been our understanding that the teetering precipice metaphor is typically deployed in order to indicate some kinda binary good/evil scenario. We've consulted a Chex Mix of esteemed geographers, cartographers, and pornographers and the scientific consensus is that she hurled herself off the precipice, picked up speed, plummeted past Kind of Unhealthy Canyon, slammed into Very Unhealthy Gorge, and splattered her mangled corpse at the bottom of Some Bad Decisions Valley. GPS coordinate currently unavailable. We pray to god that you know it when you see it.

IMMUNITY - CONNECTICUT

Doe v. Town of Madison

Supreme Court of Connecticut - July 30, 2021 - A.3d - 2021 WL 3281024

Three public high school students who were sexually abused by high school teacher brought separate action against town, town school board, police officer assigned as school resource officer, and high school principal.

Actions were consolidated. The Superior Court granted summary judgment in favor of defendants. Students appealed.

The Supreme Court held that:

- High school personnel lacked reasonable suspicion to believe that teacher was sexually abusing students or exposing them to risk of sexual abuse, as would trigger duty to report under mandatory reporting statute;
- School athletic director's testimony did not create ministerial duty of professionalism; and
- Defendants had no ministerial duty to monitor security camera video footage at high school.

INSURANCE - ILLINOIS

Netherlands Insurance Company v. Macomb Community Unit School District No. 185

United States Court of Appeals, Seventh Circuit - August 6, 2021 - F.4th - 2021 WL 3464356

Insurers brought action seeking declaration of their rights and obligations under school district's general commercial liability insurance policy after district settled female students' action alleging that it had failed to prevent and inappropriately responded to sexual misconduct by male student.

The United States District Court for the Central District of Illinois entered judgment on pleadings in district's favor, and insurers appealed.

The Court of Appeals held that student's sexual misconduct fell within scope of policy provision excluding coverage for "[a]ny sexual misconduct" of "any person."

Under Illinois law, male student's sexual misconduct towards female students unambiguously fell within scope of provision of school district's general commercial liability insurance policy excluding coverage for "[a]ny sexual misconduct" of "any person," despite district's contention that it excluded coverage only for sexual misconduct by school employee.

PUBLIC PENSIONS - MARYLAND

Cherry v. Mayor and City Council of Baltimore City

Court of Appeals of Maryland - August 16, 2021 - A.3d - 2021 WL 3611768

Police officers and firefighters filed class action lawsuit against Mayor and City Council of Baltimore, alleging claims for declaratory relief and breach of contract.

The Circuit Court certified class of plaintiffs and three sub-classes and ruled that city did not breach its contract with sub-class of active employees, but it did breach its contract with retired and retirement-eligible sub-classes and awarded more than $30 million in damages to them.

Police officers' and firefighters' petition for writ of certiorari was granted.

The Court of Appeals held that:

- City did not breach its contract with pension plan members by underfunding plan;
- City breached its contract with retired police officers and firefighters and retirement-eligible police officers and firefighters;
- City had authority to make reasonable prospective modifications to pension plan, provided they were reasonable and necessary;
- Ordinance was reasonable and necessary, as required to be enforceable; and
- Circuit court correctly declined to order specific performance and calculated damages.

City did not breach its contract with pension plan members by underfunding plan, since plan did not require city to "fully fund" retiree reserves and provision governing calculation of city's annual contribution to fund contemplated possibility of either underfunding or overfunding of plan.

City, by way of ordinance that retrospectively divested benefits belonging to those pension plan members by replacing market-driven post-retirement cost-of-living adjustment feature with tiered cost-of-living adjustment, breached its contract with retired police officers and firefighters and retirement-eligible police officers and firefighters by unlawfully withdrawing or removing previously earned and accrued benefit entitlements.

City had authority to make reasonable prospective modifications to pension plan, provided they were reasonable and necessary, notwithstanding provision that contractual relationship existed between plan members and city and benefits provided under plan thereafter could not be diminished or impaired in any way, since benefits set forth in plan did not vest until members reached service retirement eligibility and provision did not eviscerate city's reserved power to make such reasonable and necessary prospective changes to plan.

Ordinance retrospectively divesting benefits belonging to public pension plan members by replacing market-driven post-retirement cost-of-living adjustment feature with tiered cost-of-living adjustment was reasonable and necessary, and therefore it did not violate Contract Clause, since ordinance was reasonably intended to preserve integrity of plan, changes to plan, as they affected active members, were reasonable changes promoting paramount interest of city without serious detriment to employee, active member employees received substantially plan for which they bargained, and to extent any benefits were lessened or other terms became more onerous, those changes were balanced by combination of overwhelming public welfare considerations and new benefits or qualifying conditions.

Circuit court correctly declined to order specific performance, i.e., reinstitution of variable benefit for retired and retirement-eligible police officers and firefighters, and calculated damages owed to retired and retirement-eligible police officers and firefighters from ordinance retrospectively divesting benefits belonging to public pension plan members by replacing market-driven post-retirement cost-of-living adjustment feature with tiered cost-of-living adjustment (COLA) by assessing how retired and retirement-eligible members would have fared if, hypothetically, city had retained variable benefit for them but made prospective changes to plan for members whose rights to benefits had not yet vested, since retired and retirement eligible were "closed" from changes but city was permitted to apply new COLA to active members.

VARIABLE RATE BONDS - MASSACHUSETTS

Rosenberg v. JPMorgan Chase & Co.

Supreme Judicial Court of Massachusetts - May 11, 2021 - 487 Mass. 403 - 169 N.E.3d 445

Relator filed complaint under Massachusetts False Claims Act (MFCA) against financial institutions that served as remarketing agents for Commonwealth on long-term tax-exempt variable rate bonds that financed long-term public projects or infrastructure, based on allegations that agents fraudulently inflated interest rates on bonds, in breach of agents' obligations in remarketing agreements determine lowest interest rate that would permit sale of bonds on any given rate determination date.

The Superior Court Department granted agents' motion to dismiss and relator appealed.

On transfer from Appeals Court, the Supreme Judicial Court held that:

- Information relating to agents' misrepresentations to Commonwealth was in public domain, for purposes of "public disclosure" bar to qui tam action;
- Purportedly true state of agents' fraud was in public domain;
- Remarketing agreements constituted "reports," and thus were statutory source of previously disclosed information, for purposes of "public disclosure" bar to qui tam action;
- Internet website that published information on all municipal bonds constituted "news media," and thus, was statutory source of previously disclosed information;
- Relator's assertions in complaint were substantially same as misrepresentations and true state of facts that were previously disclosed to public, for purposes of "public disclosure" bar to qui tam suit;

- Relator did not have knowledge independent of that information previously disclosed to public, as would bring relator's complaint within "original source" exception to "public disclosure" bar to suit; and
- Relator's information did not materially add to previously disclosed fraudulent scheme, as would bring relator's complaint within "original source" exception to "public disclosure" bar to suit.

Remarketing agents alleged misrepresentations that they would comply with their obligations to Commonwealth to determine applicable rate of interest on long-term, tax-exempt, variable rate bonds that financed long-term public projects and infrastructure that, in their judgment, was lowest rate that would permit sale of bonds bearing interest at applicable interest rate at par plus accrued interest as of applicable rate determination date, was in public domain, for purposes of "public disclosure" bar to qui tam action against agents under Massachusetts False Claims Act (MFCA), where representations were set forth in agreements with Commonwealth, in Municipal Securities Rulemaking Board (MSRB) rules that addressed agents' duties to bond issuers, and in Securities Industry Financial Markets Association (SIFMA) model disclosures.

Purportedly true state of remarketing agents' fraud in setting artificially high interest rates on long-term tax-exempt variable rate bonds to finance long-term public projects or infrastructure, when they represented to Commonwealth that they would comply with their obligations as remarketing agents to determine lowest interest rate that would permit sale of bonds on given rate determination date, were in public domain, for purposes "public disclosure" bar to qui tam action against agents under Massachusetts False Claims Act (MFCA); relator's assertion that agents were not obtaining lowest rates was available to public on Internet, specifically, website that publishes information on all municipal bonds, and relator used same data from website on Internet to conclude that agents were not setting lowest rates on bonds.

Remarketing agreements with Commonwealth, in which remarketing agents purportedly misrepresented state of facts that they would comply with their obligations to Commonwealth to determine applicable rate of interest on long-term, tax-exempt, variable rate bonds that financed long-term public projects and infrastructure that, in their judgment, was lowest rate that would permit sale of bonds bearing interest at applicable interest rate at par plus accrued interest as of applicable rate determination date, constituted "reports," and thus were statutory source of previously disclosed information, for purposes of "public disclosure" bar to qui tam action against agents, under Massachusetts False Claims Act (MFCA).

Internet website that published information on all municipal bonds constituted "news media," and thus, was statutory source of prior disclosure of purportedly true state of remarketing agents' alleged fraud in setting artificially high interest rates on long-term tax-exempt variable rate bonds that financed long-term public projects or infrastructure, when agents represented to Commonwealth in remarketing agreements that they would comply with their obligations to determine lowest interest rate that would permit sale of bonds on given rate determination date, for purposes of public disclosure bar to qui tam action under Massachusetts False Claims Act (MFCA).

Relator's allegations in qui tam complaint against remarketing agents, relating to agents' purportedly fraudulent scheme to artificially inflate interest rates on long-term tax-exempt variable rate bonds that financed long-term public projects or infrastructure, when agents represented to Commonwealth in remarketing agreements that they would comply with their obligations to determine lowest interest rate that would permit sale of bonds on any given rate determination date, were substantially same as misrepresentations and true state of facts that were previously disclosed to public, such that publicly disclosed information put Commonwealth on trail of alleged fraud without relator's assistance, and thus, relator's complaint fell within "public disclosure" bar to qui tam suit under Massachusetts False Claims Act (MFCA).

Relator did not have knowledge independent of that information previously disclosed to public regarding scheme by remarketing agents to artificially inflate interest rates on long-term tax-exempt variable rate bonds that financed long-term public projects or infrastructure, despite agents' obligations in remarketing agreements with Commonwealth to determine lowest interest rate that would permit sale of bonds on any given rate determination date, and thus, relator was not original source of information, as would bring relator's complaint under "original source" exception to "public disclosure" bar to suit under Massachusetts False Claims Act (MFCA); Internet website that published information about municipal bonds publicly reported same data upon which relator relied, and relator's analysis depended entirely on interest rate data, which were available on website.

Relator did not materially add to previously disclosed fraudulent scheme by remarketing agents to artificially inflate interest rates on long-term tax-exempt variable rate bonds that financed long-term public projects or infrastructure, in breach of agents' obligations in remarketing agreements with Commonwealth to determine lowest interest rate that would permit sale of bonds on any given rate determination date, and thus, relator was not "original source" of information, as would bring his qui tam complaint within "original source" exception to "public disclosure" bar to suit under Massachusetts False Claims Act (MFCA), despite relator's claim that his investigation revealed robo-resetting scheme for resetting interest rates; salient information was that agents promised they would reset rates individually and failed to do so, and manner in which they conducted the fraud — purportedly in order to discourage holders of bonds from selling those bonds — was detail that would not influence behavior of someone already armed with knowledge of salient elements of fraud.

Relator's assertion of collusion between remarketing agents to artificially inflate interest rates on long-term tax-exempt variable rate bonds that financed long-term public projects or infrastructure, in breach of agents' obligations in remarketing agreements with Commonwealth to determine lowest interest rate that would permit sale of bonds on any given rate determination date, did not materially add to information previously publicly disclosed, and thus, relator was not "original source" of knowledge of scheme, as required for relator's complaint to come within "original source" exception to "public disclosure" bar to qui tam suit under Massachusetts False Claims Act (MFCA); complaint simply alleged that agents must have colluded in order for interest rates to have changed as they did, and only additional information beyond this deduction from data contained on website that published information regarding municipal bonds, obtained during single interview, was not relevant to purported fraud, but merely confirmed what relator had already had discerned from data.

POLITICAL SUBDIVISIONS - NEW JERSEY

Ocean County Board of Commissioners v. Attorney General of State of New Jersey

United States Court of Appeals, Third Circuit - August 9, 2021 - F.4th - 2021 WL 3482908

Counties and county agencies filed suits against Attorney General for State of New Jersey, Office of Attorney General, and State of New Jersey, seeking declaration that law enforcement directive, also known as Immigrant Trust Directive, issued by Attorney General to limit ability of counties and local law enforcement to cooperate with federal immigration authorities violated United States Constitution and New Jersey law and was preempted by federal statutes.

Following consolidation of cases, the United States District Court for the District of New Jersey granted defendants' motion to dismiss for lack of subject matter jurisdiction and for failure to state claim. Counties and county agencies appealed.

The Court of Appeals held that:

- In matter of first impression, political subdivision may sue its creator state in federal court under Supremacy Clause; and
- Immigrant Trust Directive was not preempted by federal law.

Immigrant Trust Directive, issued by Attorney General for State of New Jersey, limiting ability of counties and local law enforcement to cooperate with federal immigration authorities, was not preempted by federal statutes, barring state entity or official from prohibiting, or in any way restricting, any government entity or official from sharing immigration information with federal authorities, and also providing that no state or local government entity could be prohibited, or in any way restricted, from communicating immigration information to federal government, since statutes regulated state actors, not private actors.

MUNICIPAL ORDINANCE - NORTH DAKOTA

City of Fargo v. Roehrich

Supreme Court of North Dakota - August 5, 2021 - N.W.2d - 2021 WL 3411833 - 2021 ND 145

Defendant was convicted in the District Court of harassment in violation of city ordinance. Defendant appealed.

The Supreme Court held that:

- Ordinance criminalizing telephone calls with “no purpose of legitimate communication” was not unconstitutionally vague in violation of due process;
- Ordinance was not unconstitutionally vague as applied to defendant; and
- First Amendment did not protect defendant’s conduct.

City harassment ordinance criminalizing telephone calls with “no purpose of legitimate communication” was not unconstitutionally vague in violation of due process, although term was not defined by statute; ordinance required the defendant to have the intent to frighten or harass to be found guilty, and the combination of the specific intent element with the required conduct of repeated phone calls or other electronic communication with no legitimate purpose created minimum guidelines for the reasonable police officer, judge, or jury and limited the dangers of arbitrary and discriminatory application, and provided a reasonable person with adequate and fair warning of the prohibited conduct.

City harassment ordinance criminalizing telephone calls with “no purpose of legitimate communication” was not unconstitutionally vague in violation of due process as applied to defendant; while defendant may have initially called city police officers with the purpose of legitimate communication regarding his son’s car accident, he made hundreds of telephone calls to three officers over a period of two years, and many of the calls had no purpose of legitimate communication, and calls were repetitive and included name calling and profanity, allegations the officers were liars or corrupt and did not know how to do their jobs, and other similar statements.

First Amendment did not protect defendant’s conduct in making harassing phone calls to city police officers and did not prevent conviction for violating city harassment ordinance criminalizing telephone calls with “no purpose of legitimate communication,” where defendant made hundreds of telephone calls to three officers, he was told to stop calling numerous times, he was sent a cease and desist letter, and he continued to call the officers after being told to stop, and defendant stated in multiple voicemail messages that he would continue to call the officers until he was charged with harassment.

ZONING & PLANNING - PENNSYLVANIA

[Drummond v. Robinson Township]

United States Court of Appeals, Third Circuit - August 17, 2021 - F.4th - 2021 WL 3627106

Gun rights organization, gun club, and would-be operator of gun club filed § 1983 action against township and township zoning officer, alleging violation of plaintiffs' Second Amendment rights by stalling club operator's zoning application to allegedly zone gun club out of existence, among other claims.

The United States District Court for the Western District of Pennsylvania granted defendants' motion to dismiss and denied plaintiffs' motion for preliminary injunction as moot. Plaintiffs appealed. The Court of Appeals affirmed in part, vacated in part, and remanded. On remand, the United States District Court for the Western District of Pennsylvania granted defendants' motion to dismiss for failure to state a claim. Plaintiffs appealed.
Holdings: The Court of Appeals held that:

- As a matter of first impression, zoning restrictions lacked historical foundations, as would support heightened scrutiny;
- Intermediate scrutiny, rather than strict scrutiny, applied;
- Defendants failed to establish a close fit between challenged rules and actual public benefits they served; and
- Reassignment to another district judge was unwarranted.

Township's zoning restrictions barring training with common weapons in areas where firearms practice was otherwise permitted and preventing businesses in certain areas from selling guns or range time at a profit lacked historical foundations, as would support heightened scrutiny on facial Second Amendment challenge pursuant to § 1983, even though ordinance shared some features with traditional antecedents of dividing township into districts, excluding firearms purchase and practice from residential areas, and designating certain areas for center-fire practice and commercial ranges.

Township's zoning ordinance prohibiting commercially-operated gun clubs and forbidding center-fire cartridges, did not ban firearms purchase and practice in township, but rather preserved avenues for citizens to acquire weapons and maintain proficiency in their use, thus implicating intermediate scrutiny, rather than strict scrutiny, on Second Amendment facial challenge pursuant to § 1983; ordinance allowed non-profit gun clubs, allowed citizens to train with forms of ammunition other than center-fire cartridges, and opened two districts to commercial ranges and center-fire rifle training.

Township failed to establish a close fit between challenged zoning ordinance prohibiting commercially-operated gun clubs and forbidding center-fire cartridges and actual public benefits they served of preventing use of powerful ammunition, reducing noise, increasing safety, and moderating intensity of use, and thus township failed to establish that ordinance withstood intermediate scrutiny on § 1983 Second Amendment facial challenge at the motion to dismiss for failure to state a claim stage; there were no parallels for the challenged rules whether in history or in contemporary practice, there was no evidence tying challenged rules to asserted interest, and township neglected to explain why it eschewed more targeted alternatives.

Reassignment to another district judge was unwarranted for § 1983 Second Amendment case challenging township's zoning ordinance prohibiting commercially-operated gun clubs and forbidding center-fire cartridges; district court did not disregard Court of Appeals' prior order which directed district court to follow two-step framework for Second Amendment challenges, and which did not direct district court to reach a particular result at either step.

ZONING & PLANNING - UTAH

[Croft v. Morgan County]()

Supreme Court of Utah - August 12, 2021 - P.3d - 2021 WL 3557629 - 2021 UT 46

Residents brought action to challenge county's rejection of their application to submit an ordinance approving the development of a ski resort community to a referendum.

The Second District Court dismissed the challenge for lack of jurisdiction, and residents appealed.

The Supreme Court held that, as a matter of first impression, residents could not have obtained an extraordinary writ in the Supreme Court, and thus were not required to file a petition for extraordinary writ and properly filed their challenge in the district court.

Residents who sought to challenge county's rejection of their application to submit an ordinance approving the development of a ski resort community to a referendum could not have obtained an extraordinary writ in the Supreme Court, and thus were not required to file a petition for extraordinary writ and properly filed their challenge in the district court, where construction of the ski resort was not imminent, referendum did not need to be immediately placed on the ballot to avoid the ski resort's construction, referendum application was not tied to any specific election or other deadline, and, while 18 months had passed since the referendum application was rejected, their alleged injury could still be redressed through a referendum.

PUBLIC RECORDS - WASHINGTON

[Bogen v. City of Bremerton]()

Court of Appeals of Washington, Division 2 - August 10, 2021 - P.3d - 2021 WL 3504603

Citizen brought action against city alleging violation of Public Records Act (PRA).

The Superior Court granted city's motion to dismiss. Citizen appealed.

The Court of Appeals held that:

- One-year statute of limitations on citizen's PRA claim began to run on day after city's final action on citizen's records request, and
- Court would defer to superior court to award attorney fees.

One-year statute of limitations on citizen's Public Records Act (PRA) claim against city began to run on day after city's final action on citizen's public records request, rather than on day of city's final action; "within one year of" language in statute established period of time allowed for judicial review of agency actions, not how to compute that period of time, and “within one year of” time period in statute did not include day of triggering event.

Court of Appeals would defer to Superior Court to award attorney fees in citizen’s action against city alleging violation of Public Records Act (PRA); though citizen prevailed on his appeal of grant of motion to dismiss for failure to state a claim, citizen’s PRA claims had not yet been decided on merits

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Bond Insurance on Pace for Best Market Share Since 2008.

The two active bond insurers combined for a total of $18.75 billion of insured par in the first half of 2021 in 1,164 deals, up from the $14.04 billion in 985 transactions in the first half of last year.

They are on pace for the most insured par since 2008 and best market share since 2009.

Assured Guaranty Municipal Corp. and Build America Mutual insured 8.4% of the market, measured by par, according to Refinitiv data, the highest since it was 8.64% at the end of 2009. Pre-pandemic, the wrap rate was roughly 6%.

The first-half insured par is up 31% year-over-year compared to the overall market volume growth of 15%. The number of insured transactions is up 88%, while the total transaction count in the muni market increased by 19%.

Insurance usage was up 77.5% in the first quarter to $8.71 billion from $4.91 billion in the same time the year before, while the second quarter was up 9.9% to $10.04 billion from $9.14 billion.

Assured Guaranty (AGO) accounted for a total of $10.74 billion in 543 deals in the first half of 2021, compared to $7.84 billion in 476 deals a year prior. Those figures include Assured’s subsidiary, Municipal Assurance Corp, according to Refinitiv data.

“Assured Guaranty’s U.S. municipal bond insurance production was outstanding during the first half of 2021, guaranteeing 58% of new issue insured par sold,” said Robert Tucker, senior managing director and head of investor relations and communications at Assured. “The $11.1 billion (inclusive of a corporate-CUSIP transactions) Assured Guaranty (AGO) guaranteed in the primary market was 34% higher than the amount of new-issue insured par sold that it guaranteed in the first half of 2020 and, looking back to a comparable period just before the pandemic, 73% more than the amount of new-issue insured par sold that it guaranteed in the first half of 2019.”

Tucker added that the results were achieved in a market where municipal interest rates hovered near historic lows and credit spreads tightened.

“Year over year, the financial guaranty industry’s total first half insured par was up 34%, more than double the 15% rate of increase for total par issued in the U.S. municipal bond market,” Tucker said.

Build America Mutual was credited by Refinitiv with $7.54 billion in 584 deals or 41.2% of the two-insurer market share in the first half of 2021, up from its first half 2020 total of $6.09 billion in 504 transactions.

“Insured bond volume is growing significantly faster than the market overall, and that is likely to be a lasting change: 48 underwriters priced transactions with BAM insurance in the first half, and we find that dealers who have had positive experiences selling BAM-insured bonds are more likely to utilize us again in the future," according to Scott Richbourg, head of public finance at BAM.

Assured Guaranty (AGO) reports continued heightened demand for its financial guaranty insurance on larger transactions, where high demand typically signals interest from institutional investors.

In the first half of 2021, Assured Guaranty (AGO) selectively insured 21 transactions of $100 million or more in insured par, Tucker said.

"Assured Guaranty also continued to add value on double-A credits, insuring $2.3 billion of par on 56 transactions in this category during the first half of 2021," he said. "Overall par volume of municipal bonds issued has been strong year-to-date as monetary and fiscal policy drive economic recovery. Additionally, to the extent high-net-worth individual investors anticipate higher tax rates, the demand for tax-exempt income tends to increase."

Tucker noted that taxable issues made up a quarter of the par amount issued in the U.S. municipal bond market year-to-date and that Assured Guaranty (AGO) believes these issues are attractive to taxable buyers because of the currently high relative value of taxable municipals versus corporate bonds.

"Some buyers of taxable municipal bonds, including international buyers, may prefer insured bonds because they are less familiar with U.S. municipal credit and benefit from the underwriting experience of the financial guarantor," he said. "Bond insurance penetration of first-half taxable new issue par sold reached 10%, and Assured Guaranty (AGO) insured $3.9 billion of taxable new-issue par sold, which was about two-thirds of the taxable new-issue insured par sold."

BAM's Richbourg said the insurer is seeing increased utilization on sales with underlying ratings in the double-A category, which allows the mutual insurer to achieve substantial growth without changing its credit appetite.

Both of the major insurers bring AA financial strength ratings from S&P Global Ratings to the paper they wrap.

"We anticipate that new-money volume will be stronger in the second half and into 2022 as issuers gear up their capital plans post-COVID, and our guaranty will be a helpful tool for them," he said.

Grant Dewey, head of capital markets at BAM, noted the ?uneven? economic recovery from the COVID-19 pandemic.

"Even though municipal bond yields began and ended the first half at about the same level, there were some significant swings in the interim," he said. "We saw weakness in the first quarter based on inflation concerns, which then reversed when the Delta variant began to spread more widely in Q2."

He added that institutional investors, in particular, recognize that insured bonds can be more stable during those periods of volatility.

"So their appetite for a BAM wrap has remained elevated as compared to similar pre-COVID market conditions," he said. "We're also continuing to see strong interest on taxable transactions from buyers who are relatively new to the municipal market, and value BAM's deep knowledge of the sector and the liquidity of BAM-insured bonds."

By Aaron Weitzman

BY SOURCEMEDIA | 08/23/21

Another Climate Risk for Cities: Higher Borrowing Costs.

The severe drought covering the Western U.S. threatens the economic health of municipalities and may force them to pay more for bonds that fund local projects.

The extreme drought that has gripped much of the western United States has shriveled crops, stoked wildfires, and drained reservoirs across several states. According the U.S. Drought Monitor, more than 60 million people are currently living under drought conditions in the region. For some cities, lack of water could be a fiscal as well as an environmental disaster: Prolonged droughts are threatening the creditworthiness of local governments, utilities and irrigation districts.

According to a new report from S&P Global Ratings analysts Jane Ridley, Chloe Weil and Nora Wittstruck, drought-struck municipalities may generate less income from their water systems because there's less to sell or they may have higher costs to provide adequate supplies. While cities and utilities can manage a year of dry weather, the drought conditions west of the Rocky Mountains have persisted since May 2020, with no end in sight. These conditions could slow overall local economic growth and dent property values, creating "revenue implications that can lead to rating changes."

Lower credit ratings would force local governments and utilities to pay higher interest rates on bonds they issue to fund general operations and special projects. "Cities finance their infrastructure projects with debt, so this could have a significant impact on their ability to do so," said Danielle Spiegel-Feld, executive director of the Guarini Center at New York University's law school, which focuses on sustainable energy and environmental practices.

Cities may also need to restrict water use for residents and farmers, as well as limit commercial and residential development in areas where the water supply may be insufficient to sustain additional growth, S&P said.

"In some ways, cities are between a rock and a hard place in terms of financing their debt," Spiegel-Feld said. They need to limit development in areas prone to flooding, for example, but also need the property tax revenue from building on valuable land.

But lower ratings shouldn't be a near-term problem for cities, said Bloomberg Intelligence analyst Eric Kazatsky. "Credit spreads in munis are at all-time lows, across the curve and credit spectrum," he said.

Higher borrowing costs from extreme dry weather would add to expenses governments are already shouldering to shore up infrastructure, deal with damage from other extreme climate events such as floods and wildfires, and supply adequate power.

California's hydroelectric production in the first four months of this year is 29% of that generated in the same period two years ago; the hydroelectric facility on Lake Oroville, for example, was forced to shut down for the first time when water levels dropped too low at the beginning of August. In Nevada, Lake Mead's capacity is at 35%, the lowest since the area that sends water and power throughout the Southwest was created. Both situations could force local utilities to turn to more expensive — and less climate-friendly — options, such as natural gas powered plants, S&P said.

The water problem is part of a bigger puzzle for cities to solve on the overall environmental, social and governance front, with the S&P analysts writing that water considerations "will be part of issuers' ESG planning as they address what could become the 'new normal' across the West."

Bloomberg CityLab

By Lauren Coleman-Lochner

August 23, 2021

Cities and States on the Frontline of Climate Change Aren't Always Upfront about Risks. Does the Municipal Bond Market Care?

Are some of our most popular regions becoming uninhabitable?

In mid-August, as water in the Colorado River dwindled, the Metropolitan Water District of Southern California declared a "water supply alert," asking its 19 million customers to voluntarily conserve water. With many California counties already in a state of drought, mandatory restrictions could be put in place in the coming months, Governor Gavin Newsom said.

A few months earlier, officials in Miami-Dade County made a very different announcement, releasing a splashy "Sea Level Rise Strategy" that attempted to answer the question "how can we gracefully, strategically live with two feet of additional sea level rise?" But one environmentalist told the New York Times the blueprint fell short, offering "just enough to reassure developers that Miami's safe enough to build in."

Across the country, state and local governments are hustling to tackle challenges from changing climate, while simultaneously preparing for things to only get worse. It raises uncomfortable questions: at what point is Miami's waterlogged coastline just too wet? How many 100+-degree days can Phoenix, the country's fastest-growing city for the fifth-straight year, handle?

We're barely prepared for the immediate complications, forget the existential ones, public finance professionals say. Government officials often are loathe to admit the dangers their communities face. There is no standard guidance or regulation on how to document climate risk, let alone mitigate it.

More to the point, anyone looking for discipline from the $4 trillion municipal bond market, which funds state and local governments and their projects, will be disappointed.

"It's just amazing, the power of the (muni-bond) tax exemption and the avoidance of taxes. It's an unbelievable force in America," said Thomas Doe, president of Municipal Market Analytics, a Massachusetts-based provider of muni-bond market data.

"Look at the migration to Florida, Texas, and Arizona," Doe said. "You may be able to live there for a short period of time, but it's not going to be a 20-year experience." He calls it denial: "It won't happen while I'm living there." "I can't believe there will be a day when water won't come out of the tap."

Researchers at the Brookings Institution came to the same conclusion in a working paper published last September.

“In municipal finance, there appears to be almost no meaningful disclosure of climate-related risks,” the researchers wrote. “Using some of the latest science projecting spatially resolved potential climate impacts, we show that there is no detectable difference in the level of municipal disclosure between communities most at risk from climate change and those least exposed to physical impacts.”

“A central challenge seems to be not analysis but imagination,” they add.

It’s not just the thousands of ordinary Americans flocking to the “smile states” in search of sun and lower taxes — or the people buying tax-exempt bonds — who add to the risk, Doe says. The entire municipal market makes it possible for people and resources to migrate to areas that arguably may be least prepared to receive them.

Take California’s Metropolitan Water. In June, the utility sold $100 million of bonds to refinance some that had been issued earlier. It has $2.6 billion in bonds outstanding, which carry the top possible rating from the two largest rating agencies, Moody’s and S&P Global.

Metropolitan does note the risks posed by climate change, from flooding that puts pressure on its infrastructure to drought that may limit its supply, in its bond offering statement. But it adds, “Metropolitan is unable to predict with any certainty how climate change will ultimately affect Metropolitan or State water supplies or whether Metropolitan will be required to take additional mitigation measures.”

In early August, some of the bonds maturing in 2033 traded at 140.67, well above par — the 100 price typically due at maturity — in a sign investors will are willing to pay handsomely to look past all that uncertainty for the next 12 years.

“These risks are not incorporated in the municipal market. At all,” Doe told MarketWatch. “Because investors want the tax exemption, they’re not saying ‘no’ because they want the product. They don’t discern risk. It’s not a prioritized risk in the ratings. So the rating agencies aren’t penalizing the issuer, no-one is telling the issuer you have to disclose risks. No-one wants their cost of capital to go up.”

Ratings
The Brookings paper takes aim at the bond raters. While acknowledging that credit firms cannot fully disclose their methodology, the researchers still found what they call big gaps.

Among other things, they note, when Moody’s, S&P and Fitch address climate risk, it tends to be backward-looking, rather than proactive. The paper highlighted a 2017 Moody’s downgrade of Puerto Rico bonds, as an example: “Hurricane Maria hits in September 2017; the next month Moody’s downgrades the (Puerto Rico) revenue bond out of revenue concerns but still makes no mention of climate change affecting the probability of Maria-like events in the future.”

“I understand that particular criticism,” said Marcy Block, senior director of sustainable finance for Fitch. (Moody’s did not respond to a request for comment.)

Fitch does include a climate risk component (called an “ESG relevance score”) in all of its ratings, Block said, and some issuers — in the Florida Keys, for example — are graded as higher-risk because of capital needs relating to flooding and other environmental impacts.

“(S&P Public Finance) specifically incorporates an ESG paragraph into our issuer-level credit rating reports and research to provide transparency on how ESG factors may affect a particular entity’s credit profile,” the credit firm said in emailed remarks. It also discloses if one of its steps was driven by an ESG (environmental, social or governance) factor, the group said.

“There’s a recognition that there’s still more that can be done,” Fitch’s Block said. “I think it’s clear that the disclosure so far from issuers has been very weak. Whether that’s driven by investors continuing to demand more information or regulatory change, I think you’ll see more and more disclosure coming forward.”

Regulators
Many market participants are hoping for more clarity and enforcement from regulators. In March, the U.S. Securities and Exchange Commission announced an evaluation of climate-change disclosures. The SEC and federal prosecutors have since opened probes into whether a subsidiary of Deutsche Bank overstated its use of sustainable investing criteria, according to a Wall Street Journal report, citing people familiar with the matter.

Enforcement efforts might go only so far. The SEC might look to extract fines from fund managers who make misleading ESG claims or it might go after issuers who knowingly obscure risks. But its role isn’t to set standards that will force issuers to identify their risks, disclose them, and get rated on them.

Mark Kim is CEO of the Municipal Securities Rulemaking Board (MSRB), which sets rules around trading and transacting in the muni market but, like the SEC, does not have the ability to set issuer standards. In an interview with MarketWatch, Kim said, “There’s certainly more work to be done. I think the market’s understanding of climate risk is evolving. Today, reasonable investors consider climate risk to be material.”

Ideally, all disclosure would be standardized, not just a reflection of whatever quirks belong to particular issuers, Kim noted, so “investors can compare apples to apples.”

Asked whether Congress should amend its charter so the MSRB could make disclosure rules, Kim said, “That’s a really important policy question. We will leave it to Congress to decide.”

Investors
“We recognize that climate risk is a real threat, it’s not just some secular theme that’s 10, 20 years out. It’s here now,” said Sean McCarthy, head of the municipal credit research team for $2.2 trillion money manager PIMCO.

“I think disclosure is the area where people want to see more,” McCarthy told MarketWatch. “It’s getting better, but it’s a risk factor that needs to be discussed. Large borrowers, bellwether borrowers, like the state of California, are pretty good at it. Where it could be better is on the local government level but, there’s a cost associated with. I think states could help out a little bit more.”

McCarthy also thinks industry-wide standards would be ideal, but like any institutional investor, his team will still do its own credit analysis, he said.

He offered one example: PIMCO rates single-site project bonds in coastal areas lower and demands a slightly higher yield as compensation for taking on additional risk. And he noted that the municipal market broadly agrees, paying less for such bonds than it does for similar inland deals — but only by about 5 basis points.

As previously reported, demand for municipal bonds has run so hot in recent months that it’s pushed yields to all-time lows (yields move in the opposite direction as prices) and inflows to mutual and exchange-traded funds have smashed weekly records multiple times in 2021.

MMA's Doe notes a muni-market irony: some of the country's climate-change hot spots, like California and Florida, are also some of the wealthiest, where demand for tax-exempt investments is highest. He believes the municipal tax exemption is one of the biggest reasons the market looks the other way, rather than confronting climate risk.

Issuers

To be sure, plenty of people think the worst-case scenarios people dream up are simply too pessimistic. For example, McCarthy calls the question of out-migration from some of the country's most popular areas "generational."

"I am worried about population trends," he said, but views tax policy as an immediate catalyst of migration trends.

Some municipal officials argue they're far more prepared than the market may realize. Mark Hartman, a Canadian who moved to Phoenix several years to take a role as that city's chief sustainability officer, points out that his adopted hometown has always been a desert, adapting to heat long before anyone worried about manmade climate change.

"People here, it's in their DNA," Hartman told MarketWatch. "Just like the trees here are desert-adapted. We look at innovative projects and policies that will help cool our city."

In a study conducted by Arizona State University, which makes Phoenix a sort of climate-change living laboratory, two city neighborhoods just two miles apart were found to have a temperature difference as high as 13 degrees, pointing to the efficacy of climate mitigation efforts like planting trees, "cool pavement" technology, and more, Hartman said.

But the tricky thing about climate change is that it represents, well, change — not necessarily the same challenges communities faced in the past.

"The latest science about climate change shows the system changing rapidly, with synergistic impacts that will have substantial and growing impacts on physical assets and public welfare, including the economic viability of communities on the front lines," the Brookings researchers wrote.

"Extensions of the latest climate science suggests that plausible tail risks are even larger and more immediate. The problem of disclosure reflects a problem of imagination."

Doe likes to talk about climate risk in three stages: denial, which he thinks we've largely moved beyond, defense, and departure.

We are now in the "defend mode," he said. "There will be rationales made as to why an investment should be made to preserve a community. We'll build gates or drains to protect us. We'll establish resilience committees. But will it be sufficient? Does anyone have the timing right? And then, is that the best use of the money?"

No family likes to prepare for death, but eventually most of us write wills, he said. Similarly, "no-one wants to say a place is going to become uninhabitable."

MarketWatch

By Andrea Riquier

Aug. 28, 2021

[The Dedication Doctrine vs. The Project Influence Rule - Which Valuation Methodology Applies? - Nossaman]

Property dedication requirements and eminent domain usually don't mix well:they make for an odd and confusing set of valuation rules. For example, if an agency seeks to condemn property to build a road through an undeveloped area, but that road would be required in order to develop the properties, how should it be valued? Under one set of eminent domain rules (the *Porterville* doctrine), the property subject to dedication has little value since it would have to be given up as part of any future development. Under another set of eminent domain rules (the "project influence rule"), the road project should be disregarded as part of the valuation. These rules create an inherent tension for valuation purposes that courts have struggled to resolve. A recent Court of Appeal decision, *City of Escondido v. Pacific Harmony Grove Dev.*, 2021 Cal. App. LEXIS 706 (Aug. 26, 2021), provides some guidance on what valuation methodology should apply.

Background

In *Pacific Harmony*, the city filed an eminent domain action to acquire a strip of land for a road extension. The road extension had long been on the city's circulation element of its general plan, and a city ordinance required any owner developing property to dedicate public improvements to conform to the general plan. The city had also previously entered into a development agreement with a nearby hospital pursuant to which the city agreed to extend the road with contributions from the hospital and surrounding developers. With the anticipated road extension coming to fruition, the surrounding properties were up-zoned for industrial use (as opposed to low-density residential).

In the condemnation action, the city argued that the strip of land had nominal value ($50,000) since it would have been required to be dedicated as part of any future development. The city provided extensive testimony as to why the road dedication was roughly proportional to the impacts of any development (including increased daily trips from a new industrial development, the costs for the owner to build its own access road, etc.). The owner claimed the road was not necessary, as it could utilize an existing road which had sufficient capacity, and therefore the strip of land should be valued based on its industrial highest and best use, resulting in compensation of nearly $1 million. The owner also argued that the city was liable for precondemnation damages since it waited more than 10 years to condemn after entering into the development agreement which committed to build the road.

The trial court concluded that the strip of land should be valued at its unimproved value since it would have been required to be dedicated as part of any future development, and such a dedication requirement was constitutional (it was roughly proportional and rationally related to any future development impacts). The court also concluded that the "project-effect rule" did not apply, since the dedication was not put in place to impact the value of the property, but instead to mitigate the traffic burdens created by a future development. Finally, the court held that the owner was not entitled to precondemnation damages as there was no unreasonable delay in pursuing the condemnation or the road extension project. The owners appealed.

Court of Appeal Decision

The Court of Appeal walked through the two competing arguments on valuation: how to take into account the dedication requirements while also disregarding project influence.

Dedication Doctrine

With respect to the dedication issue, the Court explained that pursuant to the *Porterville* decision, “when a city would lawfully have conditioned development of property upon the owner’s dedication of a portion of the property” to mitigate the impacts of the development, “the fair market value of that portion in a subsequent condemnation action is its value in its undeveloped, agricultural state,” rather than in its highest and best developed state.” The rationale for this rule is that because the owner could not develop the portion of land subject to dedication, no willing buyer would purchase that portion for more than its undeveloped value, and therefore that is what the acquiring agency should pay. In order for this valuation approach to apply, the dedication requirement must be constitutional (roughly proportional and rationally related to the impacts from the proposed development), and it must be reasonably probable that the condemning agency would actually impose the dedication requirement as a condition of development.

Project Influence Rule

With respect to the project influence rule, the Court explained that the rule prohibits the fair market value of condemned property from being influenced by the project for which the property is being condemned. For example, if the government is condemning property to build a sewage plant, the government does not get a discount because its project renders surrounding properties less valuable. So if municipal zoning actions were enacted to suppress property values before an intended taking, the zoning law must be disregarded when valuing the condemned property.

These two concepts present an inherent conflict: the dedication approach allows a city’s dedication requirements to depress the value of condemned property, while the project influence rule prohibits it. In order to address this conflict, courts look at a “date of probable inclusion” to determine which rule applies. If the dedication requirement arose before the date of probable inclusion, the dedication approach applies, but if it arose after, the project influence rule applies. The date of probable inclusion is determined when a public agency is engaging in a public project for which it intends to acquire property, and it must be probable that the property at issue would be included in that project. Where a general plan and circulation element require a strip of land be dedicated for a roadway if the larger parcel is ever developed, the designation itself does not make it probable that the agency would condemn the strip (and hence does not trigger the date of probable inclusion).

Here, the Court concluded that the dedication requirement was constitutional, as the city did “its constitutionally required homework” to ensure that its dedication requirement was proportional to the impacts caused by developing the property. The Court also agreed that the project influence rule did not apply because the dedication requirement arose as part of the general plan and circulation element, which were in place long before the “date of probable inclusion”. The Court held it would result in a windfall to compensate the property owner for an industrial use of the strip of land when the owner would have been required to dedicate that land in order to achieve an industrial development.

With respect to the precondemnation damages claim, the Court explained that the owner is required to demonstrate that the public agency acted improperly by either unreasonably delaying an eminent domain action following an announcement of an intent to condemn or by other unreasonable conduct, and the actions must have resulted in a diminution in value. There must also be some formal announcement or other official act or expression of intent to acquire the property in question (i.e., the agency’s activities must go beyond the planning stage to reach the acquiring stage).

Here, the city’s entering into a development agreement with the hospital committing to build the road 10 years before filing the condemnation was not unreasonable; the city still had to go through general planning and environmental approvals, and regardless, the owner did not suffer any damages as a result.

Take-Aways

Dedication requirements will continue to create complex, fact-specific inquiries to determine the appropriate valuation methodology. Government agencies will likely continue to require owners to dedicate property for public improvements as part of future developments, and may resort to condemnation when necessary to complete those improvements. Property owners should be informed regarding the conditions or exactions placed on their property, and understand the constitutional factors and valuation methodologies that come into play.

Nossaman LLP – Bradford B. Kuhn

California Eminent Domain Report

August 27 2021

Muni Underwriters Cut Fees in Takedown Race-to-Bottom.

- **Massachusetts' documents show how little banks' will charge**
- **But there may be a hidden downside for states and cities**

Every once in a while, a state or local government's request for underwriting services will have a question that illuminates what's going on in the municipal-bond market at large.

Massachusetts' request from May 2020 is one of them. It asked for something rather mundane — their underwriting takedown for every $1,000 of bonds sold. That's effectively what the banks' main fee would be upfront, a key measure of the total cost of floating a bond issue.

Underwriting fees have declined steeply since the 1980s, when negotiated fees were more than $20 per $1,000 of bonds, and had more or less continued on the downward drift in recent years. This year, they're around $5.15 overall, according to data compiled by Bloomberg.

But for a big-name client like Massachusetts, underwriters, it seems, are willing to work for much less. Sue Perez, the state's Deputy Treasurer for Debt Management, said the takedowns on its bond deals has been in the $2 to $3 range since at least 2014.

Sixteen banks applied to underwrite all three transactions mentioned in the RFP. None wanted more than $3, according to copies of the responses received through a public records request. Bank of America Corp., the market's underwriting behemoth, was willing to work for just 50 cents, as was Morgan Stanley, on one-year maturities. Both won top slots.

I was shocked because I hadn't realized takedowns had shrunk to so little. But David Erdman, Wisconsin's capital finance director, assured me in an email that this collapse had come in the past two or three years, and that "starting 3-4 years ago firms have stopped even asking for a management fee," formerly levied for running a syndicate.

This takedown death-ride has come as a result of both issuers and their advisers pressing for it, but also banks on their own just offering it, said Erdman. There's often been a shortage of bonds to go around, and banks have been eager to land inventory for their clients.

All told, this seems like a great thing. That means it costs municipalities less to gain access to the bond market, right?

And this is true, but there are two elements to "how much you pay." The first is one-time professional fees, like those for underwriters, that are transparent. The second is how the actual bonds are priced, which has a much more long-term and costly impact, and is more murky.

Lee McElhannon, director of bond finance for the Georgia State Financing and Investment Commission, said the more those transparent fees are cut the more important it is to see whether the banks are underpricing the bonds.

That would make it a lot less work to sell them and maybe even deliver a quick gain to early investors. But all that would come at the government's expense, which perhaps could have paid a lower interest rate for many years to come.

This seems especially important for smaller issuers who may not have the knowledge or ability to evaluate how their bonds are priced, or who may not even care. You would do well to remember that most of the municipal market's issuers — beyond states, major authorities, some large cities and counties — are small and relatively unsophisticated.

"Your financial adviser better be very good at pressing them on preliminary and final scales, and even then you might see some interesting secondary market trades for a week or so after pricing," McElhannon said in an email. "Underwriters are pricing bonds so they move the bonds and don't take on any (significant) risk."

That may not be the case for big, sophisticated issuers like Massachusetts, who comprise a very small portion of the market. Yet other public officials chasing after those rock-bottom fees may do well to remember that sometimes, well, you get what you pay for.

Bloomberg Markets

By Joseph Mysak Jr

August 24, 2021

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

View the current list. (Registration required.)

27 Aug, 2021

Fitch Ratings Resolves Ratings of Life Plan Communities Placed Under Criteria Observation.

Fitch Ratings-New York-25 August 2021: Fitch Ratings has resolved the ratings of all Life Plan Communities (LPCs) placed Under Criteria Observation (UCO) in March, following the release of its revised LPC rating criteria.

Of the 22 ratings placed UCO, four were downgraded: one driven solely by criteria factors, one driven solely by credit reasons (a large additional borrowing), and two driven by a combination of criteria and credit factors. The remaining 18 were affirmed.

Updated review status of UCO names is available in the special report linked above.

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[S&P: A Regional Investment Bank Wins New Business and Better Manages its Municipal Clients' Credit and Climate Risks.]

HIGHLIGHTS

A regional investment bank is looking into upgrading its credit and climate workflow processes. By working with S&P Global Market Intelligence, the bank was able to automate its credit and climate data collection process, acquire a transparent approach to understanding creditworthiness of financial advisory clients, and help the firm win the underwriting of new deals.

This regional investment bank advises over 100 municipal clients and underwrites dozens of deals annually. The financial advisory team supports their clients with the issuance of new debt and navigating the credit rating process. Separately, the underwriting team facilitates the purchase and resale of new municipal securities, where having a deep understanding of credit and climate risks is essential in structuring a deal. Also, the company was aggressively looking to add more clients. Given the importance of these functions to these departments, the company was interested in upgrading its credit and climate workflow processes. By working with S&P Global Market Intelligence (Market Intelligence), the company achieved these goals of automating its credit and climate data collection process and providing a simple to use, completely transparent approach to understanding creditworthiness of financial advisory clients and helping the firm compete, win and promote the underwriting of new deals.

Pain Points
The Public Finance financial advisory and underwriting teams had been struggling with their internally developed solution, which was not adequate for the company's needs. Specifically:

- **Lacked an understanding of client climate risk:** The company did not have the data or process to assess the impact of climate or physical risk for its clients or new deals they were taking to market.
- **Internal credit models were misaligned with Rating Agency criteria:** Since the company's credit models were not annually recalibrated and updated, they were not reflective of the current methodology including environmental and social factors. Consequently, they were generating credit results that had material credit scores different than the public ratings. So, when scenario

analyses were conducted (e.g. new debt) the results were inconsistent.
- **Needed innovative approaches to win new business:** The business was increasingly competitive, and they needed to identify ways to differentiate themselves from competitors.
- **Cumbersome surveillance process:** The process the company used to conduct annual reviews of their customers was manual and time consuming.
- **Insufficient data coverage:** The company was spending more time trying to obtain the necessary data than it was conducting the analysis.
- **Gaps or lack of expertise for certain public finance segments:** The company had difficulty entering new Public Finance segments because they lacked the expertise or did not have the appropriate segment specific credit models (e.g. higher education, healthcare, housing, general obligation, transportation, water & sewer).

The company's Public Finance team adopted the Market Intelligence's Public Finance Automated Scoring Tool (PFAST) solution to address these challenges.

The Solution
Market Intelligence recommended PFAST, an Excel-based suite of Market Intelligence Credit Assessment Scorecards that is both an automated credit scoring and data solution enabling users to:

Assign credit scores to the vast majority of the company's municipal customers
PFAST offers broad Public Finance sector coverage, including:

- **General Obligation** issuers or states, cities, counties, and school districts
- **Water and Sewer** utilities
- **Not-for Profit Health Care** including health care systems and hospitals
- **Not-for-Profit Higher Education** including private and public/state institutions
- **Transportation** including airports, mass transit, toll roads, bridges, and tunnels
- **Housing** including single- and multi- family agencies

Understand your client's climate risks
Understanding your client's susceptibility to 18 different natural hazards and potential economic loss from those natural disasters will help you better and more proactively manage your clients. PFAST also includes a quantitatively based summary environmental/social score for every municipal entity where data is available.

Win new business by differentiating yourself from your competitors by providing credit and climate insights
PFAST will provide easy to identify credit and climate finding that will highlight your command of new and existing clients. Leverage our unrivaled ability to create local, regional, and national benchmarks for prospective clients given our vast database of both rated and unrated issuers.

Automate the spreading for all S&P rated General Obligation, Water & Sewer, Healthcare, Higher Education and Airport Obligors
Market Intelligence has collected more than three years of financial and economic data for all rated general obligation issuers, water & sewer, healthcare, higher education, and airports. The data and credit scoring are fully automated by simply using an identifier (CUSIP or S&P Capital IQ ID).

Monitor your customer credit quality in minutes
By simply inputting an identifier a user can generate overall credit risk scores for your complete public finance customer portfolio.

Conduct scenario analysis

Additional functionality for conducting "what-if" scenario analysis for your municipal portfolio.

Key Benefits

The PFAST solution provides an automated credit scoring tool for all US cities, counties, and school districts and water and sewer utilities. A similar approach is also available for the major rated revenue bond segments. Key benefits include:

- **Broad scope of application** with sector-specific credit scorecards and data for General Obligation and Revenue Bonds including Water and Sewer, Not-For-Profit Healthcare, Not-Fo--Profit Higher Education, Transportation and Housing.
- **Climate Risk data and scores** that identifies the susceptibility and potential economic from 18 different natural hazards fully mapped to every U.S. county.
- **Methodology transparency** of the Scorecard including all risk factors, weights, benchmarks, and scoring algorithms.
- **Training and ongoing analytical assistance** to help groups understand the range of available capabilities and continue to get the most out of the solutions.
- **Quickly get up to speed** in public finance credit analysis with our easy to use Scorecard User Guides and 24/7/365 support from our global customer support team.
- **Validation support** through annual technical documentation that explains Scorecard methodology and testing.
- **Extensive coverage and continually growing database** of municipal entities financials and economic data.

Click here to learn more about the Public Finance Automated Scoring Tool (PFAST), mentioned in this case study.

Fitch: Fiscal 2022 Much Smoother for U.S. State Budgets.

Fitch Ratings-New York-23 August 2021: A stronger economy and Federal Aid have helped U.S. states weather the disruption caused by the coronavirus pandemic with a smoother budget season firmly in place for 2022, according to Fitch Ratings in its latest annual report for U.S. state budgets.

Fiscal 2022 budgets have been enacted so 47 states so far with North Carolina, Oregon and Michigan (whose fiscal year begins on October 1) as the only outliers so far. This represents a return to more normal budgeting and is in stark contrast to the upheaval the pandemic induced last year that led to a steep drop in state tax revenue.

Many states are still determining how to allocate funds received under the American Rescue Plan Act, and renewed concerns about the trajectory of the pandemic pose a downside risk. That said, 'Strong fiscal 2021 revenue performance led many states to make upward revisions to their forecasts for fiscal 2022, bringing many close to pre-pandemic revenue estimates,' said Senior Director Karen Krop.

Going into this latest fiscal year, a primary focus for states will be rebuilding their budget resilience through adding to reserves and paying down liabilities. Whereas only a few states drew on their rainy day funds to close out fiscal 2020 and several budgeted reserve draws in fiscal 2021, states are now drawing down reserves less than budgeted and are adding to reserves in fiscal 2022.

'With additional available revenues, many states are addressing issues such as displaced workers and employment issues, mental and other health programming, and education spending,' said Krop. 'Health care is also still a key driver with many states using additional available tax revenues to support various programs, though several states are still struggling with whether or not to expand Medicaid under the Affordable Care Act ten years after its passage.'

'U.S. State Budgets Bounce Back in 2022' is available at www.fitchratings.com.

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Activists to U.S. Treasury: Use Federal Aid for Pandemic Relief, Not Debt

Grassroots groups are imploring federal officials to make sure local governments get relief to those most in need, rather than banks.

Dozens of community organizations from across the U.S. want Treasury Secretary Janet Yellen to issue rules that direct the latest round of relief funds into communities hardest hit by the pandemic and away from state and local debt repayments and police budgets.

Fifty-seven national and local groups are sending Yellen and President Joe Biden a letter Tuesday to maintain the current ban on states and cities using American Rescue Plan Act funds to repay debt. They also are asking that the aid not boost police budgets. Paying back loans and increasing funding for cops would come at the expense of community needs such a rental assistance, mental health programs, child care, homeless services and violence prevention, according to interviews with the organizations and local elected officials.

The groups are making a public push in response to efforts and comments submitted by state and local officials to the Treasury since May that seek to change or ease interim rules on the use of the funds. The rescue plan enacted in March is sending $350 billion in aid to state and local governments, which are now debating how to appropriate the unprecedented amounts.

"Congress passed the federal relief to go directly into communities," Bahar Tolou, a campaign director in Los Angeles for the Action Center on Race and the Economy, said in an interview. "The relief money is in real danger of being diverted."

ACRE, one of the lead organizations sending the letter to Yellen, is among groups from New York, Philadelphia, Detroit, Milwaukee, Chicago and Sacramento that advocate for workers, minority communities and lower income neighborhoods. They are trying to shine a light on the needs of communities after the pandemic exacerbated long-standing income gaps. Now is not the time to send money to Wall Street banks, expand police budgets or give corporations tax cuts, according to the letter.

“Every year, public dollars are already siphoned off by banks through high cost municipal debt and for corporate tax benefits, draining hundreds of billions from neighborhood services, enabling the conditions for over-policing, and exacerbating racial and economic inequality in communities,” according to the letter. “These are the very conditions that made Black and brown communities so vulnerable in the pandemic.”

Ongoing Argument

The debate over how to best use the unprecedented infusion of federal aid is playing out across the country. Philadelphia is among the cities that have asked the Treasury to reconsider and allow debt service to be paid with the money.

The city wants to “generate the highest impact for our residents,” Ashley Del Bianco, Philadelphia’s chief grants officer, said in an emailed statement. “Using a portion of our ARP allocation for debt service would allow us to provide services that are key to the economic recovery of our region.” Debt service funds projects that “directly benefit residents,” she said.

Philadelphia Councilwoman Kendra Brooks is among those who want the city to instead use the aid to address the “root causes of poverty.” For example, officials should use the funds to boost support for a mobile crisis program run by social workers rather than police, she said.

“ARPA is so unprecedented. It can have long lasting impacts,” Amanda Kass, associate director of the Government Finance Research Center at the University of Illinois in Chicago, said in an interview. “It’s great to see this kind of debate taking place.”

In Chicago, where the budget process is just getting started, officials are planning to use the funds to provide fiscal relief and still abide by the rules. Before the Treasury’s interim guidance banned using the funds for debt repayment, Chicago Mayor Lori Lightfoot’s administration had floated the idea of using ARP funds to repay a $465 million loan the city took in 2020 from JPMorgan Chase & Co. Since then, the city has said that eligible reimbursements under the Treasury’s interim rules will open up money in its main operating fund to pay back the debt and cancel another refinancing it had planned for this year.

Alderman Daniel La Spata argues that using $782 million of ARP funds to pay for expenses in Chicago’s corporate fund, which pays for services including policing, as the Lightfoot administration has proposed, and then using the money that’s freed up to pay the loan immediately, ignores the dire situation facing some residents.

“It’s within the letter of what Treasury guidance says but not the spirit,” said La Spata who wants to divvy up the city’s $1.9 billion in ARP funds for needs including mental health, child care and homeless services. “There are so many urgent needs.”

The department is “carefully reviewing” all input as it finalizes the rule, a Treasury official said Tuesday. In Sacramento, community organizer Christina Livingston said she’s worried the Treasury will relax the rules, as the city asked last month. Livingston is executive director of the Alliance of Californians For Community Empowerment, which advocates for low-income workers and people of color.

“Debt service should be included as an eligible expenditure, especially as a ‘negative economic impact’ of Covid-19,” Leyne Milstein, Sacramento’s assistant city manager, wrote in a comment on the Treasury’s website in July. “Debt secured prior to the pandemic, whose primary source of repayment is a specific source impacted by the pandemic, is especially challenged as many of these revenue sources declined precipitously and have yet to fully recover.”

Aug. 31 is the deadline for when states and larger municipalities must report to Treasury how much of the ARP allocation they’ve spent so far. In the meantime, the collective of grassroots groups is trying to sway the Biden administration’s stance on the rules.

“We don’t want this money spent on banks nor on police,” said Emma Tai, executive director of United Working Families in Chicago, among the community groups that signed the letter. “At this time, it’s so evident human need is so great.”

Bloomberg CityLab

By Shruti Singh

August 24, 2021

Characteristics of Municipal Securities Trading on Alternative Trading Systems and Broker’s Broker Platforms.

Did you know market share of alternative trading systems (ATS) and broker’s broker platforms makes up 58% of inter-dealer trades?

MSRB Chief Economist Simon Wu tracks how electronic muni trading on such platforms affects the market in his latest paper.

We’re Burying Our Kids in Debt (Just Not the Way You Think).

For the Philadelphia teacher Freda Anderson, setting up her classroom involves clearing plaster, dust and paint chips from tables, chairs and desks. Somewhere, a leak has allowed water to seep through the walls. Years of deferred maintenance have caused dust and paint chips to scatter across the room. This debris is not just a brazen reminder of state abandonment of public education — it is an active vector of harm. A report released this spring revealed an asbestos epidemic creeping through Philadelphia schools.

During the 2019 school year, 11 schools closed because of toxic physical conditions; a veteran teacher is suffering from mesothelioma, a lethal disease caused by asbestos. Ms. Anderson used to believe the best way to fix schools would be to hire more teachers, counselors and mental health providers, “but, honestly, now the first thing I would do is start reallocating money to fix the buildings,” she told me. “They’re just really dangerous.”

The question of how to finance Philadelphia schools’ $4.5 billion of unmet infrastructure needs — as well as hiring more teachers, counselors and nurses — has been a vexing issue for the community. Despite high levels of affluence in the city, inequitable distribution of state aid and regressive taxation, including hundreds of millions of dollars in local corporate tax breaks, have exacerbated budget shortfalls.

[Continue reading.](#)

The New York Times

By Eleni Schirmer

Aug. 27, 2021

[Ninth Circuit Rules That EPA's 2010 WET Testing Methodology Is Not Subject to APA Review: Taft Stettinius & Hollister](#)

In *Southern California Alliance of Publicly Owned Treatment Works v. U.S. Environmental Protection Agency*, — F.4th —, No. 19-15535, 2021 WL 3412744 (9th Cir. Aug. 5, 2021), the Ninth Circuit held that the Environmental Protection Agency's (EPA) nonbinding guidance recommending a new statistical method for assessing water toxicity under the Clean Water Act (CWA) was not a reviewable final action under the Administrative Procedures Act (APA). Instead, challenges to the guidance must be made in the context of individual permit decisions.

Under EPA's National Pollutant Discharge Elimination System (NPDES) program, the CWA permitting scheme, some permit holders must pass a whole effluent toxicity (WET) test which measures the "aggregate effect of a discharge on aquatic organisms." *Id.* EPA previously recommended several statistical methods to satisfy the WET test requirements and in June 2010, recommended an additional method called the Test of Significant Toxicity (TST) in a separate nonbinding guidance document (2010 Guidance). *Id.* at *2. The plaintiffs, municipal wastewater trade associations, alleged that EPA violated the APA by issuing the 2010 Guidance and the TST without following notice-and-comment procedures. *Id.*

The Ninth Circuit affirmed the district court's dismissal of the plaintiffs' challenge on the alternative ground that the 2010 guidance was not a reviewable final agency action. Under the APA, plaintiffs are only allowed to challenge final agency action and an agency's action is final only if it imposes legal consequences. *Id.* at *1.

The Ninth Circuit determined that the 2010 guidance does not impose any legal consequences on its own because it merely recommended the TST as another WET testing methodology from which permitting authorities may choose. *Id.* at *4. In fact, the court found that the 2010 guidance will not have legal consequences at all unless the TST is incorporated into an entity's individual NPDES permit. The court explained that "an agency action is not final when subsequent agency decision making is necessary to create any practical consequences." *Id.* The court, therefore, held that the 2010 guidance was not reviewable under the APA.

Plaintiffs argued that if they are not permitted to challenge the 2010 guidance in the district court, they will have no forum to do so. The Ninth Circuit disagreed and advised plaintiffs and other would-be challengers that the appropriate forum to challenge the TST and 2010 guidance is in the context of individual NPDES permit decisions. *Id.* at *5.

Taft Stettinius & Hollister LLP – Kristine Gordon

August 27 2021

Modernizing the Budgetary Process with Cloud-Based Systems Lets Municipalities Better Adapt.

It wasn't just businesses that shuttered their doors when the pandemic struck last spring. With everyone suddenly telecommuting, municipal governments from Massachusetts to New Mexico were unexpectedly thrust into an entirely digitized world.

For many cities and counties accustomed to working in-person within closed or analog systems, adapting to the change was undoubtedly a challenge. Especially when it comes to budgeting, being able to adapt to the pandemic's rapidly changing conditions has been a vital skill for municipal leaders over the last year, according to Charlie Francis, senior policy analyst at Questica, a California-based government administration software company.

"The ones that could respond and react most efficiently and strategically where the ones that had already made the transition from excel-based budgeting to cloud-based budgeting," said Francis, who has spent 45 years working in government finance, including half as finance director at Sausalito, Calif.; Tracy, Calif.; and Indian Wells, Calif. Last year, he returned to Sausalito after the municipality's finance director unexpectedly resigned in the middle of budget season.

Those municipalities still working with analog systems suddenly had to confront the question, "How do you collaborate when everyone is working from home?" he said. In this, cloud-based budgeting programs, which allow administrators to access data remotely and work together collaboratively, provide an answer for municipalities of all sizes.

According to Francis, digital budgeting systems have a number of benefits: First, data is accessible from anywhere. With built-in archives, there's more time for municipal leaders to analyze historical and present-day data (a feature that was especially important last year, with town meetings held via video conference apps). It's also easier to collaborate remotely when everything is digitized. And because digital data is accessible from anywhere and by everyone—citizens, too—trust in government is enhanced through transparency.

"One of the integral parts of going through a crisis like the pandemic is that you want to be able to communicate easily and accurately," Francis said, noting that trade organizations like the Government Finance Officers Association can help municipal leaders set up digital cloud-based budgeting infrastructure (OpenGov, ClearGov and Questica are three companies that make cloud-based budgeting software).

Beyond digital collaboration, Francis said governments that early-on in the pandemic preplanned and developed scenarios for budgeting were better able to adapt. Based on those scenarios, they were able to leverage data in real time as challenges unfolded, adjusting quickly to meet community needs—a process Francis calls "continuous budgeting. In other words, as new data was coming in, they were recalibrating their figures," he said.

Within the government finance community, this is "an emerging practice," Francis said. "We went from line item budgeting … to priority-based budgeting. Continues budgeting is going to be the next wave."

But it's only made possible through technology advancements such as cloud-based budgeting. In an analog system, administrators have to crunch numbers derived from separate data sheets to estimate a specific performance results. Digital systems allow this data to be viewed in real time.

For example, in order to find out how much it costs to vaccinate one person, a financial officer working in an analog system might have to, by hand, combine the number of people vaccinated with the total amount spent on vaccinations, Francis said. “Modern systems can bring all of that into one place with a dashboard: ‘Here’s the number of people vaccinated; here’s the cost for each person to be vaccinated.’”

Another beneficial aspect of cloud-based budgeting is social features, which are increasingly being integrated.

“Governing and budgeting used to be (completed by) department heads … getting together and saying, ‘here’s what we think the services are that citizens need,’” he said. These days, “Citizens are finally telling us what services they need and how they would like them delivered. It’s more interactive, it’s more productive.”

As an example, he pointed to the civil unrest that erupted last year.

“We saw it going on during COVID—here’s how we would like to see police services delivered,” Francis continued. Instead of governments telling citizens how they were going to be managed, many communities across the United States called on their leaders to integrate different policing practices based on their personal experiences.

In looking to the future, Francis said he expects these governing tech-trends to continue long after the pandemic subsides and life returns to a semblance of what it used to be. The ongoing pandemic accelerated a shift toward the digital realm that had already started. A next step beyond continuous budgeting is budgeting based on “geo-predictive analytics”—a process through which municipal leaders allot funds based on predictive data. Francis said it’s already happening in some regions.

“The new generation of finance leadership has been born into an entirely digitized working (environment),” he said. “They’re used to using rules and algorithms.”

American City & County

Written by Andy Castillo

20th August 2021

Michigan Supreme Court Rules Against Revenue Sharing Suit.

METRO DETROIT — On July 28, the Michigan Supreme Court ruled largely in favor of the state in a case that addressed Michigan’s Headlee Amendment, which, in part, requires that roughly half of the state’s spending from state revenue sources each year be paid as aid to local governments.

The minimum percentage required to satisfy Section 30 of the Headlee Amendment has been set at 48.97%. Plaintiffs, consisting primarily of municipal leaders from around the state, known as Taxpayers for Michigan Constitutional Government, argued the state of Michigan is shortchanging local governments because it counts payments directed to school districts, including charter schools, pursuant to Proposal A of 1994, as well as spending for state-mandated local services, as part of that

48.97%.

“We were obviously disappointed,” remarked Christopher Johnson, general counsel to the Michigan Municipal League, which was a plaintiff in the suit. “I think it really boils down to the interpretation between the interplay between Proposal A and the Headlee Amendment and how much money has been siphoned off from local communities to the state.”

Both Eastpointe and Roseville were parties in the suit. Roseville City Manager Scott Adkins said that municipalities like his have lost millions of dollars in the last two decades due to the 2008 recession slashing cities’ income while the Headlee Amendment and Proposal A severely limited how much they could then take in after the financial situation improved. He said that both measures also have reduced the amount of money coming into municipal governments from the state, which has amounted to a “one-two punch” that has left many cities struggling.

“We were party to the suit, along with many municipalities,” said Adkins. “When it comes to municipal finance, the state hasn’t always been consistent. There are two types of revenue sharing: constitutional revenue sharing, which is written in the Michigan Constitution. The other is statutory, which is determined by the Legislature and can be changed. They can both be difficult for communities, depending on how they are implemented.”

“You start to explain this thing to John Q. Citizen out there, and their eyes roll back in their head and they lose interest,” Johnson added. “They think it doesn’t make sense and no one would ever adopt something that crazy.”

The Supreme Court decision dictated that state payments from Proposal A revenues paid to public schools count under Headlee Section 30 as state aid to local governments; state payments to charter schools are not necessarily payments to local units of government, although some charter schools may still qualify as local units of government; and state payments to local units of government to cover state mandates required by Headlee Section 29 also must be counted under Headlee Section 30.

“This ruling is a win for the people of this state,” Michigan Attorney General Dana Nessel stated in a press release. “Public school funding is about 25% of the state’s annual budget, representing approximately 12-13 billion of state dollars each year. A significant portion of that annual funding was in question in this case — and could have resulted in higher taxes and/or fewer state-level services for Michigan’s residents if the court had determined the state was not providing enough money to local governments. This decision affirmed that the state’s decades-long treatment of these public school funds was proper under our Constitution. This was a complicated issue that demanded the best advocates on behalf of Michigan, and I am proud of the work done by my staff.”

However, those who brought the case forward said the goal is not to decrease the money going to schools but to increase the money going to municipal governments.

“What it really boils down to is the municipal finance system the state has is broken. The state needs to fix it. The decline in government spending at a local level has been devastating for communities all over Michigan. It’s not a system that can be fixed by throwing a few dollars at it here and there; it needs a more long-lasting and permanent solution,” said Johnson. “The Headlee Amendment was originally sold to voters as a way to make sure they wouldn’t be taxed out of their house, but it actually was a revenue cap on local taxes. Proposal A accomplished what the Headlee Amendment sold, which was limiting a tax increase for an individual.”

Adkins said this wasn’t a complete victory.

“Municipalities have consistently lost ground in past cases when changes were made, so we will take whatever victories we can get,” Adkins added. “What we were trying to do with this suit was a more fair and equitable manner of state finance. We were able to get an acknowledgment that the state hasn’t been fair in the distribution of revenue at least in certain components, but this isn’t a complete fix. We need them to look at the whole pie, not just one or two pieces.”

Adkins said that Headlee and Proposal A may have been good ideas when they were approved, but that the situation in Michigan has changed since then, citing the existence of charter schools as a key example.

“I think you have to look at both Headlee and Prop A,” he said. “Headlee is the constitutional amendment. When it was passed in 1978, you had a different economic platform. The same can be said for Prop A, which was passed in 1994. In both cases, you have a certain sort of economy in the 1970s and a certain sort in the mid ’90s. Neither has been adapted for 2021. While they might have been a good fit for the time they were passed, they weren’t built to be adapted as the situation changed. You weren’t paying the same price for a gallon of milk in 1978 (as) you are now. Now, municipalities have been losing ground while inflation kept going up.”

Adkins said that, until the state takes a full and comprehensive look at how revenue is being shared with local municipalities and how those municipalities are struggling, those communities will continue to struggle.

“We’re frustrated that many of the major issues still haven’t been fixed in the state’s finance system. We’re glad there’s more awareness and some small victories have been achieved, but municipalities are still struggling, so these issues have to be addressed and we still haven’t seen that happen.”

candgnews.com

by Brendan Losinski

Tax-Loss Selling and the January Effect Revisited: Evidence from Municipal Bond Closed-End Funds and Exchange-Traded Funds.

Abstract

We revisit the tax-loss selling hypothesis as a potential explanation of the well-known January effect in securities markets. We expand the empirical evidence from municipal bond closed-end funds (CEFs) by extending the sample period by almost 20 years and adding exchange-traded funds (ETFs) to the sample. Our updated sample covers the recent growth of municipal bond ETFs and a significant increase in municipal bond trading volume and liquidity. Both developments reduce arbitrage costs and thus are expected to increase tax loss selling in the funds and increase the transmission of price effects to the underlying bonds. We find that the January effect of municipal bond CEFs becomes stronger in more recent years, and show evidence that largely supports the tax-loss hypothesis. We also find some evidence indicating a smaller discrepancy between the abnormal returns of the funds and underlying bonds. For the municipal bond ETFs, we find a smaller January effect that cannot be explained by the tax-loss selling hypothesis.

Read the paper.

August 18, 2021

Muni Trading Hasn't Been This Slow Since the Turn of the Century.

- **Market's trading volume tumbles 34% this year to 22-year low**
- **Bonds have grown scarce with cash flowing steadily in**

The loneliest place on Wall Street may be the muni-bond trading desk.

Even with the volume of new state and local government debt sales on pace to surpass last year's record, trading activity has dried up considerably. The par amount of bonds traded has tumbled by 34% so far this year to $1.43 trillion, a 22-year low, according to data compiled by Bloomberg.

On average, about $8.9 billion of municipal bonds are changing hands each day, the least since 2001.

The dearth of activity is likely a side effect of the massive influx of cash into the $4 trillion municipal securities market, with mutual funds receiving an average of about $2 billion each week since the start of the year, according to Investment Company Institute figures.

As a result, money managers have faced brisk competition to get in on new bond deals and yields have held near the lowest in decades. And it seems those who own the securities are, on the whole, not eager to sell.

"Overall a lot more investors, whether they are participating in new issues or not, they are just holding on to their paper," Jonathan Law, a portfolio manager at Advisors Asset Management, said in an interview Wednesday.

It doesn't look like the gulf between supply and demand will narrow much soon. Over the next month, there's about $10.6 billion of new municipal debt sales scheduled so far, according to data compiled by Bloomberg. That's about $14.3 billion less than the amount of cash bondholders will receive from debt that's being paid off, which they typically seek to reinvest.

Bloomberg Markets

By Shruti Singh and Skylar Woodhouse

August 25, 2021

— With assistance by Natalia Lenkiewicz

Municipal Bonds Are the Apple of Fixed Income Investors' Eyes.

Fixed income investors can't get enough of municipal bonds, putting exchange traded funds (ETFs) like the Vanguard Tax-Exempt Bond ETF (VTEB) in focus.

Even in the current challenging rate environment, investors aren't thinking twice about picking up municipal bond exposure.

“The yield on the S&P Municipal Bond Index this summer fell below 1% for the first time since it was created in 1998,” a Wall Street Journal report said. “The index tracks returns on a selection of core municipal bonds from across the market and assumes any interest thrown off is reinvested. The yield in question—known as yield to worst—is the lowest rate the investor can expect to earn short of a default.”

“Still, investors can’t get enough of the bonds,” the article said, noting the high interest in munis. “Prices have surged even though outstanding muni debt has swelled by more than $100 billion in the year ended March 31, according to Federal Reserve data. Cities and states could probably sell an additional $89 billion in bonds without meaningfully driving down prices, according to an analysis of lending capacity by Municipal Market Analytics.”

Per the fund description, VTEB tracks the Standard & Poor’s National AMT-Free Municipal Bond Index, which measures the performance of the investment-grade segment of the U.S. municipal bond market. This index includes municipal bonds from issuers that are primarily state or local governments, or agencies whose interests are exempt from U.S. federal income taxes and the federal alternative minimum tax (AMT).

What’s Driving Demand for Munis?

One of the factors driving the strong demand for municipal bonds is their inherent tax advantages. That’s especially the case given the current U.S. presidential administration’s proclivity for raising taxes.

As such, getting tax-free income is a prime option to lower investors’ tax burdens. The other reason driving demand for munis is the relative stability of local government debt.

Local governments have been able to successfully stave off the effects of the pandemic, making municipal bonds a prime option for investors looking for a stable debt market.

“Meanwhile, many states, cities and counties have weathered the Covid-19 pandemic far better than expected, assuaging investor concerns that pandemic-related budget pressures could drive down the value of some local-government debt,” the Wall Street Journal article said. “Moody’s Investors Service raised its outlook on state and local governments to “stable” from “negative” in March, citing better-than-expected revenues and federal stimulus.”

ETF TRENDS

BEN HERNANDEZ

AUGUST 26, 2021

If You Bought Municipal Bonds a Long Time Ago, This Is a Great Time.

Prices surge, hurting yields for new investors, as Biden comments ignite tax-increase fears and local governments weather Covid-19

Everyone wants state and local-government bonds. That’s a good thing if you already own muni debt, and a bad thing if you’re trying to get your hands on some.

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Still, investors can't get enough of the bonds. Prices have surged even though outstanding muni debt has swelled by more than $100 billion in the year ended March 31, according to Federal Reserve data. Cities and states could probably sell an additional $89 billion in bonds without meaningfully driving down prices, according to an analysis of lending capacity by Municipal Market Analytics. Bond yields rise as prices fall.

"If you're sitting on bonds that were issued three to five years ago I would ride it out," said Greg Zandlo, president of Minneapolis-based North East Asset Management. "It's absolute gold."

There are several factors driving the surging demand in munis.

Among them are concerns that President Biden and the Democratic-controlled Congress will raise taxes. Mr. Biden spoke about the possibility on the campaign trail; his comments have since made muni bonds and the tax-free income they provide more precious to many investors.

Meanwhile, many states, cities and counties have weathered the Covid-19 pandemic far better than expected, assuaging investor concerns that pandemic-related budget pressures could drive down the value of some local-government debt. Moody's Investors Service raised its outlook on state and local governments to "stable" from "negative" in March, citing better-than-expected revenues and federal stimulus.

The surge in muni prices comes at the same time demand is high across markets, driving up prices for homes, equities and a range of other assets.

The nearly unending demand is crushing returns for prospective investors who want to earn tax-free interest. Still, bondholders who got into the market years ago are sitting on hefty returns.

Minnesota local-government bonds that Mr. Zandlo bought for clients about a decade ago yielded more than 3% annually until they were paid off recently, he said. Bonds he bought in the past few years are now trading at 10% to 15% more than the price he paid.

An investor who bought the bonds reflected in the S&P Municipal Bond Index 10 years ago and reinvested the interest he earned would have seen his investment grow 50%, said Brian Luke, head of fixed-income at S&P Dow Jones Indices.

The stampede into munis has pushed yields even below previous lows in February 2020, when investors spooked by early reports about Covid-19 viewed munis as a haven and rushed in.

Though prices plummeted briefly the following month amid a multimarket liquidity crisis, the pandemic hasn't interrupted a decadelong slide in government borrowing costs. The median amount of annual interest state governments are paying as a percentage of their total outstanding debt fell to 3.4% in 2020 from 4.2% in 2010, according to preliminary data from Merritt Research Services.

Public officials have taken advantage, issuing $186.5 billion in new debt this year through Aug. 18, a 35% increase from last year and the highest since at least 2007, according to data from Refinitiv.

When the Chicago suburb of Lincolnwood, Ill., sold $9 million in bonds this month to pay for road and water-system improvements, officials expected to pay as much as 3%, said Finance Director

Denise Joseph. Four bidders competed for the debt, she said, and the village ultimately agreed to yields ranging from 0.2% to 2.16% for bonds with maturities ranging from one to 20 years, sale documents show.

“It was a nice surprise,” Ms. Joseph said.

Much of the competition for munis is coming from asset managers charged with deploying an unceasing stream of investor cash. From the start of the year through the end of July, investors poured a total of $69 billion into municipal-bond mutual and exchange-traded funds, the most of any year since record-keeping began in 1992, according to data from Refinitiv Lipper.

In a recent New York City bond sale, institutional investors put in orders for about 70% more bonds than were available to them, allowing the city to slightly shave down interest costs, according to the city comptroller’s office.

“Every time a new deal comes to market, there’s this food fight from the institutional investors to grab as many bonds as they can get,” said Eric Friedland, director of municipal-bond research at asset manager Lord Abbett & Co.

The Wall Street Journal

By Heather Gillers

Aug. 24, 2021

[Flood of Cash Into Muni Bonds Drives ETFs to Record Year Already.]

- **Muni-bond ETFs have pulled in $14.5 billion year-to-date**
- **Investors have become more comfortable with muni ETFs**

Municipal-bond exchange-traded funds are attracting a record-breaking amount of cash in 2021 as investors get more comfortable with the investment tool and buyers flock to state and local debt.

The funds have pulled in $14.5 billion year-to-date, more than last year’s total of $14.4 billion, according to data compiled by Bloomberg. That’s the highest annual total on record since 2007.

Todd Rosenbluth, head of ETF and mutual fund research at CFRA Research, said the funds are benefiting from increasing investor familiarity with bond ETFs. “This is a continuation of the adoption of ETFs as more investors are getting comfortable using fixed-income ETFs,” he said.

The influx into the funds also comes as investors continue to flock to the market for state and local debt, which pays interest that’s tax free and offers a shelter for wealthy Americans worried about higher taxes.

Mutual funds focused on municipal securities have seen inflows for 25 straight weeks, with investors adding about $1.87 billion to municipal-bond mutual funds during the week ended Wednesday, according to Refinitiv Lipper US Fund Flows data.

Within muni ETFs, the biggest, passively-run products continue to dominate inflows. The Vanguard Tax-Exempt Bond ETF, a $13.9 billion fund that trades off the ticker VTEB, has seen $3.5 billion of inflows this year, already an annual record for the fund and more than any other muni ETF tracked by Bloomberg. It’s also the cheapest muni ETF, with an expense ratio of just 0.06%.

Rosenbluth said buyers have continued to look to “extremely cheap” funds like VTEB that offer broad exposure to the municipal market. But he noted that the space is diversifying, with other funds starting to gain more sizable inflows.

For example, the nearly $2.1 billion JPMorgan Ultra-Short Municipal Income ETF, which is actively run and launched in 2018, has seen $941 million of inflows this year, the fourth-most of any muni ETF tracked by Bloomberg. And 40 of the 67 muni ETFs tracked by Bloomberg have more than $100 million in assets, Bloomberg data show.

“I’m particularly encouraged to see the breadth of ETF products that are gaining meaningful traction,” Rosenbluth said.

Bloomberg Markets

By Amanda Albright

August 27, 2021, 9:38 AM PDT

Junk Munis Head for First Drop in Six Months on Slowing Demand.

- **Bloomberg Barclays high-yield index is down 0.09% this month**
- **Despite slowing inflows, Parametric not expecting outflows yet**

The riskiest debt in the $4 trillion municipal-bond market is headed for its first monthly drop since February as the resurgence in Covid-19 cases in the U.S. increases uncertainty around the nation’s economic recovery.

The Bloomberg Barclays High Yield Index, which includes debt from convention centers and airline-backed projects, is down 0.09% this month. Investor appetite for the riskiest state and local debt is showing signs of slowing as inflows into high-yield muni mutual funds have fallen in five of the past six weeks, according to Refinitiv Lipper US Fund Flows data. High-yield muni mutual funds saw a $389 million inflow for the week through Aug. 18, the lowest in seven weeks.

“What caused the weakness is simply the Treasury yields rose a little bit and you have more uncertainty about the virus,” Kathleen McNamara, senior municipal investment strategist at UBS Global Wealth Management, said in an interview. “Those two things weighed on the market. It was due to take a little bit of a breather.”

High-yield munis have delivered outsized returns all year as the market rallied while yields on top-rated state and local debt stayed near record lows. Junk muni bonds surged as the U.S. economy reopened earlier this year and more Americans boarded planes, conventions restarted and office workers returned to high-rises thanks to the vaccine roll out. Now the resurgence of Covid-19 amid a slowdown in vaccinations and the emergence of the delta variant, is raising questions about the return to normal.

Last week, Nuveen said it plans to shut its high-yield municipal bond fund, the biggest focused on state and local government junk bonds, to new investors after the end of next month. The move follows a similar step by rival Invesco Ltd., which closed its $11 billion high-yield muni fund to new investors.

After five straight months of high-yield muni index returns topping 1%, “it’s not surprising to see some fatigue in August,” said Gabe Diederich, a portfolio manager for Robert W. Baird, which has $9.6 billion in muni assets.

“The tailwind of improved fundamentals, cash inflows, reopening and potential tax hikes set up lower quality municipals for a strong performance run,” Diederich said. “In recent trading sessions, it does seem as though the market is looking for additional clues on economic openness as well as monetary and fiscal policy.”

Some high-yield bonds are seeing spreads widen from just two months ago. For example, the spread on 30-year bonds issued in March 2020 by Illinois’s Metropolitan Pier & Exposition Authority for the expansion of McCormick Place, the largest convention center in North America, was 55 basis points over benchmark on Aug. 16, compared to 46 basis points in June.

The decline in high-yield munis could be temporary, according to Nisha Patel, a portfolio manager at Parametric Portfolio Associates LLC. They are still the best performing class within fixed income. There’s the prospect for higher tax rates, which bodes well, and lots of cash waiting to be invested as supply of new debt has lagged demand, she said.

“Outside of economic data deterioration, I don’t see how we see massive outflows as of now,” Patel said.

“Investors are just taking some pause here,” Patel said. “Munis are having a hard time continuing to grind lower in spreads” because investors are starting to question if the income they are getting is worth the higher risk, she said.

Bloomberg Markets

By Shruti Singh

August 23, 2021

— With assistance by Martin Z Braun

Senator Wyden Proposes Sweeping Housing Tax Credit Reforms.

Senate Finance Committee Chairman Ron Wyden (D-OR) proposes sweeping changes to affordable housing in the US, including expansions and improvements to the Low Income Housing Tax Credit (LIHTC) program.

On August 18, Senator Wyden released the Decent Affordable, Safe Housing for All (DASH) Act, which implements sweeping reforms to affordable housing financing in an effort to combat homelessness and expand affordable housing access.

The legislation proposes to expand and improve the Low-Income Housing Tax Credit (LIHTC) program and make other fixes to the Housing Credit program. The bill also proposes reforms to local zoning and housing development practices, expands vouchers to combat homelessness, and includes a first-time homebuyer tax credit, a rental tax credit, and a Middle Income Housing Tax Credit.

As the chairman of the Senate Finance Committee, the bill represents a major show of support for affordable housing from a key Senate office. Specifically, Senator Wyden proposes a range of spending and tax policy reforms, including:

- Extending Housing Choice Vouchers to all families or individuals experiencing or at risk of homelessness
- Instituting reforms to local zoning and housing development practices
- Expanding and improving the Low-Income Housing Tax Credit;
- Repealing the qualified contract loophole;
- Modifying and clarifying the Section 42 nonprofit Right of First Refusal;
- Creating a tax credit for affordable housing supportive services;
- Establishing a Renter's Tax Credit;
- Creating a Middle Income Tax Credit; authorizing the Neighborhood Homes Investment Act; and
- Establishing a First-time Homebuyer Refundable Credit.

Combatting homelessness, expanding the supply of affordable housing (including through the Low-Income Housing Tax Credit program), expanding supportive services in affordable housing, and fixing the Right of First Refusal issue are key priorities for LeadingAge.

LOW-INCOME HOUSING TAX CREDIT PROGRAM: EXPANSION AND IMPROVEMENTS

The legislation also includes the Emergency Affordable Housing Act, which would strengthen the Low-Income Housing Tax Credit by preserving and protecting existing LIHTC properties, expanding production of affordable housing, and extending housing to people who earn extremely low incomes. Some of the main provisions of the EAHA would expand the 9% housing tax credit by 50% to house more families; provide a 50% basis boost to projects that prioritize extremely low-income renters; expand the 4% credit for rural areas; reduce the tax-exempt bond financing threshold for 4% credit projects from 50% to 25% for three years; and preserve tens of thousands of affordable housing units by closing a loophole. The EAHA is projected to produce nearly 1 million new affordable housing units over the next 10 years.

Some portions of the bill are expected to move through the Reconciliation process currently underway in Congress. LeadingAge supports key provisions of the bill and will work with the Senate office to advance the legislation.

AUGUST 18, 2021 | BY JULIANA BILOWICH

Capital Analysis of the Proposed Middle-Income Housing Tax Credit.

Novogradac conducted capital analysis at the request of Senate Finance Committee Chairman Ron Wyden that looks at the effect of enacting the proposed middle-income housing tax credit (MIHTC) on financing affordable rental housing for households earning just above the low-income housing tax credit (LIHTC) income limits. In addition to a pool of tax credit authority allocated to states, this analysis also examines the potential of a separate pool of tax credits that would be generated by the allocation of tax-exempt private activity bonds (PABs) and could be used in conjunction with the 4% LIHTC.

Reducing the Need for Soft Financing
"Soft" subsidies are funds and grants that are available from government sources or other lenders used to fill the financing gap between what is needed to develop the property and what the property

can receive in equity and supportable debt. This free report examines how enacting a MIHTC, to be used with LIHTC and PABs, would enable developers to finance properties in a variety of markets with less additional soft financing to fill the financing gaps, making it easier to address the severe affordable rental housing shortage in the United States.

Increasing the Amount of Affordable Housing
The proposed tax credit is intended to significantly jump-start affordable rental housing financing and reduce the tremendous deficit in the supply of affordable rental housing for more renters earning a little more than the traditional LIHTC income-targeting threshold nationwide.

Download the report.

How to Explain Pension Obligation Bonds to Your Governing Board: Orrick On-Demand Webinar

On-Demand Webinar | August 26.2021 | 2pm – 3pm (Eastern Daylight Time)

Panelists on this Web Seminar will discuss and analyze the issuance of pension obligation bonds from the decision-making perspective of an issuer, sharing examples of principal considerations that an issuer's finance managers and governing board members are called to consider prior to moving forward with a pension obligation bond (POB) issuance:

- How and why to consider the refunding of unfunded pension liabilities with POBs?
- What market conditions make POBs one tool to combat rising pension costs?
- What is needed (board study sessions, policies, etc.) to responsibly move forward with a POB issuance?
- How much unfunded pension liability should an issuer consider refunding with POBs?
- What happens if conditions (stock market, actuarial assumptions, etc.) change after POBs are issued?

Donald Field, a partner with Orrick, Herrington & Sutcliffe LLP, will lead an experienced panel through these and other critical questions. The focus of the panel will be to share recent market experience with issuers considering POBs, particularly governing board members and those who might be tasked with presenting for governing board consideration the how's and why's of POBs as an effective tool to address rising pension costs, and the development of pension funding policies for best financial practices.

Key Presenters:
Donald Field
Partner, Orrick
(Moderator)

Oliver Chi
City Manager, City of Huntington Beach
(Speaker)

Mark Young
Managing Director, KNN Public Finance
(Speaker)

John Kim
Managing Director & Executive Committee Member, Stifel
(Speaker)

Kevin Hale
Counsel, Orrick
(Speaker)

Mike Perkowski
Co-Founder and Partner, New Reality Media, LLC
(Bond Buyer Moderator)

Click here to watch the webinar.

Underwriter Settles SEC Charges for Failing to Disclose Conflicts: Cadwalader

An Arkansas-based broker-dealer and its former CEO settled SEC charges for fair dealing violations arising from a municipal bond tender offer.

In separate orders, the SEC found that, at the instruction of the former CEO, the broker-dealer recommended to a West Virginia county that it (i) effect a tender offer for bonds issued in 2006 in order to decrease its outstanding debt service expense, (ii) offer to purchase the outstanding bonds from the bondholders and (iii) bankroll the purchase of the bonds by selling new bonds with a lower interest rate that the broker-dealer would underwrite. According to the SEC's findings, the broker-dealer and its former CEO failed to disclose to the county when making those recommendations that it and its affiliates had recently purchased and sold a significant amount of the bonds that were the subject of the tender offer, which bonds were then sold back to the county at a significant profit.

As a result of its findings, the SEC determined that (i) the broker-dealer and its former CEO violated MSRB Rules G-17 ("Conduct of Municipal Securities and Municipal Advisory Activities") and G-27 ("Supervision") and (ii) the former CEO caused the broker-dealer to violate Section 15B(c)(1) ("Discipline of municipal securities dealers; censure; suspension or revocation of registration; other sanctions; investigations") of the Exchange Act.

To settle the charges, the broker-dealer and former CEO each agreed to (i) a censure, (ii) cease and desist from future violations, (iii) pay $44,072 and $46,481 in disgorgement and prejudgment interest, respectively, and (iv) pay $200,000 and $100,000 in civil money penalties, respectively. In addition, the former CEO agreed to "certain undertakings and limitations on activities."

Cadwalader Wickersham & Taft LLP

August 26 2021

Legislative Path Forward for Key Muni Legislation.

Yesterday, the House advanced the $3.5 trillion budget reconciliation framework, a legislative vehicle to be used for additional infrastructure spending after weeks of back-and-forth between a small caucus of Democratic moderates and House Leadership. The group pushed for a vote on the Senate bipartisan infrastructure package before advancing the budget framework, however, conceded, pushing the vote to September 27th setting up what will likely be a legislative battle through the fall.

With multiple infrastructure packages moving through Congress in the coming months, below is a primer on the status of key municipal bond legislation and prospects for each spending package:

Bipartisan Infrastructure Package

Earlier this month, the Senate passed a $1 trillion infrastructure spending package that includes nearly $600 billion in new funding. While a new direct-pay bond was originally included in the Senate outline, the American Infrastructure Bond was removed from the package due to a lack of offsets and the inability to reach a consensus on reimbursement rates. **While light on key municipal provisions, the bill relies heavily on the usage of PABs, including:**

- **The package would allow states to issue PABs to finance broadband deployment, specifically for projects in rural areas where a majority of households do not have access to broadband;**
- **Permit carbon capture and direct air capture (DAC) technologies to be eligible for PAB financing. These bonds would be 75 % exempt from the volume cap;**
- **The bill increases the current cap of tax-exempt highway or surface freight transfer facility bonds from $15 billion to $30 billion as proposed by the bipartisan BUILD Act (S.881). Currently, $14,989,529,000 billion of the $15 billion cap has been issued or allocated.**

As part of the House negotiations this week, the legislation will be brought to the House floor by September 27th, and will almost certainly become law shortly thereafter setting the stage for the budget reconciliation package that will include additional infrastructure spending, possibly including munis, following through on the Biden Build Back Better Agenda.

Infrastructure Focused Budget Reconciliation

Following the passage of the bipartisan package, the Senate turned its attention to the next phase of infrastructure spending, a robust budget reconciliation outline that provides the ability for an additional $3.5 trillion of federal spending. While initial policy details are light by design, through discussions with key Hill and Administration staff, the MBFA and BDA believe that municipals with receive consideration in the tax title of this potential package, with House Ways and Means Chairman Richie Neal (D-MA) a key ally for the municipal bond industry, helping to guide the path.

We remain focused on the municipal provisions included in the LIFT Act which was introduced earlier this year by House Ways and Means Member Terri Sewell (D-AL). This package includes:

- **The reinstatement of tax-exempt advance refundings,**
- **Raise the BQ debt limit, and**
- **Creation of a new direct-pay bond exempt from sequestration.**

While we believe municipals will play a role in this package, the road towards passage will likely be narrow. Senate and House moderates have pushed back at the $3.5 trillion price tag, so we expect that to come down substantially for passage. We remain focused on the LIFT Act provisions as they have support in both Chambers and remain a common-sense infrastructure solution at a low cost to the Federal government.

The MBFA and BDA will continue to provide updates as they become available.

Bond Dealers of America

August 25, 2021

BDA's Fixed Income Leadership Three-Part Webinar Series is NEXT WEEK.

September 9-10, 2021

Thursday, September 9
Time – TBD

Corporate Market Structure, New Technologies, and Liquidity Providers
The conversation will focus on the evolution of electronic trading since the pandemic began, trading protocol usage, the role of non-bank liquidity providers, and what to watch in the coming year.

- Kevin McPartland, Coalition Greenwich
- David Parker, MTS Markets
- Jim DiMonte, KeyBanc Capital Markets

Friday, September 10
10:00 am ET

Bond Market Regulation – 4210, G13, 15c2-11, Muni Advisor Rule, Corporate Syndicate Rule, Remote Work
Hear from senior staff of the SEC, FINRA, and MSRB on hot topics in fixed income regulation, compliance, and enforcement. We will examine issues like FINRA's margin rule, MSRB Rule G-13 and the recent related compliance case, SEC Rule 15c2-11, and other key topics. Dan Deaton, partner at BDA member firm Nixon Peabody, will provide commentary.

- Rebecca Olsen, SEC
- Cindy Friedlander, FINRA
- Gail Marshall, MSRB
- Dan Deaton, Nixon Peabody
- Moderated by Michael Decker, BDA

Friday, September 10
11:00 am ET

Municipal Markets 2021 – Credit Conditions and Issuance Expectations, plus What to Expect from Washington, DC
We will look into current credit conditions and issuance expectations as localities continue to recover from the COVID-19 pandemic and what we can expect for the remainder of the year. The discussion will also provide a legislative update and the current status of key muni legislation in DC.

- Tom Kozlik, HilltopSecurities
- Stephen Winterstein, MarketAxess

- Brett Bolton, BDA

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Please contact Rebecca Cooke-Rodriguez if you would like to change your registration at rcrodriguez@bdamerica.org

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SEC Fines Firm and Ex-CEO for Failing to Disclose Conflict of Interest.

Arkansas-based Crews & Associates has agreed to pay more than $200,000 and its former CEO more than $100,000 to settle Securities and Exchange Commission charges they violated fair dealing and supervision rules by failing to disclose the firm's relationship with an affiliate that profited from business the firm did with a West Virginia county.

The SEC announced the settled administrative proceedings against the firm and former CEO Rush Harding III Thursday, a significant enforcement action that is only the third muni case of 2021 following a busy 2020 for the Public Finance Abuse Unit.

The charges stem from Crews? October 2015 recommendation that Ohio County, West Virginia, reduce its debt burden through a tender offer for bonds it had issued in 2006.

The SEC said that following the discussions of the tender offer, Crews, with Harding's approval, purchased millions of dollars of the county's outstanding bonds and sold them to an entity affiliated with Crews and to Crews' customers. Almost all of the bonds Crews acquired were eventually sold to its affiliate and tendered back to the county at a price that Crews had recommended, resulting in a net profit to the affiliate.

"In municipal bond offerings, underwriters must fully disclose to issuers their financial interests in the deal," said LeeAnn G. Gaunt, chief of the Enforcement Division's Public Finance Abuse Unit. "Failure to do so is a violation of their obligation to deal fairly with issuers."

Both Crews and Harding agreed to the settlements without either admitting or denying the SEC's findings.

The 2006 bonds, maturing in 2035 and bearing interest at 8.25%, contained a make-whole call provision that rendered calling them cost-prohibitive, and an ordinary refunding or advance refunding impractical, the SEC said. Crews had a business relationship with the county since 2007, and had underwritten nine bond offerings for it.

According to the SEC, Crews recommended that the county offer to pay bondholders a price higher than the current market price of its outstanding bonds to incentivize bondholders to tender their bonds. Crews also recommended that the county fund its purchase of those previously issued bonds through the sale of new, lower interest rate bonds, which Crews would underwrite. When Crews made these recommendations, the SEC found, the firm did not disclose to the county that Crews had recently acquired more than $1 million of the county?s outstanding bonds at market prices and then sold them to two customers.

In the months following the initial discussions of the tender offer, the SEC alleged, as Crews and the county finalized the terms of the proposed transaction, Crews purchased some $4.8 million more of the county's outstanding bonds at market prices and sold them to an affiliated entity and to Crews' customers. Almost all of the bonds Crews acquired were eventually sold to the affiliate and tendered back to the county by the affiliate at a price that Crews had recommended. Crews did not disclose to the county that the affiliate had acquired bonds to be tendered, or the resulting conflict of interest created by the affiliate's financial interest in the tender offer, the SEC said.

The county authorized the issuance of $10 million of new municipal bonds to fund its purchase of the 2006 bonds. In January 2016, the notice of tender was publicly posted, with the maximum acceptable price set at 110% of par.

Crews then continued to buy 2006 bonds from third parties and from Crews customers at market prices, in some cases mark them up, and selling them to the affiliate, the SEC said.

By the time of the tender date, Crews had purchased $5.9 million in principal value of the bonds on behalf of its affiliate. On the tender date of Feb. 16, 2016, the affiliate offered to tender all of these bonds to the county's tender agent at the maximum acceptable price. Since the county did not receive a sufficient number of tender offers at prices lower than the maximum acceptable price, the county accepted the offer of the affiliate.

In all, the SEC found, the affiliate tendered 71% of all 2006 bonds that were tendered to the county. The deal did save the county money, the SEC found.

But as a result of the markups it charged on its transactions with its customers and the affiliate, Crews made a net profit of $34,631. The affiliate made a net profit of $27,153 as a result of its purchases of the bonds from Crews and its tender of those same bonds to the county.

MSRB Rule G-17 requires broker-dealers to deal fairly with all market participants, which the SEC said the firm violated by failing to make the county aware of the secondary market transactions going on. MSRB Rule G-27 requires that firms have in place a supervisory system reasonably designed to ensure compliance with all applicable securities laws and rules, but the SEC found that Crews' system provided no means of accountability and so the transactions were not reviewed as they should have been.

By violating these rules, the SEC found, Crews violated Section 15B(c)(1) of the Securities Exchange Act, which prohibits dealers from using the mail or "any means or instrumentality of interstate commerce" to execute municipal securities transactions in violation of any MSRB rule.

Crews agreed to pay a civil penalty of $200,000 and disgorgement of $34,631 and prejudgment interest of $9,441. The SEC said Crews has already taken steps to correct the supervisory problems that led to the action.

"Crews and Associates is pleased to resolve this matter and is now looking to the future," said Paul Maco, a Bracewell attorney who represented the firm. Maco said the firm is devoting its full attention to serving its customers and growing its business.

Harding agreed to pay a $100,000 penalty and disgorgement of $36,524 and prejudgment interest of $9,957. Harding, who is still a registered broker, may not participate in new issues or tender offers for 12 months. An attorney for Harding did not respond to a request for comment.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 08/26/21 12:45 PM EDT

Chicago Gambled on Federal Stimulus and Will Now Use $500 million to Pay Off Short-Term Borrowing.

'This fits the spirit of the American Rescue Plan,' one analyst says, even as she finds the opacity troubling

Savvy cash management, or creative bookkeeping?

The city of Chicago recently announced plans to use funds from the federal American Rescue Plan stimulus to pay down about $500 million in short-term debt it took out in December. The step received scant attention until a public-finance expert published a blog post on the subject in August.

As Amanda Kass, associate director for the Chicago-based Government Finance Research Center, makes clear, the move isn't improper — but she thinks it isn't a prudent selection among possible steps, either. At best, Kass sees it as a financial Hail Mary that will probably work out for the city at the expense of transparency and public engagement.

Here's what happened. Last November, facing a near $800 million fiscal 2020 budget deficit, due mostly to the pandemic, city managers decided to take on $450 million in short-term debt, plus interest. City managers reached out to several banks and found JPMorgan Chase & Co. offered the best rate. The deal was finalized in December.

Continue reading.

MarketWatch

By Andrea Riquier

Aug. 27, 2021

August Issue of GFOA's Government Finance Review.

This month's issue of *Government Finance Review* puts a spotlight on state banks. Are state banks a useful economic development tool with future promise?

Other topics from the magazine include budgeting bias, strengthening risk management, a spotlight on GFOA scholarship recipients, and more.

Financial Accounting Foundation Trustees Announce Appointment of New Chair of the Governmental Accounting Standards Advisory Council (GASAC)

Norwalk, CT—August 24, 2021 — The Board of Trustees of the Financial Accounting Foundation (FAF) announced today the appointment of Elizabeth (Beth) Pearce as Chair of the Governmental Accounting Standards Advisory Council (GASAC). Ms. Pearce's term will begin January 1, 2022.

Ms. Pearce currently serves as the Treasurer for the State of Vermont. She is the state's banker and investment officer. In her role, she manages short and long-term debt, the administration of three retirement systems, unclaimed property funds, and plays an advisory role to state policy makers.

The GASAC advises the Governmental Accounting Standards Board (GASB) on strategic and technical issues, project priorities, and other matters that affect standard setting. The GASAC provides the GASB with diverse perspectives from individuals with varied governmental, professional, and occupational backgrounds.

The FAF Board of Trustees appointed Ms. Pearce as a member of the GASAC, nominated by the National Association of State Treasurers, beginning January 1, 2021. She will succeed Mr. Robert W. Scott, who joined the GASAC in 2011 and became Chair in 2015.

"It is a pleasure to welcome Beth Pearce as our new GASAC Chair. She will play an important role in the GASB process," said Kathleen L. Casey, Chair of the FAF Board of Trustees. "We would also like to thank our departing Chair, Robert Scott, for his time, expertise, and the contributions he made to the standard-setting process," she added.

For a complete list of current Council members, visit the GASAC webpage.

- **Ed. Note:** It's happened yet again; the annual summer doldrums (*See*, Coleridge, Samuel Taylor) in which not much of anything seems to be happening. Going a month or so without providing you with substantive content used to stress us out, until we arrived at the Zen-like tranquility resulting from the awareness that we routinely – and gleefully – fail to provide you with any substantive content whatsoever for 12 months of the year.
- SIFMA State-by-State Capital Markets Database.
- Muni Buyers Grab Billions in Bonds They Won't See forMonths.
- Treasury Guidance on Non-Entitlement Units is Now Available.
- Muni Feeding Frenzy Seen Lasting as New Sales Lag Investor Cash.
- S&P: Could The Western U.S. Drought Threaten Municipal Credit Stability?
- Important Ohio Supreme Court Decision Clarifies Proper Method to Value "Big Box Stores."
- And finally, I'm Not Sure That I Agree With You 100% On Your Police Work, Lou is brought to us this week by *Gonzalez by Gonzalez v. City of Jersey City*, in which police officers were dispatched to a single-car accident on a Jersey City bridge. Upon arrival they encountered Hiram Gonzalez (a name we can make absolutely no sense of) standing by his wrecked truck and offered him a ride to a nearby gas station while he waited for assistance. Mr. Gonzalez declined, stating, "I am not riding with no Jersey City cops." Such a charmer, Hiram. Hiram was subsequently struck and killed on the bridge. When the autopsy revealed a BAC of .226%, and eyebrow or two was raised. But, really, what did the cops have to go on other than the symptoms of intoxication resulting from a .226, ("The toxicologist concluded that Gonzalez would have been 'markedly intoxicated' when speaking with the police."), a single-vehicle spinout at 3:24 on a Saturday morning, and the fact that, "Earlier in the evening, Gonzalez had posted pictures of alcoholic drinks on his social media, and an opened bottle of Hennessy was found in his truck after the accident." I mean, who could have known? Oh, on the advice of counsel and effective immediately, the BCB offices will be relocating to Jersey City, New Jersey. No particular reason.

BROWN ACT - CALIFORNIA

Daly v. San Bernardino County Board of Supervisors

Supreme Court of California - August 9, 2021 - P.3d - 2021 WL 3482924 - 21 Cal. Daily Op. Serv. 8047

Disappointed applicant for seat on Board of Supervisors and civic organization filed petition for writ of mandate, naming county Board of Supervisors and members who had participated in appointment of Board member, with appointed member as real party in interest, seeking judicial determination that initial nomination process violated Brown Act.

The Superior Court granted mandate petition. Board and appointed member appealed. The Court of Appeal denied writ of supersedeas effectuating such automatic stay of enforcement pending Board and appointed member's appeal on the merits. Board and appointed member filed joint petition for review asking whether superior court's order should have been automatically stayed as mandatory injunction. Petition for review by Board and appointed member was granted, and judgment and further proceedings below were stayed pending further order.

The Supreme Court held that:

- Superior court order was subject to automatic stay of enforcement pending Board and appointee's appeal on merits, and Board and appointee were entitled to writ of supersedeas effectuating such stay, and
- Quo warranto was available remedy for appointed member of county Board of Supervisors to be immediately excluded from office on claim that nomination process violated Brown Act.

On petition for writ of mandate seeking judicial determination that initial process to nominate applicant for county Board of supervisors position violated Brown Act, superior court order requiring Board to rescind its appointment of applicant as supervisor and instead to seat appointee named by Governor was subject to automatic stay of enforcement pending Board and appointee's appeal on merits, and Board and appointee were entitled to writ of supersedeas effectuating such stay, since requirement to remove appointee from supervisor position and seat Governor's replacement plausibly could not be described as merely incidental to other aspects of order.

Quo warranto was available remedy for appointed member of county Board of Supervisors to be immediately excluded from office on claim that nomination process violated Brown Act

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BALLOT INITIATIVE - MAINE

Caiazzo v. Secretary of State

Supreme Judicial Court of Maine - July 29, 2021 - A.3d - 2021 WL 3197177 - 2021 ME 42

Voter brought action to challenge Secretary of State's decision to draft a single ballot question for direct initiative regarding transmission lines.

The Superior Court affirmed, and voter appealed.

The Supreme Judicial Court held that Secretary of State appropriately exercised her discretion when deciding to draft single ballot question.

Supreme Judicial Court of Maine holds that Secretary of State appropriately exercised her discretion when deciding to draft single ballot question for direct initiative proposing “An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region,” as initiated bill presented a set of amendments aimed at a stated, but compound, purpose.

MUNICIPAL CONTRACTS - MARYLAND

Town of Riverdale Park v. Ashkar

Court of Appeals of Maryland - July 15, 2021 - A.3d - 2021 WL 2965001

Palestinian-American principal of towing company brought action against municipality and its personnel, claiming malicious prosecution and intentional discrimination on basis of national origin after he was denied municipal towing contract.

The Circuit Court granted judgment for municipality. Principal appealed. The Court of Special Appeals affirmed in part and reversed in part. Municipality’s petition for writ of certiorari was granted.

The Court of Appeals held that:

- Argument that had not been advanced in motion for judgment could not be considered on review judgment notwithstanding verdict;
- All that Palestinian-American had to show, as member of protected class, to establish prima facie case of discrimination was that he was qualified, but despite those qualifications, his application for tow contract was rejected, and given to somebody else;
- Membership on tow list provided legally sufficient and nondiscriminatory reason for why other towing company may have been preferred over towing company owned by Palestinian-American that had lapsed membership;
- Palestinian-American presented sufficient evidence that discrimination against his national origin motivated employment decision by municipality;
- National origin discrimination from police department officers reasonably could be imputed to municipality;
- Evidence was sufficient for jury to find that municipality’s use of law enforcement list of member towing companies as nondiscriminatory reason for decision to not select Palestinian-American’s towing company for towing contract was not worthy of credence; and
- Circuit court’s failure to decide whether to grant motion for new trial if judgment was later reversed on appeal required remand.

Palestinian-American presented sufficient evidence that discrimination against his national origin motivated employment decision by municipality to choose other towing company over his towing company for towing contract, where, among other things, claimant was called “camel jockey” by lieutenant colonel on two separate occasions, at least two more indications of discriminatory animus by police department were directed against claimant based on his national origin, police department, and specifically lieutenant colonel, was most important voice in denying claimant’s bid for employment, contract was given to other towing company on basis that it was on law enforcement towing list but list was never mentioned as necessary qualification prior to granting contract, and municipality passed resolution preferring local vendors, claimant’s company was local vendor, and other towing company was not.

MUNICIPAL CORPORATIONS - NEVADA

Endo Health Solutions, Inc. v. Second Judicial District Court of State in and for County of Washoe

Supreme Court of Nevada - July 29, 2021 - P.3d - 2021 WL 3266732 - 137 Nev. Adv. Op. 39

City brought tort action against manufacturers and distributors of prescription opioid medications to recover damages as a result of the opioid epidemic allegedly caused by defendants, and alleging public nuisance, common law public nuisance, negligence, and unjust enrichment.

The District Court denied in part defendants' motion to dismiss. Defendants petitioned for writ of mandamus.

The Supreme Court held that District Court's failure to strictly apply statutory definition of "matter of local concern" as set forth in modified Dillon's Rule warranted writ of mandamus.

IMMUNITY - NEW JERSEY

Gonzalez by Gonzalez v. City of Jersey City

Supreme Court of New Jersey - August 4, 2021 - A.3d - 2021 WL 3376907

Estate brought negligence action against police officers, city, and police department, arising out of motorist's death from being struck by a car on a highway bridge where officers allegedly left him after responding to his one-vehicle accident that left his vehicle inoperable.

The Superior CourT granted summary judgment in favor of defendants. Estate appealed. The Superior Court reversed. Defendants' petition for certification was granted.

The Supreme Court held that:

- Officers' actions did not implicate the Good Samaritan Act;
- Immunity for acting under statute requiring removal of an incapacitated person from public place to a treatment center did not apply;
- Fact issues precluded summary judgment; and
- Neither immunity for failure to enforce a law nor immunity for good-faith enforcement of a law applied.

PUBLIC INTEREST PRIVILEGE - NEW YORK

Comptroller of City of New York v. City of New York

Supreme Court, Appellate Division, First Department, New York - August 12, 2021 - N.Y.S.3d - 2021 WL 3555807 - 2021 N.Y. Slip Op. 04685

Comptroller brought proceeding against city for an order compelling city to fully comply with subpoena comptroller issued after city failed to produce documents requested by comptroller in investigation under city charter regarding city's preparation, planning, and response to the COVID-19 pandemic.

City filed cross petition seeking an order dismissing proceeding and quashing, modifying, or fixing conditions on city's compliance with subpoena. The Supreme Court, New York County, granted in part and denied in part the petition and cross petition, ordering city to comply with the request for documents but quashing the request for documents relating to communications involving mayor or first deputy mayor, and denying city's request in cross petition to quash testimonial subpoenas.

The Supreme Court, Appellate Division, held that:

- Comptroller's investigation did not exceed his authority under city charter, and
- Public interest in protecting mayor's and first deputy mayor's predecisional and deliberative communications outweighed public interest in allowing comptroller to review and possibly publish those communications as part of his investigation, and thus, public interest privilege applied to such communications.

Comptroller's investigation into city's preparation, planning, and response to the COVID-19 pandemic did not exceed his authority under city charter; charter gave comptroller power to audit and investigate all matters relating to or affecting the finances of the city and to issue subpoenas, and although investigation into city's pandemic response was not strictly targeted to finding out how the response affected city finances, charter provided comptroller with broad investigative authority of matters that affected city finances and did not strictly limit investigations to only fiscal matters, and investigation addressed the impact of the city's response to the pandemic on the city's finances.

The public interest in protecting the mayor's and first deputy mayor's predecisional and deliberative communications outweighed the public interest in allowing comptroller to review and possibly publish those communications as part of his investigation into city's response to COVID-19 pandemic, and thus, public interest privilege applied to such communications; given the ongoing threat of the pandemic, mayor and leadership team needed access to information and advice from all sources, which required that the sources had some assurance that their advice would remain confidential and free from fear of reprisal, and public disclosure of confidential communications could chill future deliberations about pressing matters, potentially to the public's harm.

MUNICIPAL ORDINANCE - WASHINGTON

City of Seattle v. Long

Supreme Court of Washington - August 12, 2021 - P.3d - 2021 WL 3556950

Truck owner sought review of municipal court order requiring him to reimburse city $547.12 for impoundment costs via payment plan of $50 per month, for truck that served as owner's home and that was impounded for violation of city's 72-hour parking ordinance.

The Superior Court affirmed in part and reversed part. City petitioned for discretionary review, and owner cross-petitioned. The Court of Appeals affirmed in part and reversed in part. Parties sought further review.

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

- Truck automatically qualified as a homestead;
- Homestead claim was premature;
- Impoundment did not violate state constitutional provision protecting against unwarranted government intrusions into private affairs;
- Impoundment and associated costs were partially punitive and thus constituted fines;
- A court considering whether a fine is constitutionally excessive should consider a person's ability

to pay; and
- Payment plan as imposed violated excessive fines clause.

Truck that served as owner's home and that was impounded by city for parking infraction automatically qualified as a homestead without need for owner to file a declaration.

Truck owner's homestead claim seeking shield against attachment, execution, or forced sale of his truck that served as his home and that was impounded by city for parking infraction was premature, where city did not seek to collect on owner's debt in the form of impoundment costs for which magistrate set up payment plan to reimburse city.

City's impoundment of truck for parking infraction and $547.12 payment plan of $50 per month for impoundment costs were unconstitutionally excessive for truck owner who used truck as residence, where nature of offense was a civil parking infraction that carried a $44 fine, city suspended enforcement of the 72-hour parking violation during COVID-19 pandemic signaling that city viewed violation as a relatively minor offense, there was no evidence that the infraction was related to any other criminal activity, truck was not parked in residential area or area of hot demand for city vehicles, owner made at most $700 per month, owner was attempting to save for apartment to move himself out of homelessness, and owner could not access his tools for work as general tradesman during impoundment.

Impoundment of truck for parking infraction after city posted notice of violation of 72-hour parking ordinance did not violate state constitutional provision protecting against unwarranted government intrusions into private affairs, where truck owner told officers his truck was in need of repairs and could not be driven, even though owner used truck as his home and did not have access to it for 21 days.

Impoundment and associated costs for truck that had a parking infraction were partially punitive and thus constituted fines under excessive fines clause, even though owner retrieved truck and costs were intended to reimburse city for towing and storage fees, where costs were imposed only as a result of the impoundment, which city code characterized as a penalty.

SIFMA State-by-State Capital Markets Database.

Explore the companies and municipalities accessing capital markets to drive economic growth in this state-by-state database.

View the SIFMA database.

This Week in Federal Funding.

In the latest edition, we talk with Shamiah Kerney, director of Baltimore's new Office of Recovery Programs. Also, updates from St. Louis, Hoboken, N.J., and Memphis.

Continue reading.

ROUTE FIFTY

by BILL LUCIA

AUGUST 17, 2021

Billions From Biden Aid Plan Left Untapped by Cash-Flush States.

At least 10 states haven't spent any of the aid from the American Rescue Plan legislation as officials grapple with how to use the unprecedented federal relief that Congress approved almost six months ago.

Tens of billions of dollars that U.S. states got as a lifeline from the Biden administration is sitting idle in local coffers already flush with cash.

Michigan has budgeted just 7% of its $6.5 billion allocation and hadn't spent any as of last week. South Dakota officials haven't even gotten around to asking for their $974 million allotted under the White House's American Rescue Plan legislation. In West Virginia, a state website says detailed plans for its $1.35 billion are "COMING SOON."

Officials nationwide are grappling with how to spend an unprecedented infusion at a time when their coffers have been replenished by a rebounding economy that in many cases is generating billions more in tax revenue than budgeted for.

Continue reading.

Bloomberg CityLab

By Amanda Albright and Danielle Moran

August 17, 2021, 6:54 AM MDT

S&P: Could The Western U.S. Drought Threaten Municipal Credit Stability?

Key Takeaways

- Water supply challenges could create credit pressure for municipal utilities, irrigation districts, and local governments resulting from either a materially unfavorable shift in cost or if the service area economy stagnates due to insufficient supply.
- Managing water demand, procuring drought-resistant supply, and maintaining storage will be critical to managing fluctuations in hydrology. Issuers with prudent rate structures and strong balance sheets will be best positioned to absorb disruptions in operations or revenue collections from hydrological variability.
- Drought-related credit pressures for local governments include potential limits on economic growth, heat waves that require assistance for residents, and climate change-induced hydrological volatility that weakens levees and leads to flash flooding and mudslides.
- Extreme hydrological variability has been a pervasive challenge across the West. As droughts become more prolonged or expansive, there could be credit pressure. We expect well-defined climate adaption policies, credible long-range resource plans, and achievable supply and demand management strategies will support stable credit quality. Many of these plans will be part of

issuers’ ESG planning as they address what could become the “new normal” across the West.

Continue reading. (Registration required.)

18 Aug, 2021

S&P: Ten U.S. Cities Successfully Weathering The Pandemic Thanks To Strong Management, Federal Support

Key Takeaways

- Although COVID-19 had a significant effect on major U.S. cities, strong management conditions and considerable federal support prevented credit deterioration.
- The sudden stop recession was shorter, and the economic rebound stronger, than anticipated, leading to more robust revenue for local governments than originally expected.
- Unprecedented federal relief was a lifeline and abated liquidity pressure.
- Current challenges for big cities include the delta variant, changing work/school patterns, and an uptick in violent crime.

Continue reading. (Registration required.)

19 Aug, 2021

Transit Leaders See New Federal Money as a Bridge, Not the End of the Line.

Bus, subway and local rail systems nearly shut down when the pandemic first struck. Now they’re trying to find a new way forward.

Congress pulled public transit agencies from the brink of financial collapse during the darkest days of the pandemic, and it is getting closer to helping them upgrade their physical assets too. But that doesn’t mean the agencies running buses and trains are in the clear yet.

The actual impact could vary greatly from one agency to the next, but overall, the industry is still worried about whether ridership will return to pre-pandemic levels.

Recent estimates show that ridership levels are now about 58 percent of what they were before the pandemic. Many agencies hope to see that number climb as offices reopen after Labor Day. If not, agencies may have to change the services they offer, make spending cuts or find new sources of funding to make up the difference.

Continue reading.

ROUTE FIFTY

by DANIEL C. VOCK

AUGUST 21, 2021

S&P Credit FAQ: Global Not-For-Profit Transportation Criteria Implementation Results Show How Operational Risk And Tax Support Influence Ratings

Key Takeaways

- The implementation of S&P Global Ratings' updated not-for-profit transportation infrastructure enterprise (TIE) criteria resulted in 22 rating actions (15 upgrades and seven downgrades) where the TIE criteria were the primary criteria applied; and four priority-lien rating upgrades where the updated TIE criteria were used to determine the obligor's creditworthiness for 32 priority-lien ratings of 21 different mass transit obligors that issued sales tax-backed obligations.
- For operating revenue-backed ratings on TIEs, positive rating changes were due to the added financial stability and flexibility from receiving significant tax revenues (like property or sales taxes) that do not fluctuate with transportation activity levels; for sales tax-backed ratings on TIEs where our priority-lien tax revenue debt criteria are applied, positive rating changes were generally due to an improvement in the linked obligor's creditworthiness, which incorporates pledged tax revenues that were generally resilient, as further evidenced during the COVID-19 pandemic; and for property tax-backed ratings on TIEs, negative rating changes were largely attributed to our incorporation of operating risk exposure for debt issued by TIE entities as well as weakened market positions for those issuers sensitive to changes in transit ridership or air travel volumes.
- Twenty-nine TIE entities benefiting from tax support received one to three notches of rating uplift; 14 received one notch of uplift, 13 receiving two notches of uplift, and two received three notches of uplift. Key considerations behind the amount of uplift were the significance of the tax revenue relative to total revenues, the type of tax (for example, sales versus property taxes), tax base characteristics as measured by diversity and stability, and a demonstrated willingness and ability to increase the tax levy.

Continue reading. (Registration required.)

17 Aug, 2021

S&P Global Mass Transit Ratings And Outlooks As Of Aug. 16, 2021.

Read the S&P list of ratings.

Bonding Time Podcast – Infrastructure Analysis and Muni Bonds with Tom Kozlik and Brett Bolton

In this installment of Bonding Time featuring Tom Kozlik of HilltopSecurities, we discuss the ongoing infrastructure deliberations in Congress and likely next steps for the bipartisan bill as well as the budget reconciliation package that will potentially provide an additional $3.5 trillion in infrastructure spending.

We also take a look at the debt ceiling and the recent extraordinary measures implemented by

Secretary Yellen halting the sale of SLGS and the potential credit ramifications of default.

[Click here for audio.]

Bond Dealers of America

rcrodriguez

August 18, 2021

House Returns to Debate Infrastructure Legislation – MBFA and BDA Continue to Advocate for Muni Priorities.

Today, the House returns from August recess for a week-long session to debate budget reconciliation instructions and voting rights legislation. At this time, House leadership remains steadfast in their position that the Chamber will not debate the Senate bipartisan infrastructure package until the budget reconciliation package, which will serve as a vehicle for additional infrastructure spending potentially including key muni priorities, becomes law– likely a months-long process.

In response to Leadership's position, a group of 9 rank-and-file Democrats demanded the House pass the bipartisan infrastructure package prior to advancing the budget reconciliation outline. This weekend, the group remained staunch in their legislative opposition penning an op-ed laying out their position.

At this time, House Leadership does not have the votes to pass the budget reconciliation instructions, setting up a likely legislative showdown in the next 48 hours. While it is too early to predict outcomes for this week's process, the MBFA and BDA believe both the bipartisan infrastructure package and a narrowed budget reconciliation package focused on the Biden Build Back Better infrastructure agenda will become law by year-end regardless of procedural hiccups.

Muni Priorities Update

The BDA and MBFA continue to press for the inclusion of key muni priorities in the budget reconciliation package. The MBFA recently met with Senior Staff in Rep. Terri Sewell's (D-AL) office to discuss the Congresswoman's muni package, the LIFT Act, and possible inclusion in the draft budget bill. The MBFA plans to continue meeting with key offices leading up to the introduction of legislative text promoting all muni priorities including:

- The reinstatement of tax-exempt advance refundings,
- Raise the BQ debt limit, and
- Creation of a new direct-pay bond exempt from sequestration.

The MBFA and BDA will continue to provide updates as they become available.

Bond Dealers of America

August 23, 2021

[The Infrastructure Bill Shows Why Congress Must Stop Enabling Bad Behavior by Cities and States.]

Under America's constitutional system, states and cities are responsible for maintaining public infrastructure such as streets, schools, parks, and water and sewer facilities. Yet even as Congress moves ahead with the $1 trillion Infrastructure Investment and Jobs Act, and even as calls increase for more federal assistance to ease burdens on local taxpayers, it's clear that the legislative branch largely fails to understand how states and municipalities manage their budgets.

This lack of understanding—or willful ignorance—is a critical shortcoming that should be addressed promptly, given the enormous amount the federal government already spends to subsidize state and local governments. In 2019, such subsidies accounted for 22% of those governments' operating expenditures of $3.5 trillion, according to U.S Census data. Federal tax deductions on interest on most municipal bonds, the financing vehicles that cities and towns use to build roads, bridges, and schools, will cost $334 billion in forgone federal revenue from 2021 to 2030, U.S. Treasury projections show. Federal aid and tax breaks also help support the jobs of 19 million schoolteachers, police officers, firefighters, public health workers, and other state and local employees whose roles have been so critical during the COVID-19 crisis.

If the infrastructure bill and a proposed $3.5 trillion budget resolution become law, federal assistance to states and municipalities will swell even further, with Congress on the hook for much of the cost of everything from roads and bridges to broadband Internet installations, in the process helping states and localities avoid taking on massive amounts of new debt beyond the $4 trillion they have already borrowed.

Continue reading.

Yahoo Finance

by William Glasgall & Richard Ravitch

August 19, 2021,

[BlackRock: Infrastructure Spending Will Continue To Be A 'Ballast' for Municipal Bonds]

BlackRock Municipal Bonds Group Head Peter Hayes joins Yahoo Finance to explain the municipal bonds outlook.

Video Transcript:

EMILY MCCORMICK: Welcome back to "Yahoo Finance Live." US Treasury Secretary Janet Yellen doubled down on her support for President Joe Biden's infrastructure investment plans in an op-ed published to Yahoo Finance earlier today. The plans include the $1 trillion infrastructure bill passed by the Senate last week, and the $3.5 trillion budget plan to expand the social safety net, which the Senate also approved the blueprint for last week. Here to discuss infrastructure, the outlook for the Fed, the markets and more is Peter Hayes, BlackRock's Municipal Bonds Group Head.

And Peter, I want to start off with that op-ed and those remarks from Janet Yellen. She highlighted several points to make the case for the spending now. And from your vantage point, how could investors be thinking about municipal bonds, specifically as a way to trade this increased government spending?

PETER HAYES: I think in general, first of all, thanks for having me, great to be back. I'll say that in general, there's been an awful lot of stimulus since the start of the pandemic on the part of both the Fed and Congress. And this is just another element. So I think it probably gives a tailwind to assets in general. But certainly adds a big balance to the municipal bond market. When you think about the spending that's occurred at the state and local level, it's been really beneficial on top of actually surprisingly strong tax revenues that have occurred.

Remember, most states and cities were really talking about large budget deficits, and actually what we've seen, is large budget surpluses. I think I saw today where the state of New York, their July revenue collections are up 21% from a year ago. New York City, 14%. Many states have not even touched these billions of dollars that they've received from the federal government. So all of this investment, all of this infrastructure spending will continue to be a ballast I think to the economic environment and the municipal market going forward over even, probably the next two years.

ADAM SHAPIRO: Peter, it's always good to see you. When we talk about going forward, I realize that you and the team, the bonds group deal in much larger numbers, but I'm going to ask a question from the kind of perspective of a lot of people who might be 45 years and older looking at the future. If they had say $500,000 saved up for retirement, how do you advise them?

Because it used to be a chunk of that you might want to put into municipal bonds. And you noted in the note that 27% of the supply was taxable issuance, because we're seeing the refinancing of what had been tax exempt muni bonds by cities and municipalities into taxable. What would you say to that potential woman or man regarding the future for them?

PETER HAYES: I'd say a lot of it is around, how much do you want to protect from taxes? And that's one of the reasons we've seen such strong inflows into the asset class this year. We've seen $62 billion in mutual fund inflow. So that's about the strongest that I can remember going back into the '90s. And I think a lot of that is because the fear of taxes going up. Now it's likely that the marginal tax rate for individuals, perhaps it goes back to 39.6%. So the benefit there is somewhat incremental. I think the bigger fear is corporate taxes. But clearly, for that individual looking to shelter income and not pay taxes on that income, municipal bonds will continue to provide, I think will provide that benefit.

The other element that sometimes is forgotten, is you look, if you think interest rates are going to rise, municipal bonds tend to do better. Well, look at this year. Year to date, the municipal index is up 1.6%. Most fixed income asset classes are actually negative. We'll use the Barclays ag. That's down negative 70 basis points. So a fair amount of outperformance. But it provides you some insulation if you really believe interest rates are going to rise.

And the other one is, it's a great hedge against equity risk. It's always done very well when you see volatility in the equity markets. Municipal bonds tend to be a safe haven for that. So it's really got kind of a three-pronged benefit to that investor, and that's what I would tell them. Adam.

ADAM SHAPIRO: In fact, the S&P municipal bond index, to reiterate what you said, has you said in the note, year to date, total return of about 1.9%, almost 2%. The other thing that's great about your note, is how everything is connected. You talk about climate change impacting revenue to utilities, especially the water utilities. Out West, which are now going to have to restrict demand, and you ended that part of the note by saying, we anticipate water usage limitations will become stricter and more widespread through year end. What kind of pressure does that put on the utilities to make good on their notes? I don't think anyone's going to default, but does it put pressure on them?

PETER HAYES: Well, I'll start with your comment. No one's going to default. I think that's very important. Sometimes they see these headlines and they think that means that an issuer is not going to repay their debt. That's never happened. California in particular has had a long history of drought. And even, and you look in some other areas of the US where droughts have been an issue over the years, water utility systems have always been very resourceful. They could cut water usage, they could raise rates. There's a lot of ways that they can actually utilize to repay their debt.

And the other one is just general utilities. So you talk about A, water restrictions. We saw I think in the Southwest yesterday for the first time they're going to cut the water usage in the Southwest to the Colorado River. And then the other is just general utilities. We saw today where I think PG&E is going to basically cut power to a certain part of their population in Northern California. That can impact revenues in the utility sector.

But again, they have a lot of tools at their disposal that they can ultimately use to help repay the debt. So it's not a default issue. Sometimes it's a rating issue, but it hasn't even really been that. Sometimes they go on negative watch, but again, investors shouldn't be necessarily very concerned about that on a going forward basis.

ADAM SHAPIRO: Peter, just quickly on interest rates. What are you expecting from the Fed meeting minutes tomorrow and Jackson Hole next week? When do you expect that tapering announcement and the actual start of tapering?

PETER HAYES: That's the $64,000 question that the bond market I think would love to know. I think our feeling generally is that interest rates have to rise. When you look at the, something you asked at the outset about the economic stimulus that's occurred, when you look at some of the supply chain disruptions and you look at the impact it's had on inflation, the notion that it's transitory is probably under, I think probably overvalued to some degree. This is here to stay for a while. So interest rates have to rise. It's a matter of when, and that goes to your question.

I think Jackson Hole is going to be somewhat of a non-event. I think the market may be expecting more out of Jackson Hole. Probably not likely to see anything there. I think it's more likely to occur in the coming months after that when we get by this Delta variant. The Fed wants to see what the impact will be on the economy. And then I think if we can get through that, if there's some clarity around the booster, and is a 2022 to restart to the economy, then you have to think more seriously about the Fed tapering, beginning to raise short-term interest rates, all of which are more likely to occur in 2022.

ADAM SHAPIRO: Peter Hayes, BlackRock Municipal Bonds Group Head, thank you so much.

August 17, 2021

Munis In Focus: NJ Megamall Sinking In Debt (Bloomberg Radio)

Joe Mysak, Editor of Bloomberg Brief: Municipal Market, discusses the latest news from the muni market. Hosted by Paul Sweeney and Matt Miller. (Taylor Riggs fills in for Paul Sweeney)

[Play Episode]

Bloomberg Markets

August 20, 2021

[Convention Centers Face Risks as Delta Ramps Up Threat to Crowds.]

- **S&P warns of slow recovery, trouble reaching pre-Covid levels**
- **Texas borrowers have convention center deals on calendar**

The Delta strain is dealing a setback to the convention industry's fragile recovery.

Some big gatherings are being shut down as the number of coronavirus cases surges again, dealing a fresh hit to a business that was already struggling to revive from the era of social distancing and working from home. The New York International Automobile Show was canceled this month for the second year in a row because of concerns over the pandemic. In Florida, the epicenter of the U.S. outbreak, the North American Association of Food Equipment Manufacturers and the Global Surgical Conference called off their events, with organizers of the later, citing the "dramatic surge" in the state's cases.

"It is very hard to pull a group of people and make sure that they are all comfortable in meeting together," S&P Global Ratings credit analyst Safina Ali said in an interview. "To an extent, they might not even get back to pre-Covid" levels, she said, referring to convention centers.

Bond-financed convention centers have seen their businesses dry up since the pandemic struck the U.S. in early 2020. The Center for Exhibition and Industry Research reported that the industry has shriveled to $24 billion, down $77 billion from 2019.

"There is not going to be a light switch and everybody is able to go back and go to events," said Brad Mayne, president and chief executive officer of the International Association of Venue Managers.

Still there isn't much distress right now for convention center debt, said Eric Kazatsky, senior U.S. municipals strategist at Bloomberg Intelligence. Many of these had pretty solid cash on hand going into the pandemic and decent credit quality.

"They had some cash to burn," Kazatsky said. "Things aren't at a total zero. They've just declined. There are still conventions being held."

Plus the muni market is searching for supply amid ongoing investor demand, and there is appetite for new projects, he said.

About $1.5 billion of municipal bonds for convention centers have been sold so far this year, down from $2.4 billion in the same period in 2020, according to data compiled by Bloomberg. There are some upcoming municipal bond deals that may offer a look at how investors view the risk.

The city of Abilene, Texas, through the Abilene Convention Center Hotel Development Corp., is looking to finance the construction for a full-service, upscale 200-room hotel and conference center 150 miles (241 kilometers) west of the Dallas-Fort Worth area. S&P considers the $19.5 million first-lien bonds BBB-, one step above junk. Additionally, the corporation is also selling $24.7 million of second-lien bonds for the project.

Also in Texas, the Baytown Municipal Development District outside of Houston plans to sell about $61 million in bonds to finance the development of the Baytown Convention Center Hotel with about 208 rooms, according to bond documents.

Yet such deals may belie the risks posed the industry's slowdown. Earlier this week, S&P said it expects Overland Park Development Corp. in Overland Park, Kansas to draw on $530,000 debt service reserves to cover a portion of its Sept. 1 interest payment.

"If revenue fails to meaningfully improve over the remainder of 2021, particularly given the additional uncertainty imposed by the Delta variant, credit quality could deteriorate," S&P said in the report on Tuesday on the Overland debt.

Cooper Howard, director of fixed-income strategy at the Schwab Center for Financial Research, said the impact of the pandemic on convention centers is about "looking at the liquidity and health of the region that they are located in. "Right now the delta variant doesn't appear to be posing a major risk to this sector, longer term it is something that yes, we will be watching," Howard said.

Bloomberg Business

By Skylar Woodhouse

August 19, 2021, 12:30 PM MDT

— With assistance by Natalia Lenkiewicz

Municipal Bonds Are Still a Solid Summer Bet for Retirees.

Municipal bond yields aren't exactly thrilling these days, but the asset class remains an important income-generator and risk-reducer for investors in retirement.

While yields are broadly low today in the municipal bond space, there are some positive points for retirement investors to consider, and the asset class is proving sturdy even as the delta variant of the coronavirus vexes investors.

"Municipals maintained their seasonal trend and posted strong performance throughout the month of July. The market benefited from a favorable supply-demand backdrop and rallying interest rates due to excess liquidity, short covering, and Delta variant fears," according to BlackRock research.

More recently, longer duration munis and those with lower credit ratings delivered upside for investors as muni market participants sought to embrace credit and duration risk. A recent decline in supply could be another factor supporting municipal bonds.

"Supply moderated from the robust levels experienced in June and trended more in line with historical expectations. Issuance of $35 billion was down -26% month-over-month but just 5% above the 5-year average, bringing the year-to-date total to $255 billion," notes BlackRock.

While yields are low within the broader municipal bond universe, investors are still displaying enthusiasm for this form of debt, with flows to related funds, including exchange traded funds, poised to hit records this year.

"Demand remained firm with the asset class garnering continued inflows. While fund flows slowed slightly into month end amid lower absolute yields, 2021 remains on pace to eclipse 2019 as the best fund flow year on record," continues BlackRock.

The asset manager recommends underweighting munis tied to "speculative projects with weak sponsorship, unproven technology, or unsound feasibility studies," as well as senior and assisted living facilities in markets that already have plenty of those establishments. However, BlackRock is bullish on munis issued by states in strong fiscal positions as well as munis issued by cities and school boards with robust property tax bases. The fund issuer also likes some high-yield munis.

ETF Trends

AUG 16, 2021

Treasury Guidance on Non-Entitlement Units is Now Available.

The United States Treasury has issued guidance on non-entitlement units (NEUs) providing additional information on eligibility and a step-by-step guide for states to allocate and distribute funds to their NEUs. States should follow the guidance and calculate allocations based on the list of local governments and their respective populations. The statute requires that all allocations to eligible governments be based on population. Treasury expects to make payments to states for distribution to NEUs in two equal tranches approximately twelve months apart.

NASACT

Muni Feeding Frenzy Seen Lasting as New Sales Lag Investor Cash.

- **One-third of outstanding debt will be paid off by end of 2026**
- **Investors already face 'a very challenging muni environment'**

Municipal-fund managers awash with cash are struggling to find bonds to buy, a situation that may persist for the next few years if new issues continue to fall short of the demand.

About 21% of outstanding tax-exempt debt will mature or be called by the end of 2024, according to data compiled by Bloomberg. That rises to 31% by the end of 2026. The figures are higher than those seen historically and exacerbate the challenge bondholders have in reinvesting their payments, said Matt Fabian, partner at Municipal Market Analytics. Meanwhile, new dollars continue to flow apace into mutual funds.

So far this year, issuers have sold $289 billion in long-term municipal debt, higher than the $267 billion over the same period last year, according to data compiled by Bloomberg. While the federal infrastructure bill in the works may drive more sales of new debt, it's unclear if it will be "enough to offset the giant sucking sound of the pending maturity schedule," Fabian said.

"We need to see a material increase in new money projects, if only for the market to stand still," he said.

The dynamic underscores the strength of the municipal-bond market, which is notching positive returns even as several other corners of the fixed-income universe are down for the year. Investors are shifting into the tax haven as President Joe Biden's administration pushes to raise income taxes on the highest earners. Meanwhile, Biden's stimulus packages easing the impact of the coronavirus pandemic have boosted the credit quality of local government borrowers such as cities and transit systems.

Investors have plowed a record amount into municipal-bond funds for the first seven months of the year, totaling more than $69 billion, according to Refinitiv Lipper US Fund Flows data. The wall of cash has led Nuveen to turn new investors away from its high-yield municipal bond fund, the market's biggest.

The demand from mutual funds and those seeking to redeploy their principal payments will likely keep spreads at tight spreads, Fabian said.

"This is a context in which spreads are not going to widen absent some kind of surprise," he said. "We need some big city to file for bankruptcy, or some kind of major reversal of revenue trends."

Meanwhile, portfolio managers are left scrambling to get a piece of new deals, which receive so many orders that underwriters are able to lower yields that the buyers feel compelled to accept.

"What starts off looking attractive, by the time it comes to you, it's okay," said Sweta Singh, portfolio manager at City Different Holdings LP. "It is a very challenging muni environment, for sure."

Bloomberg Markets

By Romy Varghese

August 20, 2021, 10:00 AM MDT

— With assistance by Natalia Lenkiewicz

Muni Buyers Grab Billions in Bonds They Won't See for Months.

- **Sales with later delivery head for record as rate risk rises**
- **Ban on tax-exempt advance refundings lifts popularity of tool**

State and local governments barred from a key refinancing tactic are turning more than ever to a funding tool that helps them avoid the risk of rising interest rates.

Sales of municipal bonds that won't be delivered to investors until months after they price have reached about $10.5 billion in 2021, up 174% from the same period a year ago and on pace for a record, according to data compiled by Bloomberg. California issued the largest ever so-called delayed-delivery bond four months ago, while deals by issuers from across the country are set to price in the weeks ahead.

The structure allows state and local governments to lock in interest rates in anticipation of refinancing higher costing debt that's not yet eligible to be called back. It's an attractive tool for governments that believe rates are going to rise, said Vikram Rai, head of municipal strategy for Citigroup Inc. The structure has grown in popularity since a clause included as part of former President Donald Trump's 2017 tax cuts banned the sale of tax-exempt bonds to refinance debt ahead of the call date.

“It’s a rate call,” Rai said in an interview. “Rates are low and I find it difficult to believe that they will go lower.”

California sold nearly $1.1 billion in April to be delivered next month, and the state plans to sell $372 million of the same structure in October. The Phoenix Children’s Hospital is selling $150.4 million through the Arizona Industrial Development Authority that will be delivered in November. And Connecticut’s Health and Educational Facilities Authority sold $206 million Wednesday that will be delivered no earlier than April.

The rising volume of forward sales comes as demand outpaces the supply of new bonds in the $4 trillion muni market, leaving yield-hungry investors willing to take on more risk to boost returns.

Rising inflation, the potential for Treasury yields to climb higher and the possibility the Federal Reserve starts tightening monetary policy could all shift future pricing for state and local governments. Ten-year top rated municipal benchmark bonds currently yield about 0.9%, according to Bloomberg BVAL pricing.

“What’s in it for us is we get the advantage of low rates,” Tim Schaefer, the deputy treasurer of public finance for the state of California, said in an interview. The state began issuing large chunks of bonds for forward delivery last October, and while it doesn’t make interest-rate predictions, it wants to benefit from the low-yield environment, he said. “All of our risk of rate fluctuation beyond the date we sign the contract is thus eliminated. We have certainty.”

Forward-delivery bonds offer extra yield to investors to compensate for the risks associated with waiting months to get your bonds. Rai, the Citigroup analyst, estimates the premium is about 3 to 4 basis points per month, meaning the further out the settlement date, the higher cost of selling the debt.

“This structure is seen as a win-win for issuers which can lower their cost of capital while investors will usually get some modest additional spread on forward delivery deals,” said Erin Ortiz, managing director for municipal credit at Janney Montgomery Scott. “In fact, investors appear as being comfortable with forward delivery deals settling much longer out, even some over one year, as opposed to three or even six months.”

Illinois’s Metropolitan Pier and Exposition Authority sold about $811 million forward delivery bonds in July to take advantage of “favorable” interest rates, said Jason Bormann, chief financial officer of the agency. A bond that matures in 2052 priced at a yield of 97 basis points over the Bloomberg BVAL benchmark, according to data compiled by Bloomberg. It generated $140 million of present value savings, the authority said. The bonds won’t be delivered to investors until March.

“I don’t see the demand changing on the issuer side unless the advance refund rules change,” Bormann said.

Bloomberg Markets

By Shruti Singh and Danielle Moran

August 18, 2021, 11:56 AM MDT Updated on August 18, 2021, 1:04 PM MDT

— With assistance by Skylar Woodhouse

[CDFA // BNY Mellon Development Finance Webcast Series: Layering the Capital Stack]

September 21, 2021 | 2:00 PM – 3:00 PM Eastern

The phrase "Capital Stack" is one that is pretty commonplace in the Development Finance nomenclature these days, but what does it truly mean to build the Capital Stack and how can it work for your project? This session will discuss how Bonds, Tax Increment Finance, Tax Credits as well as the litany of federal funding through recent legislation can work for your project and ultimately the community that is benefitting.

Click here to learn more and to register.

Important Ohio Supreme Court Decision Clarifies Proper Method to Value "Big Box Stores."

The Ohio Supreme Court issued an important decision today clarifying the proper method under Ohio law to value big box stores—in this case, a Lowe's store.

The Ohio Supreme Court rejected the property owner's argument that an appraiser should presume that the property is vacant when appraising the property. Instead, the Court agreed with the school board and county that a property should be valued using market rent rather than the actual rent from an existing lease encumbering the property at the time of the sale and transfer.

The Court was called upon to interpret somewhat recent changes to R.C. 5713.03, which requires county auditors to value property based upon the value of the "fee simple estate, as if unencumbered." Rejecting the property owner's argument, the Court clarified that this statute invokes a market-lease rule, rather than a vacant-at-transfer rule. This decision, commonly referred to as *Rancho Cincinnati*, is the latest in a series of decisions in Ohio that affect the valuation of big box stores. The Court's decision will be perceived as more favorable to political subdivisions and taxing authorities; in contrast, the Court's decision will diminish the salience of appraisals that use a "go-dark" value of big box stores.

The *Rancho Cincinnati* decision was issued by the Ohio Supreme Court on August 18, 2021 and may be cited as *Rancho Cincinnati Rivers, LLC v. Warren County Board of Revision, et al.*, slip opinion no. 2021-Ohio-2798.

If you have questions about how this case impacts the valuation of properties located in your school district, please contact your legal counsel.

Bricker & Eckler LLP

August 19, 2021

Solving The Housing Crisis With OZs, With Riaz Capital.

In this webinar, Garrick Monaghan discusses the need for affordable housing in the Bay Area and the Riaz Capital Ozone Fund III.

Watch the webinar.

OPPORTUNITYDB

by JIMMY ATKINSON

AUGUST 13, 2021

Real Estate Technology And Opportunity Zones, with Steve Nson.

How does real estate innovation intersect with Opportunity Zones? How can Opportunity Zones catalyze business development and business investment in low income communities?

Steve Nson is founder of AnySizeDeals, a conference organizer with a focus on real estate innovation. Their upcoming AnySizeDeals Festival of Real Estate Innovation event will focus on the innovation that is transforming the real estate industry.

Listen to audio.

OPPORTUNITYDB

by JIMMY ATKINSON

AUGUST 18, 2021

Demand, Supply Fundamentals Are in Muni Bond ETFs' Favor.

Long-term fundamentals could support municipal bond exchange traded funds as investment demand could fall short of new muni issuances.

About 21% of outstanding tax-exempt debt will mature or be called by the end of 2024, Bloomberg reports. The amount rises to 31% by the end of 2026.

Matt Fabian, partner at Municipal Market Analytics, warned that the amount of money maturing or set to be called is higher than that which is experienced historically, and could prove challenging for those trying to reinvest their payments, especially as new dollars continue to flow into the space with an aging population.

Meanwhile, on the supply side, issuers have sold $289 billion in long-term municipal debt so far in 2021, which was slightly higher than the $267 billion over the same period last year. Additionally, while the federal infrastructure bill could stimulate greater sales of new debt, it's unclear if it will be "enough to offset the giant sucking sound of the pending maturity schedule," Fabian told Bloomberg.

“We need to see a material increase in new money projects, if only for the market to stand still,” Fabian said.

The difference between supply and demand in the muni market has helped this pocket of the fixed income space turn a positive return in 2021, even as other areas of the debt markets are down for the year. Additionally, investors have been targeting the tax-exempt debt as President Joe Biden’s administration seeks to hike income tax rates on high earners and stimulus packages have helped ease the negative impact from the coronavirus pandemic on local government borrowers.

Investors have so far funneled a record $69 billion into municipal bond funds for the first seven months of the year, according to Refinitiv Lipper US Fund Flows data.

Looking ahead, Fabian warned that the demand for muni funds and those trying to redeploy principal payments will keep spreads tight.

“This is a context in which spreads are not going to widen absent some kind of surprise,” he added. “We need some big city to file for bankruptcy, or some kind of major reversal of revenue trends.”

ETF investors who are interested in the munis space can also consider targeted ETF strategies, such as the popular iShares National Muni Bond ETF (NYSEArca: MUB), Vanguard Tax-Exempt Bond ETF (NYSEArca: VTEB), and SPDR Nuveen Bloomberg Barclays Municipal Bond ETF (NYSEArca: TFI).

ETF TRENDS

AUG 23, 2021

Michigan’s Overlapping Property Tax Limitations Create an Unsustainable Municipal Finance System.

- States generally limit growth of property tax burdens in one of three ways – rate limit, assessment limit, or levy limit. Michigan uses all three, making it among the strictest property tax limitations of the states. Statutory tax rate limits, the Headlee Amendment’s assessment limit, and the taxable value system created by Proposal A all work to limit the growth of tax burdens and constrain year-to-year changes.
- The Great Recession and its impact on property values led to the overlapping tax limits having a mitigating affect, keeping the tax base from declining further than it could have. Since the Great Recession, which was a unique event, tax bases have been growing at relatively slow rates.
- The property tax system is not sustainable. Local government tax revenues are constrained in their growth unless they add new development to their tax bases or increase tax rates. Land is finite and cannot continue to be developed. Tax rates are statutorily limited. Local governments need revenue that can grow with their economies.

Download Report.

AUGUST 10, 2021

Barring California Taxpayers from the Courts.

Big government interests – and by “big government interests” we mean elected officials, bureaucrats, public sector unions and private corporations that live off taxpayer dollars – do everything they can to erect barriers to taxpayers seeking to vindicate their rights.

As this column has previously addressed, those barriers include making it difficult to vindicate rights at the ballot box by consistently changing election laws – often in the middle of an election cycle – in a manner designed to protect the existing political power structure.

But there is an equally virulent set of hurdles placed before taxpayers consisting of procedural barriers to obtaining relief in the courts. Just a few examples are short statutes of limitations, requirements that taxpayers must “exhaust administrative remedies” before filing a legal action, requirements that taxpayers must first pay the disputed tax in full before filing suit, and severe restrictions on the use of class actions that preclude meaningful tax relief when entire communities are hurt by an illegal tax.

Another example is the requirement that challenges to certain tax increases be brought exclusively as “validation actions.” Such actions may be brought by government entities to “bulletproof” their tax or fee increases from any future legal attack. Typically, the lawsuit will be filed against “All Persons Interested” in the legality of a bond issuance or other public finance matter and, once filed, taxpayers have only a very limited time to respond.

The short time to respond to a validation action, however, isn’t the biggest headache for taxpayers. Specifically, if the government entity doesn’t file its own action, then the validation action must be filed by citizens (any “interested party”) within 60 days of the resolution authorizing a bond or tax. The citizens’ failure to do so results in the bond or tax becoming automatically “validated” through inaction, and forever insulated from judicial review. This puts the costs of litigation on the shoulders of those having to pay the tax. And those costs include the very expensive price tag of having to “publish” a summons in the local newspaper over several days.

Ordinary taxpayers rarely have the expertise or financial wherewithal to initiate a “validation” action in court and must rely on advocacy groups such as the Howard Jarvis Taxpayers Association, which has been involved in numerous such lawsuits. But even with that expertise, there remains much wrong with expanding the circumstances where the law requires that challenges must be brought as a validation action as opposed to more traditional legal actions such as taxpayer injunctions, declaratory relief or money damages.

Validation actions may make sense in the limited area of protecting municipal bonds from legal attack well after the bonds have been issued. There is arguably a public interest in protecting the “marketability” of public bonds so that government entities have access to capital markets in order to construct public projects such as schools.

However, a bill currently pending in the California Legislature, Senate Bill 323, would hijack the validation statutes and apply them to preclude ratepayers from challenging unlawfully high rates for water or sewer – essential public services that no one can live without.

Simply stated, this expansion of the validation statutes is an unfair denial of due process that can have the effect of cementing into law illegal government acts that are then insulated from judicial review. Even the state Supreme Court has taken notice, writing in City of Ontario v. Superior Court that some applications of the validation statutes are “of doubtful constitutionality.” Not surprisingly, the Howard Jarvis Taxpayer Association opposes all attempts to enlarge the universe of government actions that are subject to the validation statutes. And we are not alone.

Even a couple of water agencies in Orange County see a problem with this expansion. While generally supportive of the bill's aims, they also recognize the importance of providing adequate notice to ratepayers "in recognition of public water and sewer agencies' Constitutional responsibility to guarantee that ratepayers – particularly economically disadvantaged residents and marginalized communities – know their rights."
What ratepayers should really know about their rights is how Senate Bill 323 takes them away. The validation statutes were never meant to insulate water, sewer, or other agency rates and fees from legal challenge. If such rates are imposed in a manner contrary to the constitutional protections guaranteed to taxpayers by Proposition 13 and other laws, ratepayers must not have the courthouse door slammed in their faces by a burdensome process that makes such challenges difficult, if not impossible.

PE.COM

By JON COUPAL

August 16, 2021

Jon Coupal is president of the Howard Jarvis Taxpayers Association.

High-Yield Munis Remain Sturdy Despite an Uptick in Defaults.

The federal government heaped billions of dollars on states to help them tidy up their balance sheets in the wake of the coronavirus pandemic.

However, municipal default rates ticked higher in 2020 and to this point this year. Yet that's not damping the case for high-yield municipal bonds and the VanEck Vectors High Yield Muni ETF (HYD), one of the dominant exchange traded funds providing exposure to junk-rated munis.

The $4 billion HYD follows the Bloomberg Barclays Municipal Custom High Yield Composite Index and turns 13 years old next February. As of Aug. 12, it yields 2.17% on a 30-day SEC basis. These days, that's elevated in the municipal bond universe, but it's not cause for alarm. As Tamara Lowin, VanEck senior municipal research analyst, points out, investors should dig into where exactly the muni defaults are coming from.

"While default rates increased in several sectors, the healthcare sector is responsible for most of the spike, doubling its five-year average," she said in a recent note. "The healthcare sector is known as one of the riskiest sectors historically, mainly due to the senior-living sub-category, which includes nursing homes, assisting living facilities, and continuing care retirement communities. This category was directly impacted by the pandemic and hit harder than any other municipal sector. The nation saw occupancy levels fall, broken supply-chains, and a loss of employees, which devastated them financially."

HYD has a 19% weight to healthcare munis – its largest segment allocation. That exposure isn't hindering the ETF this year. Year-to-date, HYD is higher by 3.35% while the widely followed S&P National AMT-Free Municipal Bond Index is flat on the year.

That's a sign that the concentration of muni defaults in one corner of the market isn't denting the thesis for this asset class in general.

"The concentration of defaults in one sector affirms our belief in the strength of high yield municipal bonds overall," adds Lowin. "The shock to the system did not result in widespread staggering defaults, but instead targeted borrowers most vulnerable to a sudden health-event shift. It is no surprise that the sector most directly impacted by the Coronavirus continues to struggle through instability. However, the size and brevity of the disruption in the remaining sectors speaks to the continued strength of high yield municipal bonds."

Of HYD's top four state exposures – California, Illinois, New York, and New Jersey – only Illinois appears somewhat financially strained at the moment. California, the ETF's largest state exposure, is doing well when it comes to tax collection and is running a massive budget surplus.

ETF TRENDS

TOM LYDON AUGUST 16, 2021

Illinois to Sell Bonds After First Ratings Increase in Decades.

- **State plans to offer $500 million in debt over next two months**
- **First batch, $130 million in tax-exempt bonds, slated Aug. 24**

Illinois is returning to the $4 trillion municipal bond market after winning credit rating upgrades for the first time in more than two decades.

Why It's Noteworthy

The state, which still has the lowest credit designation in the nation, plans to sell $130 million in junior obligation tax-exempt securities through a competitive auction for its Build Illinois program on Aug. 24. The bonds will help fund construction projects and are backed by Illinois sales tax revenue. The state's share of sales tax increased 13% to $10.4 billion in fiscal 2021, according to bond documents.

The offering scheduled for next week is the first of three issues slated for over the next two months. The state plans to sell $210 million taxable debt and $160 million tax-exempt refunding bonds through negotiated sales in mid-September, according to a statement.

Illinois last came to market in March. That was before the economy began reopening from the Covid pandemic shutdown and when investors were still grasping the impact of President Joe Biden's American Rescue Plan Act, which funnels $350 billion to state and local governments. Illinois is getting about $8.1 billion from the latest stimulus package.

Outlook

While S&P Global Ratings and Fitch Ratings have assigned BBB+ ratings to the $130 million sales tax bonds to be sold next week, Illinois's overall credit picture has brightened noticeably in the last six months. That's largely given higher-than-projected revenue, billions more in federal aid and some fiscal discipline shown by the state government.

After raising their outlooks on the state in March to stable from negative, both S&P and Moody's Investors Service lifted their ratings. Moody's raised its designation to Baa2 from Baa3 on June 29 and S&P boosted to BBB from BBB- on July 8. Both increases were the first for the state in more than 20 years.

Fitch raised its outlook to positive from negative on June 23, but maintained its BBB- rating, which is still one notch above non-investment grade. The state remains the lowest rated, largely because of its heavy unpaid pension liability — which currently stands at about $144 billion, lack of a meaningful rainy day fund and ongoing structural deficits.

It had faced a string of outlook and rating cuts resulting from the budget impasse from 2015 through 2017 between the Democrat-controlled Illinois General Assembly and then Governor Bruce Rauner, a Republican. Plunging revenue in 2020 due to pandemic-spurred business closures had added to the pressure and put the state on the brink of a junk rating.

Now, S&P's stable outlook for the Build Illinois bonds reflects sales tax resilience, liquidity strength and continued economic recovery, Geoff Buswick, an analyst for S&P, said in a report Aug. 13.

Market's View

"For the first time in a long time the state is coming to market with the momentum of positive rating actions," said Dora Lee, director of research for Belle Haven Investments, which holds $15 billion in muni assets including Illinois debt. "It really shows what the state is capable of with a bit of financial discipline and a supportive federal aid environment."

The state's yield spreads are still wider than other states but are historically low, said Dennis Derby, a portfolio manager for Wells Fargo Asset Management, which holds Illinois as part of $35 billion muni assets. The sales tax bonds are also "one of the strongest financing mechanisms for Illinois" and using them for capital projects makes sense, he said.

Illinois pays 70.8 basis points more to borrow than 10-year AAA benchmark securities, according to data compiled by Bloomberg. While that is slightly more than earlier this summer, it's far less than the 4.4% in May 2020 at the height of investors' anxiety about financial repercussion from the pandemic.

"Illinois continues to ride positive market momentum and improved ratings outlooks," Derby said.

Bloomberg Markets

By Shruti Singh

August 20, 2021, 6:33 AM MDT

Nuveen to Close Top High-Yield Muni Fund to New Investors.

- **Investors have flocked to muni junk bond funds for high yields**
- **Nuveen fund has gained over 14% in the past year, data shows**

Nuveen said it plans to shut its high-yield municipal bond fund to new investors after the end of next month.

The fund is the biggest focused on state and local government junk bonds, a corner of the market that's received a massive influx of cash at a time when the pace of new debt sales has struggled to keep up.

High-yield municipal funds have drawn in new cash week after week this year as the market rallied, delivering out-sized returns at a time when yields on the safest state and local government bonds are holding not far from record lows.

Investors have added nearly $17 billion of new money to such funds since the start of the year, according to Refinitiv Lipper US Fund Flows data.

That influx has created challenges for fund managers forced to compete against each other to get in on new bond offerings. At the same time, surging economic growth and the massive federal rescue package has left local government credit ratings broadly on the rise.

Nuveen's High Yield Municipal Bond Fund, run by John Miller, is not only the market's behemoth, with more than $24 billion of assets, but one that has also consistently outperformed its rivals. It has returned more than 14% over the past year, better than all but 2% of its peers, according to data compiled by Bloomberg.

The fund is closely watched by municipal-bond investors, given its track record and size. A spokesperson said Miller was unavailable to comment.

Nuveen is also closing its California high-yield muni fund to new investors after Sept. 30, the company said in a statement and filings with the Securities and Exchange Commission. Those with stakes by then will still be allowed to keep investing.

The step follows a similar move by rival Invesco Ltd., which closed its $11 billion high-yield muni fund to new investors.

"Nuveen investment and product teams will closely monitor market conditions and other fund-specific factors and will actively look to reopen the funds when it is deemed to be in the best interest of shareholders," Nuveen said in a statement to Bloomberg News.

Bloomberg Markets

By Danielle Moran

August 19, 2021, 2:45 PM MDT Updated on August 19, 2021, 3:40 PM MDT

— With assistance by Romy Varghese

New Jersey's American Dream Megamall Is Once Again Sinking in Debt.

- **Developers hired restructuring lawyers and financial advisers**
- **Ghermezians sacrifice pieces of empire to keep project afloat**

Since its groundbreaking nearly two decades ago, the megamall built in New Jersey's Meadowlands has done little except hemorrhage cash. Now, less than two years after its much-delayed opening, the complex known as American Dream is threatening to dash the lofty ambitions of yet another developer.

The Ghermezian family, which runs some of the biggest and most successful malls in North America, can’t keep up with the bills on the shopping and entertainment megaplex, which helped drive its original developer to the brink of bankruptcy and later was seized by lenders from the team that came next.

Revenue from the stores has been so scarce amid the surging pandemic that the Ghermezians have hired legal and financial advisers to help them ease the crushing $3 billion debt load, and perhaps retain some role in running the project, according to people with knowledge of the matter.

Continue reading.

Bloomberg

By Eliza Ronalds-Hannon, John Gittelsohn, Lauren Coleman-Lochner, and Martin Z Braun

August 19, 2021, 5:00 AM MDT

HilltopSecurities Strengthens Footprint, Adds Key Professionals to Public Finance Division.

DALLAS, August 18, 2021–(BUSINESS WIRE)–Hilltop Securities Inc. (HilltopSecurities) recently welcomed a pair of key financial services leaders to its Public Finance division in Florida and Minnesota. John Pellicci will serve as senior managing director, head of municipal high yield underwriting and sales, while Yaffa Rattner will serve as senior managing director, head of municipal credit in the firm’s Public Finance division.

The two bring a combined 67 years of financial services experience to HilltopSecurities’ team of financial professionals and will report to Todd Bleakney, senior managing director, co-head of Debt Capital Markets.

“John and Yaffa will be wonderful additions to our Public Finance division,” said Bleakney. “They are both seasoned professionals and will only enhance our ability to serve our clients. I look forward to working with them.”

“With the addition of Yaffa and John, we continue to strengthen our capital markets effort across our platform,” said Mike Bartollota, Executive Managing Director, Co-Head of Public Finance/Debt Capital Markets at HilltopSecurities. “We are delighted to have such talented and experienced professionals join our team.”

Investors Flock To Municipal Bonds For Tax Savings.

Wealthy investors are shoveling more money into municipal-bond exchange-traded funds as they seek shelter from expected higher tax rates.

Municipal-bond ETFs have already experienced $13.8 billion in net inflows this year. The current trajectory is set to outpace the $14.5 billion gathered by muni-bond ETFs for all of 2020.

The U.S. Senate recently approved a $1 trillion infrastructure spending package. That’s on top of the $1.9 trillion Covid-19 relief bill passed earlier this year, plus $2.2 trillion more spending via the

CARES Act in 2020. The surge in government spending has alarmed many affluent households and financial advisors who are bracing for higher income tax rates.

Income generated from municipal bonds is exempt from federal taxes and from state income taxes, so long as the bonds purchased are from a taxpayer's home state. In certain cases, income from in-state municipal bonds could be subject to state taxes.

There are 65 U.S.-listed municipal-bond ETFs with $78.5 billion in combined assets, according to ETFAction.com. The Denver-based firm is seeing a big pickup in demand for muni-bond ETFs.

ETFs that own higher yielding, lower credit quality municipal bonds have been among the biggest beneficiaries of surging investor demand. Over $1.25 billion has already flooded into high-yield muni-bond ETFs this year, which is more than 10 times greater than the $111 million of assets gathered in 2020.

The $3.9 billion VanEck Vectors High Yield Muni ETF (HYD) is among the funds within the high-yield category that's seen an uptick in asset flows. HYD carries a 30-day SEC yield of 2.18% which equates to a 3.46% taxable equivalent yield for investors in the highest 37% tax bracket. The fund distributes income payments monthly and charges 0.35% annually.

Muni-bond ETFs that are exempt from the federal alternative minimum tax, or AMT, have become another popular target for investors.

With $8.7 billion in combined assets, ETFs tied to municipal bonds with AMT-free income represents the largest segment within the overall municipal-bond ETF category. Within this group, the Invesco National AMT-Free Municipal Bond ETF (PZA) owns at least 80% of its assets in muni bonds that are exempt from the AMT.

The AMT disallows certain deductions that are permitted in the ordinary income-tax code. After calculating taxes under both ordinary income and AMT rates, taxpayers must pay whichever rate is higher. The 2017 tax law change under the Tax Cuts and Jobs Act increased the phase-out thresholds, meaning fewer tax filers are subject to AMT.

FINANCIAL ADVISOR

AUGUST 17, 2021 • RON DELEGGE

[Should You Rethink Your Muni Ladders?]

Municipal bond ladders are a common strategy to mitigate interest rate risk. If interest rates rise, you can reinvest bonds coming due in higher-yielding bonds. If interest rates fall, you always have a good number of bonds locked in at higher rates. The problem is that the current environment introduces a lot of uncertainties.

Let's look at why muni bond investors face a challenging reinvestment environment and alternative strategies to consider.

Demand Outstrips Supply

The municipal bond market has become a fixed-income safe-haven. After a tumultuous winter, the federal government's stimulus spending has padded state and local budgets. Meanwhile, the swift economic recovery alleviated many concerns of future budget shortfalls. These trends have eliminated the need for new muni bond issues to raise capital.

Continue reading.

dividend.com

by Justin Kuepper

Aug 18, 2021

- More Muni Issuers Are Making Banks Compete to Win Bond Deals.
- MSRB Offers Remote Municipal Advisor Principal Exam.
- Fitch: USPF Exposed to the Same Factors Pressuring the US Sovereign
- S&P: Uncovering Local-level Risk Factors for Municipal Exposures
- Pimco Veterans Look to Shake Up 'Old School' Muni Loan Market.
- MSRB Research Paper on the Taxable Municipal Bond Market.
- GFOA 2021 GAAP Update.
- And finally, Bismarck, Otto van Bismarck, is brought to us this week by *Smith v. Isakson*, in which Eric Smith was found guilty of violating a Bismarck ordinance restricting the use of public grounds without a permit after a mall and fast-food restaurant repeatedly asked Mr. Smith to remove his flags, banners, and assorted merchandise promoting the campaign of a particular presidential candidate from the property. (Don't ask us, could have been any number of presidential candidates.). The penalty for this particular infraction is $100. There exists no possibility for jail time. Nevertheless, in a move no one could have seen coming from an individual already deemed a vexatious litigant (Is there a better two-word combo in the English language? Moist Towelette?) by the Supreme Court of North Dakota, Mr. Smith sued the mall for $500k (*pro se*, natch) and managed to (once again) take his case to the state supreme court. Our deepest, deepest condolences to the DAs who will now be required to provide Mr. Smith with a jury trial. You ever deal with a *pro se* litigant? Think clown-car towing rabid monkeys barreling head-long into a tanker truck of human waste. And finally, finally, when even Chick-fil-A wants you off its property, please take this as a sign that it's time for a long dark night of political soul-searching.

EASEMENTS - CALIFORNIA

Pear v. City and County of San Francisco

Court of Appeal, Sixth District, California - July 28, 2021 - Cal.Rptr.3d - 2021 WL 3186556 - 21 Cal. Daily Op. Serv. 7667

Grantors' successors brought action regarding their uses of surface of strip of property deeded to city and county for use for underground water pipes, alleging claims for quiet title, an irrevocable license, declaratory relief, and injunctive relief.

The Superior Court granted summary judgment for city and county. Successors appealed, and the Sixth District Court of Appeal reversed and remanded. Following a court trial, the Superior Court entered judgment for successors on claims to quiet title and for declaratory and injunctive relief, and city and county appealed.

The Court of Appeal held that:

- Deed reservation allowed grantors' successors to plant grass on the property;
- Deed reservation allowed grantors' successors to place ornamental landscaping on the property;
- Deed reservation permitted roads and streets for both residential and commercial use;
- Deed reservation allowed access to commercial property's service bays which were perpendicular to the pipeline property; and
- Deed reservation did not permit parking lot use of the property as part of general access to neighboring automotive service center.

PUBLIC FINANCE - MICHIGAN

Taxpayers for Michigan Constitutional Government v. Department of Technology , Management and Budget

Supreme Court of Michigan - July 28, 2021 - N.W.2d - 2021 WL 3179659

Taxpayer organization brought action against state and state authorities to enforce state constitutional amendment requiring certain percentage of state spending to be apportioned to local government.

The Court of Appeals granted mandamus relief for organization, and the matter then came before the Court of Appeals again on motion for reconsideration. The Court of Appeals granted summary judgment in part and denied it in part for both parties. Parties' applications for leave to appeal were granted.

The Supreme Court held that:

- "Proposal A" payments should be counted as part of total state spending paid to units of local government for purposes of Headlee Amendment;
- Public school academies (PSAs) were not "school districts" as that term was used in Headlee Amendment; and
- State funding provided to units of local government had to be counted for purposes of "total state spending paid to all units of Local Government" under Headlee Amendment.

Under the Headlee Amendment requiring certain percentage of state spending to be apportioned to local government, neither specific individual units of local government nor classes of units of local government are entitled to the same proportion of the allotment for units of local government as they received in 1978–1979.

"Proposal A" payments from state sales and use tax that state directed to school districts, and state spending for state-mandated local services and activities, had to be counted as part of total state spending paid to units of local government for purposes of Headlee Amendment requiring certain percentage of state spending to be apportioned to local government.

Public school academies (PSAs) were not "school districts" as that term was used in Headlee Amendment which requires certain percentage of state spending to be apportioned to local government; although legislature authorized creation of PSAs and treated them as school districts for specific purpose of receiving aid from State School Aid Fund, PSAs were organized as nonprofit corporations by person or other entity, PSAs were not limited to defined local geographic area, governing body of PSA was made up of board of directors comprised of privately selected members, board of directors of PSA could enter into contract with education-management corporation to manage or operate PSA or to provide PSA with instructional or other services, and PSA was funded solely by state and may not levy taxes.

State funding provided to units of local government had to be counted for purposes of “total state spending paid to all units of Local Government” under Headlee Amendment which required certain percentage of state spending to be apportioned to local government to honor voters’ intent neither to freeze legislative discretion to enact necessary and desirable legislation in response to changing times and conditions nor to permit state government unrestricted discretion in its allocation of support for mandated activities and services; state funding to unit of local government was state funding to unit of local government, whether that funding was tied to state mandate or was unrestricted aid for discretionary spending.

STANDING - NEW HAMPSHIRE

Carrigan v. New Hampshire Department of Health and Human Services

Supreme Court of New Hampshire - July 20, 2021 - A.3d - 2021 WL 3044342

Taxpayer-resident brought declaratory judgment action against Department of Health and Human Services and its Commissioner, alleging that they were failing to meet their statutory and constitutional duties with respect to abused and neglected children as a result of their “irresponsible” spending decisions.

The Superior Court dismissed for lack of standing. Taxpayer-resident appealed.

The Supreme Court held that taxpayer-resident lacked standing under state constitutional provision allowing declaratory judgment actions challenging unlawful spending of public funds.

State constitutional provision allowing declaratory judgment actions by taxpayer-residents challenging governmental action involving unlawful spending of public funds does not provide the judiciary with the authority to decide whether the State or a local government has invested sufficient resources to address alleged shortcomings or has properly funded the agencies with responsibility for abiding by the legal requirements enacted by the legislature at levels that facilitate legal functioning.

Taxpayer-resident lacked standing, under state constitutional provision allowing declaratory judgment actions by taxpayer-residents challenging governmental action involving unlawful spending of public funds, against Department of Health and Human Services and its Commissioner alleging that they were failing to meet their statutory and constitutional duties with respect to abused and neglected children as a result of their “irresponsible” spending policies involving poor allocation of resources, where taxpayer-resident failed to challenge any specific spending action or spending approval by Department.

MUNICIPAL ORDINANCE - NORTH DAKOTA

Smith v. Isakson

Supreme Court of North Dakota - July 22, 2021 - N.W.2d - 2021 WL 3083472 - 2021 ND 131

Defendant convicted, following bench trial, of violating city ordinance prohibiting the sale of merchandise on public grounds without a permit filed a pro se petition for writ of supervision, alleging violation of his right to jury trial.

The Supreme Court held that:

- Defendant was not entitled to jury trial under Sixth Amendment, but
- He was entitled to jury trial under North Dakota constitution.

Defendant charged with violating city ordinance prohibiting the sale of merchandise on public grounds without permit was not entitled to jury trial under the Sixth Amendment, since the offense was characterized as infraction, and carried a maximum potential fine of $1000, without any possible prison term.

Defendant charged with violating city ordinance prohibiting the sale of merchandise on public grounds without permit was entitled to jury trial under North Dakota constitution; when North Dakota constitution was adopted in 1889, laws permitted cities to comprehensively regulate sales in public places, and jury trial was guaranteed for violation of such laws because potential penalties included incarceration for up to three months and fines of up to $100, and constitution extended right to jury trial to all crimes for which the right was preserved when constitution was adopted.

IMMUNITY - OREGON

Sherman v. State by and through Department of Human Services

Supreme Court of Oregon, En Banc - July 29, 2021 - P.3d - 368 Or. 403 - 2021 WL 3204726

Former foster child brought action against Department of Human Services, alleging that the Department failed to protect her from abuse while she was a child in foster care by negligently certifying her foster parents and failing to appropriately investigate and respond to alleged abuse, and also alleging violation of the Vulnerable Person Act.

The Circuit Court granted Department's motion to dismiss, ruling that claims were time-barred by the statute of ultimate repose. Former foster child appealed. The Court of Appeals reversed and remanded, and Department appealed.

The Supreme Court, en banc, held that:

- Statutory two year limitations period for Oregon Tort Claims Act (OTCA) claims does not render statute, exempting child abuse claims from the statute of ultimate repose, completely ineffective;
- Statute, exempting child abuse claims from the statute of ultimate repose, applies to all child abuse claims, including claims for child abuse brought against public bodies; and
- Child abuse claims brought against Department should not have been dismissed.

EMINENT DOMAIN - SOUTH CAROLINA

Ray v. City of Rock Hill

Supreme Court of South Carolina - August 4, 2021 - S.E.2d - 2021 WL 3378945

Landowner brought action against city for trespass and inverse condemnation arising from city's piping stormwater under her house.

The Circuit Court granted summary for city on inverse condemnation claim, after which the Circuit

Court directed a verdict for city on trespass claim. Landowner appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. City petitioned for writ of certiorari, which was granted.

The Supreme Court held that:

- Factual issues about city's reconnection of city pipes to stormwater catch basin precluded summary judgment on inverse condemnation claim, but
- Statute of limitations barred recovery for damage caused by flow of water before city reconnected pipes.

Genuine issues of material fact existed as to whether city's reconnection of three city pipes to stormwater catch basin, which allowed water to resume flowing through pipe under landowner's house, was an affirmative, positive, aggressive act by city resulting in damage to landowner's property, precluding summary judgment on landowner's inverse condemnation claim.

Landowner's right of action against city for inverse condemnation was limited to three years from date she discovered, or by exercise of reasonable diligence should have discovered, she might have had a claim against city for city's piping stormwater under her house.

PUBLIC UTILITIES - TEXAS

[Quadvest, L.P. v. San Jacinto River Authority]()

United States Court of Appeals, Fifth Circuit - August 3, 2021 - F.4th - 2021 WL 3362470

Investor-owned water utilities brought action against San Jacinto River Authority (SJRA), state entity, alleging that SJRA violated Sherman Act when it entered into and enforced contracts relating to purchase of wholesale water in Montgomery County, Texas.

The United States District Court for the Southern District of Texas denied SJRA's motion to dismiss based upon state-action immunity. SJRA filed interlocutory appeal.

The Court of Appeals held that:

- SJRA invoked state-action immunity as state entity, and therefore interlocutory appeal of denial SJRA's motion to dismiss based upon state-action immunity was proper, and
- SJRA was not entitled to state-action immunity at pleading stage.

San Jacinto River Authority (SJRA) invoked state-action immunity as state entity, in action brought by investor-owned water utilities alleging that SJRA violated Sherman Act when it entered into and enforced contracts relating to purchase of wholesale water in Montgomery County, Texas, and therefore interlocutory appeal of denial SJRA's motion to dismiss based upon state-action immunity was proper, since SJRA was active participant in market over which it purportedly exerted anticompetitive control.

Texas Legislature did not authorize entry of San Jacinto River Authority (SJRA), as state entity, into, and enforcement of, challenged provisions of groundwater reduction plan (GRP) contract with intent to displace competition in market for wholesale raw water in Montgomery County, Texas, and therefore SJRA was not entitled to state-action immunity at pleading stage of action brought by investor-owned water utilities alleging that SJRA violated Sherman Act, since statutory authority to sell surface water would not inherently, logically, or ordinarily result in displacement of competition in market for allegedly cheaper, plentiful groundwater.

TAX - MARYLAND

Mayor and City Council of Ocean City v. Commissioners of Worcester County, Maryland

Court of Appeals of Maryland - August 5, 2021 - A.3d - 2021 WL 3417685

Municipality brought action seeking declaratory judgment that tax setoff laws were unconstitutional because they treated different municipalities differently.

The Circuit Court dismissed the action. Municipality appealed. The Court of Special Appeals affirmed. Municipality's petition for writ of certiorari was granted.

The Court of Appeals held that statutes providing for mandatory real property tax setoffs did not violate uniformity requirement in Constitution.

Statutes providing for mandatory real property tax setoffs did not regulate matters of purely local concern, and therefore they did not violate Constitutional provision requiring General Assembly to act in relation to government or affairs of any municipal corporation only by general laws that in their terms and in their effect applied uniformly, since tax setoff statutes strongly affected county residents who resided outside of municipality.

Municipal CUSIP Request Volumes Slow in July, Ending 5-Month Growth Streak.

NEW YORK, Aug. 13, 2021 /PRNewswire/ — CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for July 2021. 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 significant monthly decrease in request volume for new municipal identifiers and a slight increase in request volume for new corporate identifiers.

CUSIP identifier requests for the broad category of U.S. and Canadian corporate equity and debt edged higher in July versus June totals. The monthly increase was driven largely by medium-term note and Canadian corporate issuance. On a year-over-year basis, corporate CUSIP request volume was down 1.3%.

Monthly municipal volume decreased in July, the first monthly decline in muni CUSIP request volume since January of this year. The aggregate total of all municipal securities – including municipal bonds, long-term and short-term notes, and commercial paper – fell 18.7% versus June totals. On an annualized basis, municipal CUSIP identifier request volumes were up 4.2% through July. New York led state-level municipal request volume with a total of 196 new CUSIP requests in July, followed by Texas with 195 and California with 93.

"Municipalities have been busy with new debt issuance this year, and while the volume of new requests has slowed this month, it's important to note that seasonality could be playing a role in the trend. June is peak short-term notes season, so it stands to reason that we'd see a tough comparison in July," said Gerard Faulkner, Director of Operations for CGS. "With interest rates still holding at historic lows and state governments very much in need of cash flow, we expect issuance volume to stay healthy for the near term."

Requests for international equity and debt CUSIPs both declined in July. International equity CUSIP requests were down 4.6% versus June. International debt CUSIPs were down 24% on a monthly basis.

To view the full CUSIP Issuance Trends report for July, click here.

More Muni Issuers Are Making Banks Compete to Win Bond Deals.

- **So-called competitive deals are up 32% to highest since 2016**
- **Competitive sales were down a year ago following market crash**

In a stark contrast to a year ago when states and local governments hit by the pandemic had to woo skittish investors, more issuers are selling municipal bonds through competitive auctions that put the risk on underwriters.

The amount of long-term bonds sold through competitive deals has risen to $64.6 billion so far this year, a 32% increase from the same period of 2020 and the highest for the year-to-date period since 2016, according to data compiled by Bloomberg. Meanwhile, the volume of long-term bonds sold through a negotiated offering — still the bulk of the market — has gained 2.7% to about $211.8 billion, the data show.

In a competitively priced deal, underwriters bid for and buy the bonds and then have to sell them no matter the market conditions. In negotiated offerings, banks are hired in advance to set the interest rates and line up buyers for the securities.

Right now, investor demand for tax-exempt debt is so great that the extra legwork by underwriters and marketing time needed with negotiated deals to attract buyers isn't as necessary, according to Vikram Rai, a municipal analyst for Citigroup Inc. Munis have proven to be an oasis in the fixed-income universe in 2021, outperforming Treasuries.

"Negotiated deals are more popular when the market has a slightly weaker tone," Rao said. "When demand is strong we see competitive deals increase."

The rise in competitive deals is a big shift from a year ago, when negotiated sales spiked as the market coped with the impact of business shutdowns at the start of the pandemic and spooked investors pulled record amounts of cash from mutual funds. Last year through mid-August, competitive deals were down about 18% from the same stretch of 2019, while negotiated deals jumped 35%.

The supply of muni bonds expected to be issued in the next 30 days is short of the amount available for reinvestment by $14.9 billion, up 10% from a year ago, according to data compiled by Bloomberg. Mutual funds for tax-exempt bonds have seen inflows of almost $60 billion this year as investors look for income amid historically low interest rates, and there have been no meaningful outflows for almost 66 weeks.

Right now, the market is leaning more toward competitive deals than last year because "issuers, and their financial advisors, see the uneven landscape between supply and demand," said Bloomberg

Intelligence analyst Eric Kazatsky. “To help drive the best deal for their clients, advisors help navigate them towards the competitive market, where they can save on costs of issuance and have many firms bid on their debt.”

Also boosting the rise in competitive sales, recent rate volatility has eroded some of the benefits of refunding offerings, which are largely priced through negotiated sales, according to Kimberly Olsan, senior vice president of municipal bond trading for FHN Financial. Refunding deals are down while new money sales, which are usually sold via a competitive auction are up, she said.

Still, the surge in competitive deals may be a “temporary phenomenon,” according to Citi’s Rai. “If there is any letup in demand, the needle will turn toward negotiated deals,” he said.

Bloomberg Markets

By Shruti Sing

August 13, 2021

— With assistance by Danielle Moran

Fitch Ratings Updates State Revolving Fund and Muni Finance Pool Program Criteria.

Fitch Ratings-Austin-11 August 2021: Fitch Ratings has published an update to its “State Revolving Fund and Municipal Finance Pool Program Criteria.” This report replaces the previous report of the same title last published on March 3, 2021.

The fundamentals of these criteria remain unchanged. However, on Aug. 9, 2021, Fitch published an exposure draft for its “CLOs and Corporate CDOs Rating Criteria (CDO Criteria)” that proposes a calibration update to its Portfolio Credit Model, including probability of default assumptions, confidence intervals, and correlation.

Given the relationship of these criteria to the CDO criteria, for new ratings, Fitch will utilize a modified version of its Portfolio Stress Model incorporating similar changes as those proposed in the CDO criteria exposure draft. With respect to the surveillance of existing ratings, Fitch will utilize the existing version of the Portfolio Stress Model without modification. Following the consultation period and publication of the new CDO Criteria, this SRF criteria and the Portfolio Stress Model will be updated accordingly.

Fitch does not expect any ratings changes as a result of these updates.

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Fitch: USPF Exposed to the Same Factors Pressuring the US Sovereign

Fitch Ratings-New York-12 August 2021: US Public Finance (USPF) ratings are subjected to the same macroeconomic and structural factors that underlie the Negative Outlook on the United States' Long-Term Foreign Currency Issuer Default Rating (IDR) of 'AAA' says Fitch Ratings. Most USPF ratings are not explicitly tied to the US sovereign rating, except when bond repayment depends on federal agencies or instruments. However, federal policy actions have direct and indirect ramifications for the operating environment of states, local governments, and revenue-supported entities, which over time could influence the risk profile of the sector.

The Negative Outlook on the US sovereign rating reflects ongoing risks from fiscal deficits and real interest rates to its public finances and debt trajectory. A further meaningful increase in debt could lead to a downgrade. Deterioration in governance represents a further risk, reflecting in part a lack of bipartisanship and difficulty in formulating policy and passing laws in Congress.

Although there are numerous policy and funding links between USPF issuers and the federal government, USPF issuers benefit from the significant autonomy inherent in the US federal structure. Legal and fiscal powers enshrined in the US Constitution devolve broad powers to states, most notably fiscal powers. Government frameworks below the state level follow similar patterns, with substantial fiscal powers delegated to local governments to deliver general services and to public and not-for-profit entities to fund public services through their own revenue powers.

Future actions by the US government to rein in the nation's very high debt burden by curtailing spending could directly affect USPF credits that rely on federal funding for certain programs, particularly Medicaid, housing subsidies and grants, higher education grants and student loans, and the Highway Trust Fund. USPF ratings assume sufficient flexibility to respond to reduced federal funding, although service mandates or decisions to backfill lost federal funds with own-source resources could affect operating performance over time.

Local governments bear the added risk of absorbing both federal spending cuts and state tightening that could follow a round of federal spending cuts but their typically broad budgetary tools and high reserves help offset this constraint. Lower infrastructure investment could also affect credits longer term if states, local governments and revenue-supported entities must ultimately bear the full burden for expansion or restoration of infrastructure.

Beyond funding effects, a weakening of the US government's credit quality could have wider reverberations on USPF finances. Higher interest rates would make debt issuance costlier for USPF issuers. Weaker public finances could diminish the reach and effectiveness of countercyclical actions, leaving USPF issuers vulnerable to deeper downturns and slower recoveries.

A limited number of ratings with direct links to, or dependence on, the US sovereign credit retain the Negative Outlook on their 'AAA' rating, unless there are mitigants that reduce US sovereign exposure. These ratings with US rating links are municipal housing bonds currently rated 'AAA' and secured entirely, or predominately, by Fannie Mae and Freddie Mac mortgage-backed securities and pre-refunded municipal bonds where escrowed funds deposited with a trustee to advance refund the bonds are invested in US government obligations. Ratings on the latter bonds depend on the rating assigned to those securities, which are generally US treasuries or other bonds directly guaranteed by a US federal agency.

S&P: Uncovering Local-level Risk Factors for Municipal Exposures

The Muni Landscape

Municipal securities, or "muni bonds", issued by states, cities, counties and other governmental entities in order to fund infrastructure, schools and other projects represent an extensive marketplace. As of the first quarter of 2021, there was $4 trillion in outstanding issuance, accounting for over 50,000 issuers.

Muni bonds come in two varieties: general obligation and revenue bonds. General obligation bonds are used to finance public projects that aren't linked to a particular revenue stream. Revenue bonds, by contrast, are bonds whose interest and principal are backed by the revenues of a specific project that the bonds are funding, such as toll roads and universities.

Often, revenue bonds are issued through a conduit, which is usually a government agency or government-sanctioned entity that issues debt to raise funds for large-scale projects, such as hospitals and airports, on behalf of a borrower. Conduits typically are not responsible for the payment of principle or interest for the issue(s) in question, as this falls to the borrower. In addition, conduits are often not located in the same geographic area as the projects they are funding.

The Rise of ESG Concerns are Impacting Munis Too

Environmental, social and governance (ESG) factors are taking center stage and playing an increasingly important role in the evaluation of risks associated with investments. In March of this year, for example, the European Union's Sustainable Finance Disclosure Regulation ("SFDR") came into force requiring certain asset managers and financial advisers to make ESG disclosures to potential and current investors. This new regulation also impacts large U.S. firms that market funds in Europe.

To fully understand potential ESG risks, it is imperative to know where assets are located. This applies to muni bonds, as well, but there are three major challenges here:

1. Conduit issues are assigned to the state where the conduit issuer resides, not where the actual projects are located.

2. Revenue bond issues often represent projects that are located across numerous cities, counties and even states, but are assigned to a single state at issuance.
3. Many revenue bond issuers (e.g., hospital obligated groups, gas districts and water districts) cover multiple locations, and it is important to map these multiple entities to the issuer in question in order to effectively assess ESG risks.

To address these challenges, CUSIP Global Services (CGS) partnered with ISS ESG[2] to create a location mapping solution.

Shining a Light on Municipalities to Assess Potential Risks

CUSIPs are nine-character alphanumeric security identifiers that capture the unique attributes of issuers and their financial instruments throughout the U.S. and Canada. In the muni bond market, a CUSIP is used by investors to uniquely identify and track municipal securities and link them with the underlying issuing entity. This represents approximately 1.5 million CUSIPs today.

Working with ISS ESG, CGS has created a mapping file that links the first six characters of the unique CUSIP identifier for each municipal issue with the geographic identifier (GEOID) hierarchy for the issuer, including state, county, city and school district. The GEOID is a unique geographic identifier assigned by the U.S. Census Bureau to administrative/legal and statistical geographic areas.

ISS ESG has also developed its Muni QualityScore based on socioeconomic, environmental, health and crime data, which can be accessed through a separate mapping and is updated quarterly. The GEOID-level detail enables muni bond identifiers to be paired with these ESG scores, giving market participants insight into the level of exposure their municipal securities have to certain ESG attributes.

This new capability addresses a longstanding challenge in the U.S. muni bond market, where interested parties could not easily make the link between underlying issuer and related census, socioeconomic, climate change and crime data. Through this partnership, CGS and ISS ESG are able to deliver more transparency into the muni bond market, facilitating links to data that can be used to inform risk models and values-based investment strategies.

Click here for more information on the CGS/ISS ESG solution.

Pimco Veterans Look to Shake Up ‘Old School’ Muni Loan Market.

- **Alpha Ledger’s blockchain-based platform offers loan auctions**
- **Firm aims to move into business of public muni debt in 2022**

After breaking new ground in exchange-traded funds for Pimco more than a decade ago, Manish Dutta and Tammie Arnold have set their sights on one of the more opaque corners of municipal finance.

Their company, Alpha Ledger Technologies, is seeking to modernize the market for direct lending to municipalities through a platform based on blockchain, the technology used for verifying and recording transactions that’s at the heart of Bitcoin.

The firm’s system lets cities and localities auction their loans, allowing a wide group of investors —

such as regional banks — to bid, potentially reducing borrowing costs on these relatively small, private financings. The other benefit is that the system provides an online account of the bids and the deal — a novelty for localities used to maintaining paper records.

It amounts to a shift from the "old-school" process of underwriting, where the decision to pick a bank and the terms of a loan can be private, said Dutta, Alpha Ledger's chief executive officer. Fifty banks have used the platform, including community, regional and national banks, he said.

"On our platform, it's an open, direct, transparent market," he said.

In July, the Poulsbo, Washington-based company, which was founded in 2019, made further inroads when California's Coachella Valley Unified School District borrowed through its platform. It was one of five loan transactions Alpha Ledger has completed this year, after two in 2020.

Banks held about $197 billion of direct loans to municipalities as of the second quarter, according to research firm Municipal Market Analytics. Alpha Ledger wants to move into the public-debt arena — which accounts for the brunt of municipal borrowing — some time in 2022.

The muni market, with annual bond and note issuance of about $400 billion, has proved to be tough to disrupt. In one example, Neighborly, a venture that tried to sell muni bonds in smaller pieces than the typical $5,000, abandoned that effort in 2019.

Dutta, who worked on technology development at Pacific Investment Management Co., co-founded the company with Christopher Wade and brought on former colleagues like Arnold and Don Suskind, who worked on ETF products at Pimco.

'Nothing But Competition'
Traditionally with municipal loans, borrowers hire advisers who seek bids from banks. Municipalities can also approach banks directly. With direct loans, officials have found they can borrow at rates comparable to those on bonds without the fees or disclosure requirements associated with public-debt offerings.

Alan Crain, chief financial officer of Kitsap Bank in Port Orchard, Washington, said his bank joined the platform even though he knew it was "nothing but competition" in the lending market.

"My recognition was that if we don't work with them to do this, someone else will," he said. "I'd rather work with them and understand how to pivot our business, rather than be left out in the cold."

Kitsap manages a portfolio of about $280 million of municipal debt including the loans, and has participated in four transactions on the platform. Crain said that he's seen the bidding process deliver lower rates for borrowers as well as more flexible terms for them, and said it helps improve transparency around pricing.

"When banks compete, you win" as a borrower, he said.

ETFs to Blockchain

Arnold and Dutta met in 2008, when Arnold was tasked with starting Pimco's actively managed bond ETF products, an effort that she said stretched existing technology around compliance, trading and disclosure.

For example, the money manager had to address issues with pricing of ETFs, which updates instantly because the funds trade on an exchange, while mutual funds can sort out net asset values overnight if needed, she said.

Arnold's request for more help with technology led to her connection with Dutta. Both spent roughly two decades at Pimco. She says ETFs were instructive in how to make small transactions financially viable, given that they had to be available for investors at a much lower cost than mutual funds, for example.

That's now relevant to Alpha Ledger's strategy of focusing on municipal loans, which tend to be smaller. The average size of loans the company has worked on is about $3 million.

"This is an exercise in small transaction size access and economics," said Arnold, the company's head of business strategy.

Alpha Ledger charges what it calls a technology fee, that is fixed regardless of loan size and which the company declined to share. The company is working with municipal advisers and bond counsel as it seeks new business, Dutta said.

'Digitizing Everything'

David Ulbricht, director of advisory services for SDAO Advisory Services, which advises Oregon-based issuers, said he researched blockchain for two years after first meeting with the company in 2019. He wanted to make sure it would be a good product for his clients, which include special districts, cities, school districts and counties.

"It's basically digitizing everything," he said. "You realize, OK, this is kind of where things are going."

The platform helps banks hear about transactions — and as a result, the terms of the financings under the platform are "very, very" competitive and can cut out costs like bank counsel fees, something that ultimately benefits borrowers, Ulbricht said.

The platform also offers a debt-management tool, which appealed to Oregon's Port of Astoria, which operates an airport in Warrenton, Oregon. It obtained a $1.3 million loan through the platform in April, and plans to put its $14 million loan portfolio on the platform, said Melanie Howard, the port's accounting and business services manager.

The port typically monitored its loans on a spreadsheet, while the blockchain technology offered a way for both the port and the banks to have easily accessible details on the loans, she said.

"It ties a better relationship between the lender and borrower," she said.

Bloomberg Markets

By Amanda Albright

August 16, 2021, 10:00 AM MDT

— With assistance by Martin Z Braun

[Schools Brace for More Cyberattacks After Record in 2020.]

Reported hacking incidents have increased nearly fivefold since 2016. Virtual learning during the pandemic created even more access points for attackers.

Cyber criminals are targeting U.S. schools at an increasing rate after remote learning during the pandemic left them more vulnerable to hacks, and the risk shows no sign of abating as students and teachers head back to the classroom this month.

The number of publicly disclosed computer attacks on schools has exploded since 2016 to a record 408 in 2020, according to the K-12 Security Information Exchange, a nonprofit that tracks such incidents, and those figures are almost certainly an undercount because many go unreported. While schools are opening back up across the country for in-person instruction, many are expected to retain virtual learning as an option and that means more access points for potential intrusion with financial consequences for districts that are already facing increased costs to bring students back.

The growing frequency of hacks — averaging more than two per school day last year — has school officials worried about the potential for the theft of students' identities and the added cost to insure against attacks and repair breaches. In Del Rio, Texas, the district comptroller mistakenly wired more than $2 million to a hacker's account. About 170 miles (274 kilometers) away, a district in Live Oak, Texas, paid an undisclosed ransom amount to regain control of some computer platforms, and in Broward County, Florida, thousands of stolen files, including some confidential information, were published after district officials refused to pay a $40 million ransom, according to local reports.

Continue reading.

Bloomberg CityLab

By Nic Querolo and Shruti Singh

August 9, 2021, 12:06 PM MDT

Cut in Infrastructure Money for Communities Hurt by Highways Disappoints Advocates.

The Reconnecting Communities Initiative aimed to help cities rectify damage caused by highways built through minority neighborhoods. The bipartisan infrastructure bill cut it by 95 percent.

Shawn Dunwoody and Suzanne Mayer can remember when Democratic Sens. Kristen Gillibrand and Chuck Schumer of New York went to Rochester's Inner Loop at the end of June and emphasized the need to fund projects that reconnected neighborhoods bisected by highways.

The senators' advocacy meant the world, said Dunwoody and Mayer, who created a group called Hinge Neighbors. Their goal was to fill in the Inner Loop, a part of Interstate 490 that the federal government built after it plowed through minority neighborhoods in the 1950s, destroying hundreds of homes and businesses.

They said the words of support feel confusing now that they have seen the details of the bipartisan infrastructure bill. The Reconnecting Communities Initiative — which began as a bill written by

Gillibrand and Schumer, whose offices did not respond to requests for comment — was cut from a proposed $20 billion in the American Jobs Plan to $1 billion in the recently proposed legislation.

Continue reading.

nbcnews.com

By Phil McCausland

Aug. 5, 2021

What's In the Infrastructure Plan for Rural America?

Here's a deep dive into the final bipartisan infrastructure deal approved by the Senate impacting those in agriculture.

The U.S. Senate's passage of the more than 2,700-page Infrastructure Investment and Jobs Act offers many important provisions that those in rural America were seeking. The bill provides $548 billion in additional spending. When combined with existing baseline infrastructure spending, total funding for infrastructure will be approximately $944 billion over five years and $1.2 trillion over eight years.

The House has already passed its own version of an infrastructure bill – the INVEST In America Act, also in H.R. 3684, which the Senate replaced with this plan. The House could take up the Senate's version, but it's unlikely given House Transportation and Infrastructure Chairman Peter DeFazio, D-Ore., concerns with missing provisions after he spent months on his own plan.

The Infrastructure Investment and Jobs Act represents a highlight reel of the Senate's bipartisan work. It includes several bills that have already won bipartisan action in the Senate, including a must-pass highway bill to extend programs set to expire this fall.

Continue reading.

farmprogress.com

Jacqui Fatka | Aug 11, 2021

What Works? Evidence and Evaluation Key as States and Localities Spend Aid.

The federal government is urging states and localities to study the results of their American Rescue Plan Act spending and to adopt programs with proven track records.

As state and local governments get started spending billions in federal recovery dollars, public officials are making bold predictions about how far the money will go to help their communities with issues like homelessness, upgrading infrastructure and job training.

But to know how well these investments are paying off, it will be necessary to have systems in place to assess whether they're meeting their goals. With this in mind, the federal government is pushing states and localities receiving American Rescue Plan Act funds to think about ways to evaluate the results of their spending, and also to pursue “evidence-based” programs.

“Evaluation lets us understand if something is working as intended, why and for who,” Diana Epstein, who leads a team focused on evidence-based policymaking at the White House Office of Management and Budget, said during an online seminar the Treasury Department held this week to discuss program evaluation and other issues tied to ARPA’s state and local aid funding.

[Continue reading.]

ROUTE FIFTY

by BILL LUCIA

AUGUST 12, 2021

[Public-Private Partnerships Promoted in Bipartisan Infrastructure Package: Nossaman]

Yesterday, the Senate released legislative text for its highly anticipated bipartisan infrastructure package, titled the Infrastructure Investment and Jobs Act. Negotiations have been ongoing for months, and while several political and policy hurdles remain before this proposal can arrive on the President’s desk for his signature, agreement on this bipartisan package is a hugely positive development. Project sponsors and practitioners have closely tracked the development of this package not only with respect to overall funding levels and policies but also with an eye towards specific provisions relevant to public-private partnerships (“P3s”) and other alternative delivery methods. The bipartisan package includes three provisions, in particular, that will provide tremendous benefit to P3s if enacted.

First, Section 80403 would raise the cap on private activity bonds (commonly known as “PABs”) for highway and surface freight transfer facilities from $15 billion to $30 billion. PABs allow private entities to benefit from tax-exempt bond treatment to finance certain public works improvements. However, the federal $15 billion allocation of highway and surface freight transfer facility PABs has been exhausted, eliminating the ability of private entities to access tax-exempt bonds for these projects. Increasing the cap from $15 billion to $30 billion would address current demand and lower the cost of private financing on future P3 projects.

Second, Section 71001 would provide $100 million in grants to project sponsors for technical assistance with P3 procurements. While this may seem a bit esoteric, it is incredibly challenging for a public agency with needs that outweigh resources to consider P3 delivery without technical support, especially if the project sponsor has never used this delivery method before. These grants would provide particular benefit to agencies with significant infrastructure needs but without the internal capacity or resources to engage experts to assist in P3 delivery.

Third, Section 70701 would require a value-for-money (“VfM”) analysis for any project seeking credit assistance under the TIFIA or Railroad Rehabilitation & Improvement Financing (“RRIF”) programs with estimated capital costs of $750 million or more. A VfM analysis evaluates the benefits of P3 delivery for a certain project against conventional delivery, looking across the spectrum of project costs during the lifecycle of the asset. While P3 delivery will not be the most efficient option for every project, this VfM requirement will ensure that projects receiving TIFIA and RRIF credit assistance evaluate whether P3 delivery would provide public benefit over conventional delivery.

While the future of this legislation is not yet clear, inclusion of these three provisions marks a positive step for federal P3 policy and would provide tremendous benefit to the industry if enacted.

By Shant Boyajian on 08.02.2021

Nossaman LLP

The Senate Infrastructure Bill's Four Interconnected Broadband Components.

In 1934, Congress mandated the newly created Federal Communications Commission (FCC) "to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service"—but left it largely up to the FCC and the states to figure out how to do so. In 1996, Congress expanded that universal service goal to include access to "advanced services," meaning high-speed internet, and explicitly established a goal of "affordable" services, including to "low-income consumers." There, too, Congress declined to provide appropriations to achieve those goals.

Now in 2021, Congress has done a lot more than just set goals for access to these services—it finally provided the funding to do so.

Continue reading.

The Brookings Institution

by Blair Levin

Friday, August 13, 2021

House Expected to Return Early for Infrastructure Debate – MBFA Meets with Key House Office

Next week, the House is expected to return from August Recess early for a week-long session to debate multiple infrastructure packages' processes and potential passage. **This includes the Senate passed bipartisan 1 trillion dollar infrastructure package that includes $600 billion in new money and relies heavily on PAB financing.** The Chamber also passed a budget reconciliation resolution, an outline paving the way for an additional $3.5 trillion in infrastructure spending this year. Both items are now awaiting review in the House.

In response to a group of 9 rank-and-file Democrats demanding the House pass the bipartisan infrastructure package before advancing the budget reconciliation outline, House Leadership has taken steps to pass a rule allowing for the Chamber to take up the bipartisan infrastructure bill alongside the budget outline. It seems this is the most likely path to be followed next week, however, the Rule needed to attempt this gambit has yet to be drafted or approved.

House Leadership has set a deadline of September 15th for Committee Chairs to submit legislative priorities for the budget reconciliation infrastructure package, setting up a fall debate on the $3.5

trillion package.

The BDA and MBFA continue to press for the inclusion of key muni priorities in the budget reconciliation package. Last week, the MBFA met with Senior Staff in Rep. Terri Sewell's (D-AL) office to discuss the Congresswoman's muni package, the LIFT Act, and possible inclusion in the draft budget bill. The MBFA plans to continue meeting with key offices leading up to the introduction of legislative text promoting all muni priorities including:

- The reinstatement of tax-exempt advance refundings,
- Raise the BQ debt limit, and
- Creation of a new direct-pay bond exempt from sequestration.

The MBFA and BDA will continue to provide updates as they become available

Bond Dealers of America

August 17, 2021

US History Shows Spending On Infrastructure Doesn't Always End Well.

The lasting problems of infrastructure aren't of need or construction, but of overbuilding, delayed costs and the challenges of thinking ahead.

Over the past two centuries, federal, state and municipal governments across the U.S. have launched wave after wave of infrastructure projects.

They built canals to move freight in the 1830s and 1840s. Governments subsidized railroads in the mid- and late 19th century. They created local sewage and water systems in the late 19th and early 20th centuries, and then dams and irrigation systems through much of the 20th century. During World War II, massive amounts of public money were spent building and expanding ports, factories, airfields and shipyards. And after the war, highway construction – long a state and local project – became a federal endeavor.

Many of these projects did not end well. The problem wasn't that the country didn't need infrastructure – it did. And the troubles weren't the result of technical failures: By and large, Americans successfully built what they intended, and much of what they built still stands.

Continue reading.

governing.com

August 15, 2021 | Richard White

A PE Windfall from Infrastructure Package is No Sure Thing.

The US Senate this week passed a sweeping $1.2 trillion infrastructure bill, marking President Biden's biggest legislative victory to date. But it remains unclear if the bill will be a win for a US private equity industry that has raised hundreds of billions over the past decade to rebuild the country’s roads, bridges, utilities and more.

Public-private partnerships, also known as P3s, have struggled to gain traction in the US, even as the country’s infrastructure has slowly crumbled. The Senate bill, which totals some 2,700 pages, attempts to change that by directing states and municipalities to consider instituting public-private agreements. Part of the infrastructure bill requires local governments seeking federal funding for a project of over $750 million to run a cost analysis on a private partnership.

But the bill reportedly doesn’t require local governments to actually create public-private partnerships. That means investors that have raised billions for infrastructure deals could be in the precarious position of having ample dry powder but few opportunities to spend.

And the bill still needs to pass a divided House of Representatives before being signed into law.

Investment is needed. The American Society of Civil Engineers gave the country’s infrastructure a “C-” grade in a 2021 report card, reportedly estimating that it would cost almost $2.6 trillion to implement the necessary repairs and earn a “B” grade.

Some within the private equity industry have sounded an optimistic tone about the legislation. Adam Bernstein, a managing director at infrastructure and impact investor North Sky Capital, said the bill could open the door for more investment in electrical vehicle infrastructure, renewables and the electrical grid. And that could open the door for mega-deals.

“You’re going to have to take some big swings,” Bernstein explained. “And you would just have to think that a larger infrastructure fund would be able to participate in that.”

Over the past decade, infrastructure fundraising has climbed, albeit in fits and starts, with the total raised peaking at more than $46 billion in 2018, according to PitchBook data.

Private equity firms have turned to infrastructure deals in part because they are often immune to the level of volatility seen by fixed income or equities, for instance. And the contracts can often last decades, providing steady returns regardless of broader market trends.

In 2017, Blackstone announced it would raise $40 billion for an infrastructure fund, with $20 billion coming from the Public Investment Fund of Saudi Arabia. But the vehicle has struggled to get off the ground. In Blackstone’s fourth quarter earnings call, president Jonathan Gray said the vehicle had raised around $14 billion, well short of its original target.

Over the past few years, there’s been growing angst about allowing private equity firms to dip their beaks into public works projects. In Bayonne, N.J., water bills spiked 28% after KKR invested in the city’s public water systems, according to an analysis by The New York Times. Other cities including Missoula, Mont. have actually sued to buy back their water systems.

Private equity investments in public utilities haven’t always gone well for the firms, either. In 2014, electricity company Energy Future Holdings filed for Chapter 11 bankruptcy protection, bogged down by more than $40 billion in debt after TPG, KKR and the private equity arm of Goldman Sachs took the company private in 2007 in a $45 billion deal.

At the time, The Wall Street Journal reported it was the eighth largest bankruptcy in the history of the US. And it’s one of the most high-profile LBOs to ever fail, with the firms reportedly losing a combined $8 billion of their invested capital.

“Overall, a lot of money has been raised, and that’s commensurate with the capital needs of the amount of infrastructure spending," Bernstein said. "That, of course, doesn't guarantee it'll end up being a good investment."

For local and state governments, it's not always easy to know whether or not to partner with PE. Governments often tap the $4 trillion municipal bond market for financing. This allows them to keep more of the profits from massive infrastructure projects to themselves, but they are then responsible for any cost overruns.

For North Sky, Bernstein sees an opportunity to pour more capital into lower-middle-market infrastructure projects, with investments ranging between $15 million and $20 million and on a shorter timeline than the typical private equity holding period, which can extend up to seven years.

"Where we see the opportunity is to really partner with those smaller counties [and] cities that may not necessarily need 100 MW solar or wind farms or electricity, but may need to refurbish a recycling facility, or a water treatment plant, or a smaller, renewable electricity facility," he said. "And those are the kinds of transactions that aren't going to get attention from some of the larger players."

Yahoo Finance

August 14, 2021

Understanding the Infrastructure Bills.

What's in them and what could happen next

By a vote of 69 to 30, including 19 Republicans and all 50 Democrats, the U.S. Senate passed a $1.2 trillion infrastructure package, known as the Infrastructure Investment and Jobs Act, on Tues., Aug. 10, 2021.1 Following passage, the proposed legislation was sent to the House of Representatives where further adjustments are expected. Should the bill pass, the House and Senate will need to consolidate their respective versions for a final bill to go to President Biden for his signature.

Tuesday's bill is one of two pieces of infrastructure legislation under consideration in the Senate. In addition to the $1.2 trillion bipartisan bill, a second $3.5 trillion Democratic proposal is in play.

On Aug. 9, Senate Majority Leader Chuck Schumer addressed this second bill in a letter to colleagues saying, "I will immediately move to the FY2022 Budget Resolution with reconciliation instructions."2 Reconciliation means the $3.5 trillion bill could pass the Senate by a simple majority vote avoiding the risk of a filibuster. And some House progressives had said they would not support the bipartisan plan unless the Senate moved quickly on the second bill.

Continue reading.

INVESTOPEDIA

By JIM PROBASCO Updated Aug 11, 2021

MSRB Offers Remote Municipal Advisor Principal Exam.

The MSRB will allow individuals seeking to qualify as municipal advisor principals to take the Municipal Advisor Representative Qualification Examination (the "Series 54 Exam") online. The accommodation is temporary and intended to address persistent COVID-19 challenges.

To schedule an online test, individuals must submit an interim accommodation request form to FINRA. Once this is processed by FINRA, individuals may schedule a test appointment online. Information on the sign-up process and exam will be published during the week of August 15, 2021, on a dedicated webpage on MSRB.org.

The MSRB will also seek to extend the relief under Supplementary Material .09 ("Temporary Relief for Municipal Advisor Principal") to MSRB Rule G-3 ("Professional Qualification Requirements") from the current compliance date of November 12, 2021.

Cadwalader, Wickersham & Taft LLP

13 August 2021

The SALT Deduction Cap Makes it Harder for Communities to Recover.

To help our communities recover from the COVID-19 pandemic and its economic fallout, Congress has a historic opportunity to rebuild our economy and create a sustainable future for all Americans by enacting President Joe Biden's full Build Back Better agenda — an agenda that will improve the lives of everyday people by investing in well-paying jobs, health care, infrastructure, public schools, higher education, child care, elder care and more.

Congress should go one step further to incentivize communities to invest in themselves by reversing former President Donald Trump's cap on deductions for state income tax and local property taxes, the so-called SALT cap, which limits these governments' ability to invest tax revenue in public schools, higher education, public health, police, firefighting and emergency medical services.

Reviving the SALT deduction is especially important for our frontline workers — firefighters, teachers, and public health workers who have helped our country survive the pandemic, keeping our schools open, our hospitals running and our communities safe — and those they serve. SALT is not just another tax break for the wealthy, as some claim; it's an opportunity for many everyday people to offset the taxes they pay for the services our communities rely on.

Here's the math: An average two-income family with a firefighter and a teacher makes between $100,000 and $200,000 annually. If they claim the SALT deduction — which more than 85 percent of families in that tax bracket do — they receive an average tax break of $15,859. When the SALT deduction is capped, those same middle-class families see a tax increase of $5,000.

That means, even as they are paying more in taxes, the budgets for their schools, hospitals and firehouses are being cut.

The SALT deduction is a tax break you receive for supporting your community: providing schools the resources necessary to meet our children's needs; ensuring that our public health system can confront a deadly pandemic; keeping us from shutting down firehouses; preparing the next generation of adults for their careers without saddling them with debt, and supporting a safety net for when people experience job loss or homelessness. The deduction helps ensure the collective funding of these programs, making it easier for state and local governments to provide these services that benefit all of us. It effectively puts money in everyday taxpayers' pockets to help keep up with the rising costs of basics like gas and groceries.

Allowing taxpayers to deduct the full amount of their state and local taxes on their federal tax returns is one of the federal government's most powerful tools for incentivizing states and local governments to invest in critical public services. Lawmakers have long recognized this: The Revenue Act of 1913 introduced the federal income tax and provided a deduction for state, county, schools and municipal taxes. Years later, the Revenue Act of 1964 specified that real and personal property, income and general sales taxes could be deducted from federal taxes. As the Government Finance Officers Association pointed out in 2017:

"The SALT deduction reflects a partnership between the federal government and state and local governments. The deduction is fundamental to the way states and localities budget for and provide critical public services, and a cornerstone of the U.S system of fiscal federalism. It reflects a collaborative relationship between levels of government that has existed for over 100 years. Currently, the SALT deduction is an accepted part of the tax structure that is critical to the stability of state and local government finance."

As cities, towns and families continue to recover from the pandemic, Congress should be making things easier on state and local governments and the people who pay taxes to fund them. The American Rescue Plan, the American Jobs Plan and the American Families Plan are major steps in the right direction but reforming the SALT cap would go a long way toward helping working families access a more robust recovery.

THE HILL

BY RANDI WEINGARTEN AND EDWARD A. KELLY, OPINION CONTRIBUTORS — 08/09/21

Randi Weingarten is president of the American Federation of Teachers. Edward A. Kelly is general president of the International Association of Firefighters.

The Rise of Sustainable Bonds for Affordable Housing.

The pandemic worsened the U.S. affordable-housing crisis. Increasingly, public and private entities are tapping the bond market to finance development.

The shortage of affordable housing has long plagued low-income families in the U.S., and racial inequity is one significant factor that's contributed to the crisis. Minority groups, especially Blacks and Hispanics, suffer higher rates of housing insecurity due to homeownership discrimination—particularly in the mortgage application process—which leaves them disproportionately exposed to the increasingly unaffordable rental market, according to a recent Morgan Stanley Research report.1

The affordable housing deficit has only worsened since the pandemic. The country now lacks as many as 6.8 million homes for households with income at or below the poverty guideline, or 30% of the local median income. That's nearly double the 3.6 million shortfall in 2019, according to a recent report from the National Low Income Housing Coalition.2

“The housing affordability crisis in the U.S. has grown acute over the years, and only became more so during the pandemic, amid the spike in unemployment and homelessness,” says Joan Tally, Managing Director in Morgan Stanley’s Community Development Finance, which helps the firm meet obligations to lend, invest in and provide services to low- and moderate-income communities.

The long-term solution entails an obvious, if costly, solution: Build more affordable housing. One increasingly promising model of financing taps into the growing investor appetite for sustainable bonds, especially those that target projects tied to social equality. That’s prompted more issuers of this debt to enter the market, including state housing finance agencies, community development financial institutions (CDFIs), affordable-housing developers and corporations.

DEMAND FOR AFFORDABLE-HOUSING BONDSThe focus on racial and economic justice during the pandemic has elevated social bonds and sustainability bonds in this space. Traditionally, allocators financed affordable housing projects through green bonds tailored to deliver positive environmental impact through LEED certification or energy-saving infrastructure to combat climate change.

Now, affordable housing is also included in social and sustainability bonds. In 2020, green, social and sustainability bonds raised more than $600 billion from investors, nearly double the $326 billion issued in 2019; the majority of growth came from an increase in social and sustainability bonds.3 In particular, robust demand came from investors who prioritized financing for social inequities exacerbated by COVID-19, such as decreased nonprofit funding, falling health-care system revenues and unequal access to resources and opportunities.

“Affordable-housing finance has been an important part of the ‘E’ in ESG—environmental, social and governance—investing for more than 15 years,” says Geoff Proulx, Managing Director and Co-Head of the Affordable Housing and Community Development Group in the Public Finance Banking Group within the Fixed Income Division at Morgan Stanley. “Now the ‘S’ is emerging as a driver of demand for those interested in investing in affordable housing.”

NEW ISSUERS IN THE SUSTAINABLE BOND MARKETSome nontraditional organizations also have started to tap capital markets to fund affordable housing. CDFIs, Treasury-certified private financial institutions, are increasingly turning to the bond market to raise money for affordable-housing projects, according to Grace Chionuma, Executive Director and Co-Head of the Public Finance Affordable Housing and Community Development Group.

Only in recent years have CDFIs issued bonds to access longer-term capital. In 2017, Local Initiatives Support Corp. issued the first-ever CDFI bond—a $100 million offering underwritten by Morgan Stanley to help fuel new businesses, jobs and large-scale redevelopment efforts. Since then, Morgan Stanley has underwritten four other bond offerings for CDFIs, totaling $332 million, as investors sought new and additional forms of sustainable investing, Chionuma says.

Other entities continue to broaden the sustainability bond market. In December, Morgan Stanley underwrote the first taxable social bond by BRIDGE Housing, a nonprofit affordable-housing developer that builds, owns and manages properties in high-cost, high-density areas on the West Coast, including San Francisco, San Diego, Los Angeles, Seattle and Portland. The proceeds of that $100 million issue will go toward developing and acquiring multifamily affordable housing, transit-oriented development, green building and energy efficiency.4

“Demand is extreme for this type of housing in areas that have average median incomes at these levels,” says Chionuma, and the goal is to help facilitate more capital to additional nonprofit affordable-housing developers like BRIDGE Housing. “Given the maturity of the sector, with the right execution, we’ll be able to enable more capital flow from public markets into these projects,” she says.

HOMEOWNER LENDING AND SINGLE-FAMILY HOUSINGSocial bonds are also starting to fund homeownership programs that extend affordable loans to first-time homebuyers, says Proulx, with many programs devoting a significant portion of lending specifically to minority homeowners. Examples of housing finance agencies that aim to help mitigate the racial homeownership gap include the Massachusetts Housing Finance Agency, Florida Housing Finance Corp. and Rhode Island's RIHousing, he says.

In the past year, Morgan Stanley has facilitated inaugural bonds to finance single-family affordable housing by underwriting social bonds for agencies in several states, including Iowa, Florida, Massachusetts, Rhode Island and New York, Proulx says. A recent example is the Massachusetts Housing Finance Agency's first-ever social bond, which Morgan Stanley underwrote in December. Proceeds will fund new mortgages, including down-payment assistance loans to first-time homebuyers for owner-occupied, single-family affordable housing for low- and moderate-income households throughout the state.

MORE CORPORATES ISSUE AFFORDABLE-HOUSING BONDSCompanies have also issued affordable-housing bonds in response to growing investor demand, according to Cristina Lacaci, Morgan Stanley's Head of ESG Structuring in Global Capital Markets. "Investor desire, especially from younger generations, is driving the growth of sustainable investing in both mainstream funds and sustainability funds," she says.

One recent example: last August, Alphabet issued a $10 billion offering, underwritten by Morgan Stanley, that included $5.75 billion of sustainability bonds, the largest-ever corporate sustainable financing deal. A portion of the proceeds from the sustainability bonds will finance the repurposing of land owned by Alphabet to develop affordable housing across the Bay Area.

And Morgan Stanley offered its own inaugural $1 billion social bond in October to finance housing at affordable rates for low- or moderate-income individuals or families. Proceeds will support a range of affordable housing developments across the U.S., including a project for homeless veterans in Washington, D.C., and the construction of new affordable homes close to high quality public transit in South Salt Lake, Utah.

"As the recovery from the pandemic continues, our clients and our firm have a unique opportunity to address issues of systemic injustice through the capital markets," says Audrey Choi, Morgan Stanley's Chief Sustainability Officer. "Morgan Stanley is excited about our ability to both underwrite and issue innovative financial solutions like social bonds that continue to gain traction with investors demanding to address societal challenges by providing capital that makes a positive impact on a large scale."

Morgan Stanley's social bond is one of the most recent examples of the firm's decade-long leadership in sustainable finance, which includes the establishment in 2013 of the Institute for Sustainable Investing, which accelerates the mainstream adoption of sustainable investing. That same year, Morgan Stanley helped support the first corporate green bond and, in 2017, priced the first public market bond deal for a CDFI to help advance economic opportunity in underserved neighborhoods in the U.S.

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1 American Community Survey (ACS), Home Mortgage Disclosure Act (HMDA), Morgan Stanley Research.

2 https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2019.pdf

3 https://www.environmental-finance.com/assets/files/research/sustainable-bonds-insight-2021.pdf

4 https://bridgehousing.com/press_releases/bridge-housing-issues-100m-in-serie-
-2020-sustainability-bonds/

Morgan Stanley

August 10, 2021,

Second Half Tailwinds for Municipal Bonds.

After a strong start to 2021, more tailwinds could keep the momentum going for municipal bonds and the Vanguard Tax-Exempt Bond ETF (VTEB).

The expectation of higher taxes next year could spur a flight to municipal bonds in the second half of 2021. Thus far, the threat of inflation and potentially higher rates hasn't turned investors away from municipal bond products.

"During the first half of the year, municipal bonds (munis) shrugged off the rise in long-term U.S. interest rates and crushed their taxable counterparts," an Advisor Perspectives article noted. "Expectations for higher taxes in 2022 that could be included in a potential stimulus package have kept demand high, while muni net supply was constrained the last few months."

As the stock market continues to flux up and down on Covid news, municipal bonds can provide some level of stability. Municipal bonds are traditionally less volatile than their corporate bond counterparts.

VTEB tracks the Standard & Poor's National AMT-Free Municipal Bond Index, which measures the performance of the investment-grade segment of the U.S. municipal bond market. MUB seeks to track the investment results of the S&P National AMT-Free Municipal Bond Index, which also measures the performance of the investment-grade segment of the U.S. municipal bond market.

The sampling approach means that both funds hold a subset of bonds within the index to replicate the debt's yield, duration, and credit quality. This method allows the funds to avoid trading expensive bonds that could harm performance. It also minimizes tracking errors.

Continued Strength for Munis

Passage of the trillion-dollar infrastructure could also give municipal bonds a boost. Local government infrastructure projects are typically funded by municipal bonds.

"The driving force for the rest of the year should continue to be technical demand, driven largely by the U.S. government's fiscal plan," the Advisor Perspectives article said further. "Barring a total derailment of the infrastructure and social-stimulus packages, we can expect this demand to stay high and muni yields to remain tight to Treasuries, with returns approximating muni market yields. Any strong selloff in munis is likely to quickly snap back as investors jump in to capture value."

ETFTRENDS.COM

by BEN HERNANDEZ

AUGUST 9, 2021

Munis In Focus: Jobs, Plane Hangars, Field Of Dreams (Bloomberg Radio)

Joe Mysak, Editor of Bloomberg Brief: Municipal Market, discusses the latest news from the muni market. Hosted by Paul Sweeney and Matt Miller.

Listen to audio.

Bloomberg Radio

August 13, 2021

Big Banks' Big 2Q; Solar Heats Up; Tax Exempts Roar (Podcast)

In this week's broadcast featuring Bloomberg Intelligence analysts and their research, Alison Williams assesses the state of big bank equities trading and M&A fees, Rob Barnett breaks down the pace of solar capacity additions this year and Eric Kazatsky discusses the hot run by tax-exempt municipal bonds. Michael Halen digs into casual dining's recovery from the pandemic and Kevin Ryan explains how insurers may benefit from the cyberthreats exposed by Covid-19.

Hosts: Alix Steel and Paul Sweeney. Producer: Tim Herro.

The BI Radio show podcasts through Apple's iTunes, Spotify and Luminary. It broadcasts on Saturdays and Sundays at noon on Bloomberg's flagship station WBBR (1130 AM) in New York, 106.1 FM/1330 AM in Boston, 99.1 FM in Washington, 960 AM in the San Francisco area, channel 119 on SiriusXM, www.bloombergradio.com, and iPhone and Android mobile apps.

Bloomberg Intelligence, the research arm of Bloomberg L.P., provides in-depth analysis and data on more than 2,000 companies and 130 industries. On the Bloomberg terminal, run BI .

Listen to audio.

Bloomberg

August 6, 2021

What Will the End of LIBOR Mean for the Multifamily Industry?

Learn what's happening with the switch to a new loan index.

The multifamily housing industry is moving closer to phasing out its long-standing index for adjustable-rate loans and other financial transactions.

The London Interbank Offered Rate (LIBOR), which covers five currencies and seven tenors, is on its way out after years of being a globally accepted benchmark. The Alternative Reference Rates Committee (ARRC), a group of private-market participants convened by the Federal Reserve and the New York Fed, has identified the Secured Overnight Financing Rate (SOFR) as LIBOR's replacement.

LIBOR was supposed to be retired by the end of this year, but that date has been extended to June 30, 2023, for most U.S. LIBOR values. The one-week and two-month LIBOR will still expire at the end of 2021.

"In commercial real estate, floating interest rates are commonly indexed off LIBOR," says Steven Fayne, principal at Align Finance Partners. "However, its uses span far more than just mortgages. Corporate loans, government bonds, credit cards, swaps, and myriad other financial products currently use LIBOR as a benchmark."

Citi Community Capital (CCC), a leading provider of financing for affordable housing, uses one-month LIBOR swap rates for floating-rate construction loans and other community development floating-rate loans. In addition, CCC uses LIBOR swap rates to establish fixed rates for permanent period fixed-rate loans, according to Barry Krinsky, national production manager.

Despite LIBOR's widespread use and long history, U.S. financial regulators have been pushing for the change to SOFR because it is believed to be a better and more resilient rate. One reason for this is the sample size for calculating LIBOR has been declining since the Great Recession. There's now less than $1 billion a day in transaction volume compared with $1 trillion a day for SOFR, says Blake Lanford, managing director in the trading department at Walker & Dunlop.

Other key differences are also driving the move. LIBOR is an average of interest rates reported by major banks, and some have been accused of misrepresenting their numbers to achieve better returns. SOFR, a broad measure of the borrowing of cash overnight collateralized by Treasury securities, is based on actual transactions rather than a survey.

"LIBOR is forward-looking, so the one- and three-month LIBOR is an expectation of where it would be one or three months in advance based on a forward curve," says Lanford. "SOFR is currently backward-looking, using a 30-day average."

What's Happening in Multifamily

Fannie Mae and Freddie Mac moved over to using SOFR for their variable-rate loans last September.

"There were a few months when there was some optionality, but they wouldn't accept anything after December that was LIBOR-based," says Lanford.

"Everything now from Fannie and Freddie is SOFR-based on new loans."

CCC also is planning on ceasing the use of LIBOR for new loans and issuing SOFR loans in the coming months, according to Krinsky.

The firm has chosen the new index, he says, "in part because the SOFR benchmark when combined with the lending spread is expected to result in our multifamily borrowers achieving all-in borrowing rates similar to what they achieved with the LIBOR benchmark."

In the affordable housing world, the use of LIBOR is somewhat limited. Adjustable-rate loans are uncommon in low-income housing tax credit deals because housing credit investors do not want the variable-rate exposure.

However, these loans are seen in some Section 8 transactions and during the construction phase of some affordable housing deals. Adjustable-rate loans are also seen in conventional multifamily property loans.

For the overall multifamily industry, the big unknowns are how and when will lenders transition the loans in their portfolio that use LIBOR. They're going to have to move over to SOFR at some point.

When that transition happens there's going to have to be a spread added to minimize any value transfer from the rate changing in favor of the investor, or borrower, says Lanford.

The good news is that many existing contracts will expire before LIBOR is phased out in mid-2023, so the parties won't have to alter the pricing methodology currently used, according to Fayne.

"For contracts that use LIBOR as a benchmark and expire after 2023, the reference rate will need to change," he says. "However, it's highly likely that those contracts include 'fallback language' prescribing how the loan will be priced in the event LIBOR rates are no longer available."

The next big action is expected to take place this month. "The big banks are being asked to switch over to SOFR at least on the interdealer interest-rate swaps by July 26," says Lanford. "Once that happens, there's going to be more progress."

This step will cause trading activity among swap dealers on these platforms, which account for a substantially large share of trading in the interest rate swap markets, to switch from LIBOR to SOFR.

That's going to create a more robust market, and that will be necessary to build a forward-term rate like there is for LIBOR. "We have a one-month and a three-month LIBOR," Lanford says. "They're trying to develop the same thing for SOFR. Right now, there's plenty of transactions on the front end, but not as much as on longer-term futures and swaps contracts. The switch on July 26 will change that."

Looking ahead, it's important for developers to know what their variable-rate exposure is. "There may be some borrowers that have a schedule of real estate that's 100% fixed rate, and they don't have much to worry about," he says. "For those who have some variable-rate exposure, planning in advance and matching up their loans along with any other derivatives is going to be a priority. Unfortunately, there's not much that we know yet as far as timing, but try to anticipate that switch."

Walker & Dunlop will provide lots of notice to the loans in its portfolio, and Fannie and Freddie will work to give as much lead time as possible as well, according to Lanford.

With representatives of the Federal Reserve and ARRC saying that SOFR should be used, developers should be cautious about loans that use a different benchmark. "I think the recommendation will soon be to think hard before using LIBOR or alternative indexes other than SOFR," Lanford says.

Affordable Housing Finance

By Donna Kimura

July 12, 2021

Public Pension Looters Need Not Fear FBI And Law Enforcement.

The FBI's investigation into alleged false investment performance at the $67 billion Pennsylvania Public School Employees' Retirement System may suggest law enforcement is finally focused upon public pension shenanigans. That's not likely.

If you want to understand how pension looters and high-level investment scammers frequently escape prosecution, begin with studying the legal and regulatory structure of the money management industry. Successful scammers know: (1) which laws or regulations they can skirt, or break; (2) who, i.e., which agencies may come after them for their bad behavior; and (3) the limitations of different regulators and law enforcement.

A "security" is a broad term that includes many types of investments, such as municipal bonds, corporate stock and bonds, bank notes, investment contracts and more. Securities fraud occurs when someone involved with one of these investments lies, cheats, or steals in an attempt to gain a financial advantage.

Continue reading.

Forbes

by Edward Siedle

Aug 16, 2021

MSRB Research Paper on the Taxable Municipal Bond Market.

New MSRB research paper studies the evolution of the taxable municipal bond market over the last decade and reviews the market dynamics of two years when taxable municipal bond issuance was particularly high—2010 and 2020.

Read the MSRB research paper.

Florida's Brightline Train to Resume Service in November.

- **Brightline suspended operations in March 2020 due to pandemic**
- **Train hopes to boost ridership with new stations, Disney plans**

Brightline Holdings, the Florida luxury rail company backed by Fortress Investment Group, will resume running trains in November after suspending service in March 2020 because of the coronavirus pandemic.

In a briefing Tuesday, Brightline President Patrick Goddard said schedules and fares would be similar to those before the suspension. Among new features, riders, who must wear masks on board, will have the option of booking a car, shuttle or electric golf cart to get to the stations. The company will also require Covid vaccines for its employees. The state is reporting a three-day average of

18,795 new Covid cases, according to the Florida Department of Health, ranking it among the highest rates in the country.

With Florida drawing tourists and new residents, vehicle traffic has increased and the company anticipates demand for its service between Miami and West Palm Beach, Goddard said.

“As long as Florida continues to grow, we feel very resolute in our optimism for the future of the business,” Goddard said.

The country’s first new privately financed intercity passenger rail in a century, launched in 2018 along Florida’s east coast, missed passenger and revenue forecasts even before the onset of the Covid-19 outbreak. But over recent months, the company has notched several wins to boost ridership, such as reaching an agreement with Walt Disney World Resort to develop a station on its property. Brightline is also working on commuter rail initiatives with Miami-Dade and Broward counties.

New stations in Boca Raton and Aventura will come online next year, while the expansion to Orlando will wrap up construction at the end of 2022, Goodard said.

Municipal-bond investors have welcomed the developments. A bond due in 2049 traded Wednesday at an average yield of 5.3%, compared with a high of 7.75% in January, according to data compiled by Bloomberg.

Meanwhile, Brightline is pressing ahead with a plan to lay train tracks to Las Vegas from southern California. In July, it said it purchased a site in the gambling hub for its station.

Bloomberg Business

By Romy Varghese

August 10, 2021, 9:22 AM MDT Updated on August 10, 2021, 10:02 AM MDT

— With assistance by Nic Querolo

[Defaulted California Plant Gets OK to Borrow More.]

- **CalPlant wins bid to sell $18 million of new debt securities**
- **Company says it’s making fiberboard from rice straw, a first**

A defaulted California company trying to produce a unique kind of sustainable fiberboard won approval from the state to issue as much as $18 million of new debt.

California’s Debt Limit Allocation Committee, which provides access to the low-cost financing intended for private ventures serving the public interest, on Wednesday approved the request by CalPlant I LLC. The company has already borrowed $344 million since 2017 through sales of unrated tax-free debt, most of which is in default.

After years of delay and setbacks including the pandemic and a fire, CalPlant finally finished building a facility last year that it says is producing the world’s first medium-density fiberboard made from a rice-cultivation byproduct called rice straw. The company has equity backing from entities including a subsidiary of the Teachers Insurance & Annuity Association of America.

The plant, which began making panels in November, needs more money to fully scale up to commercial operations. Despite the dubious distinction of having the third-largest high-yield muni default of the past decade, according to Municipal Market Analytics, the company is likely to sell most of the new securities to existing bondholders.

“This allocation is the final piece of the puzzle for this plant,” said Nancee Robles, interim executive director of the debt committee, before the board approved the request.

Bloomberg Markets

By Romy Varghese

August 11, 2021

[Opportunity Zone Redevelopment Areas Still Reaping Benefits Of National Home-Price Boom In Second Quarter 2021.]

Median Values Again Rise Annually By At Least 15 Percent in Half of Zones; Opportunity Zone Price Spikes Remain on Par with Those Outside of Zones

IRVINE, Calif., Aug. 12, 2021 /PRNewswire/ — ATTOM, curator of the nation’s premier property database, today released its second-quarter 2021 Opportunity Zones report analyzing qualified low-income zones established by Congress in the Tax Cuts and Jobs Act of 2017 (see full methodology below). In this report, ATTOM looked at 5,236 zones across the United States with sufficient sales data to analyze, meaning they had at least five home sales in the second quarter of 2021.

The report found that median single-family home prices increased from the second quarter of 2020 to the second quarter of 2021 in 75 percent of Opportunity Zones and rose by at least 15 percent in about half of them. Price patterns in Opportunity Zones continued to roughly track trends in other areas of the U.S., even surpassing them in some ways, much as they did in the first quarter of this year.

Home values in Opportunity Zones did continue to lag well behind the national median of $305,000 in the second quarter of 2021. About three-quarters of the zones with enough data to analyze had typical second-quarter prices below the national figure. Some 39 percent also still had median prices of less than $150,000 in the second quarter of this year. But that was down from 47 percent a year earlier as values inside some of the nation’s poorest communities kept surging ahead with the broader national housing market, despite the Coronavirus pandemic remaining a threat to the U.S. economy.

Even as the national economy was gradually recovering during the Spring of 2021 from the economic damage that came after the pandemic hit early last year, the impact continued to hit hardest in lower-income communities that comprise most of the zones targeted for tax breaks designed to spur economic redevelopment. Nevertheless, Opportunity Zones largely kept pace with national home-price trends as increases roughly paralleled the nationwide boom now in its 10th year.

Opportunity Zones are defined in the Tax Act legislation as census tracts in or along side low-income neighborhoods that meet various criteria for redevelopment in all 50 states, the District of Columbia and U.S. territories. Census tracts, as defined by the U.S. Census Bureau, cover areas that have

1,200 to 8,000 residents, with an average of about 4,000 people.

"Housing markets kept chugging along in some of the nation's poorest neighborhoods during the second quarter of this year in another sign that the decade long home-price boom across the nation knows pretty much no boundaries. Values kept rising inside specially designated Opportunity Zones at around the same rate as they did in other areas even as the Coronavirus pandemic continued causing economic hardship," said Todd Teta, chief product officer with ATTOM. "For sure, property values in Opportunity Zones remain depressed. But the price spikes there not only suggest that those communities are a very viable option for households priced out of more-upscale neighborhoods. They also indicate the ongoing potential for the economic revival that underpins the Opportunity Zone tax breaks."

High-level findings from the report include:

- Median prices of single-family houses and condominiums rose from the second quarter of 2020 to the second quarter of 2021 in 2,901 (75 percent) of the Opportunity Zones with sufficient data to analyze and increased in 2,916 (64 percent) of the zones from the first quarter to the second quarter of this year. By comparison, median prices rose annually in 81 percent of census tracts outside of Opportunity Zones and quarterly in 70 percent of them. (Of the 5,236 Opportunity Zones included in the report, 3,850 had enough data to generate usable median prices in the second quarters of both 2020 and 2021; 4,577 had enough data to make comparisons between the first quarter of 2021 and the second quarter of 2021).
- Measured year over year, median home prices rose at least 15 percent in the second quarter of 2021 in 2,011 (52 percent) of Opportunity Zones with sufficient data. Prices rose that much during that time period in 51 percent of other census tracts throughout the country.
- Opportunity Zones did even better when comparing areas where prices rose at least 25 percent from the second quarter of 2020 to the second quarter of 2021. Measured year over year, median home prices rose by that level in 1,366 (35 percent) of Opportunity Zones but in only 30 percent of census tracts elsewhere in the country.
- Typical home values in four of every 10 Opportunity Zones increased annually in the second quarter of 2021 by more than the 22-percent increase in the overall national single-family median home price during that time period.
- Among states with at least 20 Opportunity Zones, those with the largest percentage of zones where median prices rose, year over year, during the second quarter of 2021 included New Hampshire (median prices up, year over year, in 95 percent of zones), Massachusetts (94 percent), Idaho (91 percent), Utah (90 percent) and Arizona (89 percent).
- Of all 5,236 zones in the report, 2,021 (39 percent) still had median prices in the second quarter of 2021 that were less than $150,000 and 914 (17 percent) had medians ranging from $150,000 to $199,999. The total percentage of zones with typical values below $200,000 was down from 65 percent in the second quarter of 2020 to 56 percent in the second quarter of 2021.
- Median values in the second quarter of 2021 ranged from $200,000 to $299,999 in 1,081 Opportunity Zones (21 percent) while they topped the national median of $305,000 in 1,183 (23 percent).
- The Midwest continued in the second quarter of 2021 to have the highest portion of Opportunity Zone tracts with a median home price of less than $150,000 (63 percent), followed by the South (45 percent), the Northeast (41 percent) and the West (6 percent).
- Median household incomes in 88 percent of Opportunity Zones were less than the medians in the counties where they were located. Median incomes were less than three-quarters of county-level figures in 56 percent of zones and less than half in 16 percent.

Report methodology

The ATTOM Opportunity Zones analysis is based on home sales price data derived from recorded sales deeds. Statistics for previous quarters are revised when each new report is issued as more deed data becomes available. ATTOM compared median home prices in census tracts designated as Opportunity Zones by the Internal Revenue Service. Except where noted, tracts were used for the analysis if they had at least five sales in the second quarter of 2021. Median household income data for tracts and counties comes from surveys taken the U.S. Census Bureau (www.census.gov) from 2015 through 2019. The list of designated Qualified Opportunity Zones is located at U.S. Department of the Treasury. Regions are based on designations by the Census Bureau. Hawaii and Alaska, which the bureau designates as part of the Pacific region, were included in the West region for this report.

About ATTOM
ATTOM provides premium property data to power products that improve transparency, innovation, efficiency and disruption in a data-driven economy. ATTOM multi-sources property tax, deed, mortgage, foreclosure, environmental risk, natural hazard, and neighborhood data for more than 155 million U.S. residential and commercial properties covering 99 percent of the nation's population. A rigorous data management process involving more than 20 steps validates, standardizes, and enhances the real estate data collected by ATTOM, assigning each property record with a persistent, unique ID — the ATTOM ID. The 20TB ATTOM Data Warehouse fuels innovation in many industries including mortgage, real estate, insurance, marketing, government and more through flexible data delivery solutions that include bulk file licenses, property data APIs, real estate market trends, and more. Also, introducing our latest solution, that offers immediate access and streamlines data management – ATTOM Cloud.

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U.S. 'Opportunity Zones' Use Tax Breaks for Developers to Help Poor Neighborhoods - But Are They Really Helping?

By most accounts, Beaverton, part of Oregon's Sunset Corridor, is a desirable American suburb. It's 15 minutes from downtown Portland, home to Nike headquarters and has a median household income of around US$50,000 range.

Why, then, are American taxpayers subsidizing developers to build in Beaverton, along with dozens of other economically robust communities just like it?

The answer lies in an ambitious public-private partnership initiative known as opportunity zones. Embedded in the U.S. Tax Cuts and Jobs Act of 2017, aimed at incentivizing private investors to develop real estate in low-income communities and spur local business growth, the program has attracted billions of dollars in projects from Beaverton to Boston.

Continue reading.

theconversation.com

August 12, 2021

QOFs Tracked by Novogradac Surpass $17.5 Billion in Equity Raised.

Qualified opportunity funds (QOFs) tracked by Novogradac raised $17.52 billion in equity as of midyear, according to the Novogradac Opportunity Zones Investment Report: Data Through June 30, 2021, which was released today. The semiannual report includes information on the geographic and investment-type focus of more than 1,000 QOFs and includes the top 20 states and top 40 cities for planned investment, as well as the number of QOFs in each of several ranges of equity raised. The report also features a historical section, where trends are examined over time. Michael Novogradac published a blog post on the data and the report is the subject of today's Tax Credit Tuesday podcast.

The report will part of the discussion at the Novogradac 2021 Fall Opportunity Zones Conference, Oct. 21-22 in Cleveland.

August 10, 2021

GFOA 2021 GAAP Update.

November 4, 2021 | 1 p.m.-5 p.m. ET

Details:

Government Finance Officers Association (GFOA) will offer its 2021 GAAP Update on November 4, 2021, with encore presentations on December 9, 2021, and January 13, 2022, using GFOA's online learning management system (LMS).

Participate in interactive exercises to test your knowledge of the material being presented. Receive immediate feedback to your questions during the program from GFOA's Technical Services Center staff.

Key topics* that will be covered during this year's session include:

New GASB pronouncements:

- GASB Statement No. 98, *Annual Comprehensive Financial Report* (anticipated)
- GASB Implementation Guide No. 2021-1, *Implementation Guidance* Update-2021

Updates on GASB projects on:

- Compensated Absences
- Accounting Changes and Error Corrections
- Omnibus – 202X
- Disclosure Framework

Special segment – Implementing GASB 87, *Leases*, first effective for fiscal years ending June 30, 2022

Update on new developments impacting audits of state and local governments, including implications of CARES Act and ARPA assistance

Common deficiencies seen in applications for GFOA's Certificate of Achievement for Excellence in Financial Reporting

Current Implementations:

- GASB Statement No. 89, *Accounting for Interest Cost Incurred before the End of a Construction Period*
- GASB Statement No. 90, *Majority Equity Interests*
- GASB Statement No. 92, *Omnibus 2020*
- GASB Implementation Guide No. 2020-1, *Implementation Guidance Update-2020*

**Topics are subject to change*

Learning Objectives:

- Prepare to implement new pronouncements including GASB 87, *Leases*, arguably the most complex new standard since the postemployment benefits standards
- Understand the implications of proposed guidance for which GASB has sought comments; and
- Become familiar with:
- Other new accounting standards and implementation guidance recently issued by GASB
- Current issues affecting financial statement audits and federal funds Single Audits of state and local governments
- Reporting shortcomings frequently seen by GFOA

REGISTER

ESG Related ETF Filings Flourish.

The summer has seen a wave of ESG-related filings, with the focuses ranging from traditional environmental, social and governance (ESG) to political affiliations to alternative energy to female empowerment.

Roughly 100 new filings were made for ETFs or ETF families since the end of May, and at least 25 of those have an ESG element.

Climate Change Funds Emerging

The largest group of these funds are focused on climate change and carbon emissions, with the most notable being FlexShares' family of five "ESG & Climate" ETFs covering various core asset classes and tracking in-house indexes. That family includes the following funds:

Continue reading.

etf.com

by Heather Bell

August 16, 2021

Municipal Bonds Are Still a Solid Summer Bet for Retirees.

Municipal bond yields aren't exactly thrilling these days, but the asset class remains an important income-generator and risk-reducer for investors in retirement.

While yields are broadly low today in the municipal bond space, there are some positive points for retirement investors to consider, and the asset class is proving sturdy even as the delta variant of the coronavirus vexes investors.

"Municipals maintained their seasonal trend and posted strong performance throughout the month of July. The market benefited from a favorable supply-demand backdrop and rallying interest rates due to excess liquidity, short covering, and Delta variant fears," according to BlackRock research.

More recently, longer duration munis and those with lower credit ratings delivered upside for investors as muni market participants sought to embrace credit and duration risk. A recent decline in supply could be another factor supporting municipal bonds.

"Supply moderated from the robust levels experienced in June and trended more in line with historical expectations. Issuance of $35 billion was down -26% month-over-month but just 5% above the 5-year average, bringing the year-to-date total to $255 billion," notes BlackRock.

While yields are low within the broader municipal bond universe, investors are still displaying enthusiasm for this form of debt, with flows to related funds, including exchange traded funds, poised to hit records this year.

"Demand remained firm with the asset class garnering continued inflows. While fund flows slowed slightly into month end amid lower absolute yields, 2021 remains on pace to eclipse 2019 as the best fund flow year on record," continues BlackRock.

The asset manager recommends underweighting munis tied to "speculative projects with weak sponsorship, unproven technology, or unsound feasibility studies," as well as senior and assisted living facilities in markets that already have plenty of those establishments. However, BlackRock is bullish on munis issued by states in strong fiscal positions as well as munis issued by cities and school boards with robust property tax bases. The fund issuer also likes some high-yield munis.

ETF TRENDS

TOM LYDON | AUGUST 16, 2021

Strategies to Deal with Potential Capital Gains Tax Increases.

President Biden's proposal to raise taxes on capital gains has many investors concerned. But before you make any rash decisions with your own portfolio, it's important to understand whether you'll be among those affected — because not everyone will be — and if so, what steps you can take to help minimize the impact.

In addition, if you own investments you're looking to leave to your heirs, you should also be aware of a possible change in estate tax treatment that could mean a higher tax bill for your loved ones that could be somewhat avoidable if you take action.

Managing Your Capital Gains Taxes

Before digging into the possible changes, it may be helpful to recap what capital gains taxes are. Capital gains taxes simply are taxes levied on profits from selling an investment. So, if you buy $10,000 in stock and sell those shares five years later for $20,000, you will likely owe taxes on your $10,000 capital gain, unless the investment is held in a tax-deferred account, such as a 401(k) or an IRA.

Under President Biden's proposal, the highest tax rate for capital gains would increase to 39.6%, up from a top rate of 20% currently. But because the higher tax rate as proposed would only impact investors earning more than $1 million a year, most people wouldn't be affected. Also, it's important to note that the proposed changes may evolve as they move through the legislative process.

Still, if you would be impacted by this change, or are just looking to reduce your potential capital gains tax exposure, consider these actions:

- **Invest in municipal bonds.** These are generally exempt from federal income tax, and they are also exempt from state income taxes if the bond issuer is from the investor's home state, making them appealing to investors in high-tax states. Still, be sure to also consider out-of-state municipal bonds, which provide portfolio diversification and can provide higher after-tax yields.
- **Max out what you contribute to your tax-deferred retirement accounts**, including your 401(k) and IRAs. Any capital gains you earn from investments in these accounts will be tax-deferred until you begin withdrawing the funds in retirement.
- **Utilize tax-loss harvesting to help lessen the tax bite from capital gains.** Under this strategy, you can sell an investment that's fallen in value and use that loss to reduce any taxable gains. If you'd like, you can then reinvest your proceeds into a similar type of investment to maintain your asset allocation but beware of the Wash Sale Rule if you reinvest within 30 days of the sale because the loss may be disallowed. Note that only $3,000 of capital losses can be used to offset ordinary income over and above offsetting any capital gains in the same tax year –any remaining losses can be carried forward to any future tax year, indefinitely, until exhausted. So, for example, if you sell a stock that's declined in value by $20,000, that loss can reduce a $10,000 capital gain to $0 and help lessen your overall tax burden. In addition, $3,000 of unused capital losses can be used to offset your ordinary income. Finally, the remaining $7,000 in unused losses can be carried forward and used to offset future taxable gains and up to $3,000 in ordinary income.
- **Consider investing in separately managed accounts** (SMAs) as an alternative to mutual funds. Fund investors are often surprised to receive taxable gains statements at the end of the year, even when they didn't sell any shares of the funds. SMAs do not have embedded capital gains, unlike mutual funds. And because an investor who invests in an SMA owns the portfolio's securities directly, they can take advantage of tax-loss harvesting.

Managing the Potential Elimination of Step-Up in Basis for Inherited Assets

Another potentially important change to be aware of is the proposed elimination of the step-up in basis for inherited assets. Currently, the step-up provision means that the cost basis of the inherited asset is adjusted (stepped-up) to reflect the fair market value of the asset at the time of the owner's death. For example, if you inherited shares worth $100,000 from a deceased loved one and then sold those assets, you wouldn't owe capital gains on that sale, even if the stock appreciated in value from an original purchase price of say $10,000.

Under President Biden's proposal, when someone passes away, their death would trigger capital gains taxes on appreciated assets for their heirs, either at the time of death or when their heirs sell the assets. So, as with the previous example, if you inherited shares worth $100,000 that had been purchased for $10,000, you'd owe capital gains on the $90,000 worth of appreciation.

Buy-and-hold investors who own assets that have appreciated considerably in value may want to speak with an attorney or tax adviser to shrink the size of their estate. You may simply choose to realize the gains at the current lower capital gains tax rates and re-establish the basis by purchasing the same security again if the goal is to continue to hold the investments and pass them to your heirs. When repurchasing the security, be careful of the wash-sale rule, which may affect your ability to claim a deduction if you sold at a loss.

In addition, possible strategies you may want to consider include:

Annual gifting of assets to heirs. You can give up to $15,000 per person during the year without having to pay any tax, and if you are married, your spouse also can give $15,000 to the same person, for a total of $30,000 per beneficiary per year.

- Donating appreciated assets to charity.
- Placing assets into a trust.
- Purchasing a life insurance policy. The funds from a life insurance policy can help replace the loss of funds from an estate due to estate taxes or capital gains if the step-up in basis is eliminated.

Note that you should discuss your particular situation with a trusted accountant or tax adviser.

Revisit Your Plan with Your Financial Adviser

Tax laws are always evolving, and what's proposed is often not the same as what becomes law. It's important to add that these are proposals made by the administration, but also need to be passed by Congress. Regardless of what happens with taxes, consider meeting with your financial adviser. The past year has brought many developments, and it's worth revisiting your overall plan in light of any changes COVID-19, a new administration or your personal situation may mean to your financial plan.

Yahoo Finance

Chuck Cavanaugh, Head of Wealth Planning

Sun, August 15, 2021

Webinar: Driving Investment into Texas' Rural Opportunity Zones.

September 7, 2021 – 1:00 PM – 2:30 PM

Attracting investors to rural Opportunity Zones is a well-known challenge. Federal reserve data show that at least 60% of opportunity zones in Texas are at least partially in a rural census tract. In order to attract investment in these rural Opportunity Zones, local leaders must be able to identify priority projects and businesses and build a local investment strategy. During this webinar, expert panelists will provide best practices and tips for economic development practitioners on driving investments into rural Opportunity Zones in Texas.

Click here to learn more and to register.

The Infrastructure Plan Could Boost N.J.'s Opportunity Zones.

The U.S. Senate this week moved closer to passing President Biden's $1 trillion infrastructure bill — the biggest investment in America's rails, roads, broadband and electrical grid in decades. New Jersey political leaders hope the landmark legislation will help fund critical state projects like the Gateway Tunnel.

One of the hallmarks of the Infrastructure Investment and Jobs Act is channeling investments to under-served communities, including those in New Jersey, positioning them as hubs for next-generation jobs and innovation. The White House aims to "revitalize manufacturing, secure U.S. supply chains, invest in R&D, and train Americans for the jobs of the future." This goal has eluded presidential administrations for much of the 21st century. Yet a convergence of factors makes the next few days a particularly favorable window to make progress — though perhaps not in the way policymakers expected.

One way the Biden administration plans to pay for the infrastructure bill is by nearly doubling the tax rate wealthy Americans pay on profits from their sale of stock. This capital gains hike would have major financial impacts, and observers are debating what it would mean for economic fairness and federal revenue. The increase could also have a surprisingly powerful effect on jobs and business growth in low-income areas by pivoting investors toward Opportunity Zones.

Continue reading.

nj.com

By Charles Meyer

Aug 10, 2021

Best Practices for Rural Development Finance Agencies: CDFA Rural Development Finance Webinar Series

August 31 | 2:00 PM – 3:00 PM Eastern

There are hundreds of development finance agencies working in concert to support rural communities. They exist at all levels of government, in communities of all sizes, and provide financing programs to address multiple capital needs. How do you find a development finance agency that is the right fit for your rural community? During the third installment of the CDFA Rural Development Finance Webinar Series, discover best practices of development finance agencies to help you identify the right partner for your projects.

[Click here](#) to learn more and to register.

[Treasurer Fiona Ma Announces First Sale of Revenue Bonds for Community College Housing.](#)

California State Treasurer Fiona Ma and Chair, California School Finance Authority (CSFA), announced the successful completion of a $68.31 million College Housing Revenue Bond sale through the CSFA to finance first-ever student housing on the campus of Santa Rosa Junior College (SRJC). The Bonds priced on Thursday, July 15, 2021, and closed on July 29, 2021. This financing marks the inaugural issuance of community college student housing bonds by CSFA. This reflects Treasurer Ma's commitment to bringing affordable housing to community college students and to bridge California's resource and equity gaps.

"There is an urgent need for housing community college students," said Treasurer Ma. "I am so pleased that the California School Finance Authority could find an innovative way to help by providing low-cost financing for this much-needed housing project at Santa Rosa Junior College. We see this sale as a model that could help other community colleges throughout the state."

Santa Rosa Junior College serves over 20,000 students in nearly 300 degree and certificate programs on 80 acres on their Santa Rosa and Petaluma campuses. The housing project on the Santa Rosa campus will be SRJC's first on-campus student housing, and it will provide safe, affordable, and accessible housing to the culturally and economically diverse SRJC student population. This 95,281-square-foot project will offer 352 total beds and will include living room and common areas; common kitchens with grab and go options; public restrooms; activity lounges; game rooms; study areas; quiet study areas; co-ed restrooms; 24-hour security; and a 92-space parking lot – all conveniently located on campus.

"Our service area suffered devastation from wildfires that destroyed thousands of homes and impacted many of our students and their families. Currently, one out of five Santa Rosa Junior College students are experiencing housing insecurity and homelessness. We are delighted to have access to this financing solution that will allow us to provide affordable on-campus housing for our students", Dr. Pedro Avila, Assistant Superintendent at Santa Rosa Junior College District.

The bonds are rated 'BB' by S&P. Stifel, Nicolaus & Company served as the underwriter for this limited offering to Qualified Institutional Buyers and Institutional Accredited Investors. The bonds sold at an all-in true interest cost of 3.16%. The tax-exempt Series 2021A bonds consisted of 4 percent term bonds maturing in 2031, 2036, 2041, 2051, and 2055 yielding 2.01 percent, 2.18 percent, 2.32 percent, 2.45 percent, and 2.52 percent, respectively. A final term bond was added in 2060 that incorporated an extraordinary call provision and sold at a discount with a 2.75 percent coupon, yielding 2.9 percent. The extraordinary call will enable SRJC to prepay the bonds without penalty should it receive an external grant or charitable funding to offset the cost of the new student housing project. The taxable Series 2021B bonds consisted of a 3.50 percent term bond maturing in 2026, priced at par. The National Campus and Community Development Corporation, a non-profit corporation, serves as the borrower on behalf of the SRJC.

Conduit revenue bonds issued by CSFA are special, limited obligations payable solely from payments made by the underlying borrower pursuant to the transaction documents and from funds and accounts established under the transaction documents, and CSFA shall not be directly or indirectly or contingently or morally obligated to use any moneys or assets of CSFA for all or any portion of payment to be made pursuant to the bonds.

For more information about CSFA's conduit financing program for student housing, please visit CSFA's webpage at: https://www.treasurer.ca.gov/csfa/financings/index.asp.

August 10, 2021

Las Vegas Train Bonds Will Go To California Housing.

- **California had set aside $200 million for rail that's delayed**
- **Company plans to request debt for tourist train next year**

California reallocated $200 million of tax-exempt private activity bonds formerly reserved for Fortress Investment Group's Las Vegas tourist train to be used instead by affordable housing projects.

In January, the state's Debt Limit Allocation Committee set aside that portion of California's limited financing resource in anticipation that the firm's Brightline Holdings would request it later in the year. Instead, the venture said in June it will seek an undisclosed amount of debt next year. The committee's three-member board on Wednesday unanimously approved moving the bonds to housing.

This is the second time California had expected the train to use the bonds, only to give the resource to housing, with demands from housing developers far outstripping what's available. Last year, California had given Fortress the ability to sell $600 million of private activity bonds, which are meant for ventures for the public interest that are capped annually in each state by the federal government.

But Fortress was unable to get enough investors on board for an unrated bond deal that would have financed construction for a 169-mile (272-kilometer) line connecting Las Vegas to the desert town of Apple Valley, 90 miles away from downtown Los Angeles. After the firm pulled the deal in October, California reallocated Fortress's award to affordable housing needs.

In the latest iteration of the project, the line would move closer to Los Angeles by extending to Rancho Cucamonga, which is located along an existing commuter rail called Metrolink. In July, Brightline said it purchased a site in Las Vegas for its station.

Bloomberg Markets

By Romy Varghese

August 11, 2021, 2:11 PM MDT

Novogradac 2021 Fall Opportunity Zones Conference.

Hilton Cleveland Downtown & Online | October 21, 2021 – 8:30am to October 22, 2021 – 5:30pm

Introducing the Novogradac 2021 Fall Opportunity Zones Conference.

Develop your professional relationships and reconnect with others active in opportunity zones (OZ) investment in Cleveland, a city that is benefiting from more than $250 million of OZ investment. Learn from qualified opportunity fund (QOF) managers, investors, developers and Novogradac accountants who will discuss the state of the marketplace, types of project trends, plus structuring and operational considerations of QOFs.

For those unable to join us in Cleveland, we invite you to join us online, where you can view our panels, chat with both in-person and virtual attendees, plus watch online-only content of the event.

Click here to learn more and to register.

Fitch: Midwest Metros Drive Job Growth While Other Regions Lag

Fitch Ratings-New York-12 August 2021: Metros in the Midwest drove employment growth during a flat month for the country overall, according to the latest U.S. Metro Labor Markets Tracker from Fitch Ratings.

The Midwest's median recovery rate for major metros rose to 71% in June from 66% in May, with eight of nine major metros in the Midwest seeing employment recovery rates above 50%.

"Cleveland and Chicago were the only Midwestern major metros where recovery rates declined month-over-month from May to June," said Senior Director Olu Sonola.

Additionally, Cleveland again saw the largest month-over-month decline among Midwestern major metros at 0.5%. While the Midwest's median Fitch-adjusted unemployment rate fell to 7.8% in June from 8.8% in May, the same figure rose in three Midwestern metros in June: Indianapolis, Milwaukee, and Minneapolis.

Elsewhere throughout the country, the median share of jobs recovered by major metros in the West was 62% in June, the lowest regional median. Salt Lake City is the first major metro to have reached 100% of pre-pandemic employment since February 2020, having now regained 104% of pre-pandemic payroll figures by June.

The median jobs recovery rate for major Metropolitan statistical areas (MSAs) in the Northeast rose to 64% in June from 63% in May. A closer look at the region shows that New York City finally reached a recovery rate of 50% of jobs lost at the start of the pandemic. Hartford and Rochester are the only two major Northeastern MSAs to see a decline in recovery rates in June.

Fitch's latest "U.S. Metro Labor Markets Tracker" is available at www.fitchratings.com.

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Additional information is available on www.fitchratings.com

The Conclusion of a Long Running Pay-to-Play Case.

Many of the cases brought recently by the Commission have been either offering fraud or microcap issuer cases with the latter often centered on pump-and-dump manipulations. These cases typically fleece unsuspecting investors who purchase what appear to be inexpensive securities based on some type of guaranteed return or assurance against lost in the case of offering fraud actions or the lure of quick profits from an about to increase stock in the case of the manipulations. The outcome in all of these cases is the same – the investors lose their hard earned savings.

Some cases follow a different pattern. For example, some cases involve public officials taking a bribe in return for steering business to others. In those cases the pattern is different but for investors it is the same, they lose although it may not be as apparent. Once such case is *SEC v. Webb*, Civil Action No. 17-8685 (N.D. Ill.), a pay-to-play case.

Defendant David Webb is the mayor of the City of Markham, Illinois. In connection with a 2012 municipal bond offering designed to fund city capital projects, Mr. Webb engaged in a pay-to-play scheme. The mayor approached a contractor involved in the city capital projects and solicited a bribe. In return Mr. Webb agreed to steer a multi-million construction project to the contractor. The project would be funded from the offering proceeds of the municipal bond offering.

The complaint alleges violations of Securities Act Section 17(a) and Exchange Act Section 10(b). To resolve the action Mr. Webb consented to the entry of a permanent injunction based on the Sections cited in the complaint in late 2017. This week the Court entered the final judgment after determining monetary remedies. The Court entered permanent injunctions based on the Sections cited in the complaint. The mayor was also barred from participating in further municipal bond offerings. In addition, Mr. Webb was directed to pay disgorgement of $85,000 and prejudgment interest of $32,849.35. Those amounts were deemed satisfied by the restitution order entered in the parallel criminal case. *See* Lit. Rel. No. 25160 (August 9, 2021).

SEC Actions – Thomas O Gorman

August 12 2021

Port of Miami to Sell $1.4 Billion in Muni Bonds.

Miami-Dade County will sell debt backed by revenue from Port of Miami, a pandemic high and a sign of investors' demand for local-government debt

Florida officials announced the largest pandemic-era municipal-bond sale backed by port revenue, hoping to tap into investor demand for local-government debt tied to recovering sectors of the U.S. economy.

Miami-Dade County said Monday it is selling around $1.4 billion of bonds due 2050 and backed by revenue from the Port of Miami, or PortMiami—the county's largest municipal bond sale ever. That is also the largest sale tied to a port since last March, beating a $1.1 billion bond issued by the Port Authority of New York and New Jersey during July 2020.

Miami is home to the largest port in Florida. It processed more than $45 billion worth of cargo during the fiscal year ending September 2020 and in normal times is home to over a fifth of the world's cruise traffic.

The offering's size is a sign of the strength of the overall municipal market. A stimulus- and vaccine-fueled recovery has sparked a rally in bond prices, dropped yields toward record lows and left many state and local governments flush with cash. Those improvements, plus increased prospects of a federal tax increase, have prompted more investors to buy municipal bonds, analysts say, after coronavirus fears sparked a sharp selloff last spring.

Investors, meanwhile, have been receptive to assets that benefit from a global shipping crunch, leading municipal bonds tied to ports to outperform other local debt. The S&P municipal-bond port index has returned over 2.4% to investors this year through Aug. 4, including price changes and interest payments. That compares with a 1.9% return on municipal bonds broadly and 0.2% on U.S. investment-grade corporate bonds.

Still, the Miami sale, which is being led by Wells Fargo, WFC -1.52% will occur against a backdrop of growing fears related to rising Delta variant infections. Questions remain about the cruise industry's recovery following canceled cruise voyages over the past year. PortMiami officials are forecasting around 3.8 million cruise passengers during the next fiscal year starting in September, below pre-pandemic totals above six million.

So far, between fiscal years 2019 and 2020, cruise revenue at PortMiami has fallen more than 35% to $34 million, based on the port's most recent audit. Other passenger fees such as parking revenue have declined by nearly half to around $6 million.

Recent support from the federal government has helped PortMiami make up lost revenue. The port received over $66 million through the American Rescue Plan, the second-largest recipient among ports in Florida, behind Port Canaveral.

Increased demand for shipping goods globally has also helped soften the blow from stranded cruises. Cargo volume at PortMiami this fiscal year is running at an annualized pace of 1.25 million 20-foot-equivalent units, or TEUs, port officials say. That is on pace to beat the port's previous volume record from 2019 by 11%. Cargo revenue during the fiscal year ending September 2020 rose over 20% to $28.7 million.

Despite the challenges, analysts are optimistic about the offering's prospects. While PortMiami relies more on cruise revenue than other U.S. ports, investors in search of yield have been willing to lend to shipping and travel-related municipal borrowers looking to refinance debt, said Howard Cure, director of municipal bond research at Evercore Wealth Management. "The market is pretty receptive to giving some relief as long as there's a faith things will return to normal," he said.

Cruise operators and port officials are expecting passenger volumes at PortMiami to recover as the world reopens. Construction of new boat-berthing spaces and ship terminals is expected to increase yearly passenger capacity to around 8.5 million people, officials say.

Moody's Investors Service recently raised the credit outlook for PortMiami to stable from negative.

It expects cruise operations will increase over the next year and that the port has sufficient liquidity to manage that transition.

The new bond will refinance most of PortMiami's $1.6 billion in outstanding debt, some of which will be used for new construction. The deal will also extend the maturity of about $600 million in short-term debt, helping lower yearly interest costs.

Demand for municipal bonds has made such refinancings attractive to local officials. "Now is the right time to take advantage of historically low interest rates," said Juan Kuryla, chief executive of PortMiami.

Daniella Levine Cara, mayor of Miami-Dade County, said the bond sale could have an added benefit: increasing confidence among county officials about the government's ability to tap debt markets for future financing needs.

"We can take this to the bank," she said.

The Wall Street Journal

By Sebastian Pellejero

Aug. 10, 2021 7:00 am ET

The HYD ETF: Elevate Your Municipal Bond Income

Yields are low across the fixed income spectrum and municipal bonds aren't being spared. The positive is that bond prices are appreciating, but when yields get too low, investors are often compelled to embrace riskier fixed income assets.

Investors looking for high yields with some protection and tax benefits in the municipal bond universe have a friend in the VanEck Vectors High Yield Muni ETF (HYD). HYD, which tracks the Bloomberg Barclays Municipal Custom High Yield Composite Index, sports a 30-day SEC yield of 2.17%. That's not the high yield investors are accustomed to with junk-rated corporates, but it's well in excess of standard muni benchmarks.

HYD isn't just about yield. More speculative munis are outperforming their investment-grade counterparts, and improving state finances support the case for this asset class.

Continue reading.

etftrends.com

by TOM LYDON

AUGUST 10, 2021

PSE Confirms Plans for Public-Private Partnership to Finance New Buffalo

Bills Stadium.

Pegula Sports and Entertainment told Mayor Byron W. Brown this week that it will seek a “public-private partnership” with state and local government to build a new stadium for the Buffalo Bills in Orchard Park.

A PSE executive late Friday confirmed Brown’s account of his conversations over the past few days with officials “at the highest levels” of the company that indicated Bills ownership will not seek a deal totally financed with public money.

Ron Raccuia, executive vice president of PSE, offered his first public comments on the stadium proposal late Friday. He said “the Pegulas purchased the Bills with a commitment to build a championship caliber organization.”

“They want to win, and they have continued to provide the resources necessary to do so,” Raccuia said. “When it comes to the future new home of the Bills, they have always known that, like virtually all NFL stadiums, this will ultimately be some form of a public/private partnership.”

The mayor said he periodically speaks with the team about their plans, even though any public financing for a new facility would stem from state and county sources.

“They made it clear to me they are willing to be a financial partner in a new stadium and expect to be,” Brown said. “I’m sure they expect a public partnership as well. They see it as a public-private partnership.”

Multiple sources told The Buffalo News for an Aug. 1 story that the proposal centered around 100% public financing. The sources spoke on condition of anonymity due to the high sensitivity of the early stages of negotiations, noting that the Bills were seeking at least $1.1 billion in taxpayer assistance – grants, tax breaks and other possible funding streams. Sources later confirmed to The News that the actual amount the team offered in its first proposal was $1.4 billion.

The idea of total financing of a new stadium produced concern among Albany lawmakers, with several labeling the idea a “non-starter.” Assembly Majority Leader Crystal D. Peoples-Stokes, D-Buffalo, was among those dismissing the original plan as outlined to her. Late Friday, she reiterated that she always understood the PSE proposal involved total public financing, adding she was encouraged by the mayor’s comments.

“The way it was intimated to me by the governor’s people is that they wanted to build a new stadium, but there was no reference to a public-private partnership,” she said, adding that Brown’s version of the team’s position “was not the way it was given to me originally.”

The mayor, meanwhile, said he believes that the public-private relationship was “their position all along.” Brown said he spoke to PSE representatives because he was “concerned” about the situation.

“So we have the Pegulas and their representatives clarifying that they certainly will be a financial partner in this,” he said, “and that definitely made me feel good about this prospect.”

Representatives of New York State and Erie County, the main public entities expected to finance a new stadium, were not available for comment.

The News reported earlier this month that PSE had floated to the state and county officials an initial ask that the public pay for a new facility to be built in Orchard Park adjacent to the team’s existing facility. The proposal would negate any need to temporarily relocate to another city during a multi-year construction effort.

The team's current lease for the county-owned Highmark Stadium expires in 2023. As a result, sources told The News that negotiations between PSE, the state and Erie County are taking on a more serious tone in recent weeks.

The concept also carries broad implications for the entire state beyond just financing. Other areas of New York could be expected to make their own proposals for Albany dollars to pay for new minor league baseball stadiums or downtown hockey arenas, as has occurred in the past whenever major league projects have been proposed for New York City or Buffalo.

All of this also occurs as Gov. Andrew Cuomo prepares to leave office following his announced resignation stemming from sexual harassment allegations. He will be succeeded by Lt. Gov. Kathy Hochul, who said this week that keeping the Bills in Buffalo is a "high priority."

The Buffalo News

by Robert J. McCarthy

Aug 14, 2021

- S&P: USPF Enterprise Sectors Treatment Of Operating Leases Under FASB's ASU 2016-02 (ASC 842)
- MSRB Proposes Amendments to Annual Customer Notification Requirements.
- A "Good" Tax-Advantaged Bond Bill Tells Issuers Whether They Can Refund – A Case Study: Squire Patton Boggs
- Transaction Costs During the Covid-19 Crisis: MSRB White Paper
- The Use Of A Crisis To Create Opportunity In The Muni Market.
- BDA Fixed Income Insights Digital Magazine – Summer 2021
- *City and County of San Francisco v. All Persons Interested in Matter of Proposition G* – Court of Appeal holds that, although the constitutional provision requiring two-thirds vote of qualified electors to approve special taxes, requires governmental entities to gain approval of supermajority of voters before imposing a special tax, it does not repeal or otherwise abridge by implication the people's power to raise taxes by initiative, and to do so by majority vote.
- And finally, Is There, Like, A Test For Performance De-enhancing Drugs, Dude? is brought to us this week by *State ex rel. Schmitt v. Bridgeport*, in which no less an authority than the Supreme Court of Ohio was called in to untangle a workplace farce in which William Schmitt wandered into the offices of Bridgeport Village in order to drop off a citizen initiative petition. Mr. Schmitt walked into cheerful-bizarro-alternate-bureaucracy-land that he was uniquely unqualified to navigate. (*e.g.* "An unknown person directed Schmitt to the mayor's office, and when he arrived at that office, he asked a woman at the desk if she was the 'clerk.' She responded affirmatively. Later in that conversation, she clarified that she was merely a 'volunteer clerk.'" *See, also*, "The fiscal officer is Mary Lyle, not Carole Lyle. (The record does not disclose whether the two Lyles are related.)" Then again, Mr. Schmitt was there "to place an initiative on ballot to enact an ordinance limiting the penalty for the possession or cultivation of certain quantities of marijuana or hashish within the village to a fine of $0." But if the fine is, like, zero dollars, is that really, like, a fine, man?

EMINENT DOMAIN - COLORADO

North Mill Street, LLC v. City of Aspen

United States Court of Appeals, Tenth Circuit - July 27, 2021 - F.4th - 2021 WL 3163952

Property owner, whose property was located within area of city zoned for industrial use, brought action against city after council adopted ordinance that removed free-market residential units as permitted conditional use within such zoning district and refused to rezone property to mixed use zoning district, seeking declaratory judgment that ordinance was invalid and unenforceable and injunction against enforcing ordinance, and alleging, inter alia, a § 1983 regulatory takings claim under the Fifth Amendment.

The United States District Court granted defendants' motion to dismiss. Property owner appealed.

The Court of Appeals held that:

- Finality rule, under which a regulatory takings claim is not ripe until plaintiff has received final decision, is prudential, and not jurisdictional;
- Owner's claims were constitutionally ripe for review;
- City retained discretion to approve free-market residential unit development, supporting determination that city's decision was not final, and thus claims were not prudentially ripe for review; and
- It was not reasonably certain that city would deny application for variance, supporting determination that city's decision was not final, and thus claims were not prudentially ripe for review.

Finality rule, under which a regulatory takings claim is not ripe until the plaintiff has received a final decision regarding the application of the challenged regulations to the property at issue from the government entity charged with implementing the regulations, is prudential, and not jurisdictional.

Property owner, whose property was located within industrial zone, adequately alleged that it suffered economic injury that was fairly traceable to city's adoption of ordinance that removed free-market residential (FMR) units as permitted conditional use within property's zoning district and denial of owner's rezoning application, so as to satisfy injury-in-fact requirement for Article III standing, and thus owner's claims were constitutionally ripe for review, for purposes of claims against city alleging, inter alia, § 1983 regulatory takings claim under the Fifth Amendment; owner alleged that ordinance made it more difficult to find suitable tenants, and that it was not able to build FMR units unless it pursued planned development application for a variance.

City retained discretion to approve free-market residential unit (FMR) development on property owner's property, which was zoned for industrial use, through the planned development application process, supporting determination that city's decision was not final, so as for claims to not be prudentially ripe for review, for purposes of claims against city alleging, inter alia, § 1983 regulatory takings claim under the Fifth Amendment; city retained discretion to approve a use variation from the zoning regulations through the planned development application process, and city was merely required to consider earlier findings made in course of rezoning application in considering such a variance.

It was not reasonably certain that city would deny property owner's application for variance from zoning regulations through the planned development application process, in order to permit free-market residential unit (FMR) development on property zoned for industrial use, supporting determination that city's decision was not final, and thus claims were not prudentially ripe for review, for purposes of claims against city alleging, inter alia, § 1983 regulatory takings claim under the Fifth Amendment; relevant zoning ordinance did not definitively determine type of development permitted on property specifically, and owner had only submitted an application for re-zoning as opposed to variance.

ZONING & PLANNING - MAINE

Hill v. Town of Wells

Supreme Judicial Court of Maine - July 13, 2021 - A.3d - 2021 WL 2932349 - 2021 ME 38

Property owner sought judicial review of the decision of town's zoning board of appeals (ZBA) denying his request for setback variances.

The Superior Court rejected ZBA's denial of the variances. Abutting landowner, as intervenor, appealed.

The Supreme Judicial Court held that:

- In considering whether the essential character of the locality within which property owner sought a setback variance would be altered if variance was granted, "locality" included a wildlife sanctuary and the abutting undeveloped Refuge and wetlands, and
- Property owner failed to show that his proposed residence with the variances would conform to the "essential character of the locality," and would not degrade the significant value of surrounding environmental resources, thus, supporting denial of owner's variance request.

BALLOT INITIATIVES - OHIO

State ex rel. Schmitt v. Bridgeport

Supreme Court of Ohio - August 3, 2021 - N.E.3d - 2021 WL 3376105 - 2021-Ohio-2664

Initiative proponent sought a writ of mandamus to compel village clerk to certify to the elections board the sufficiency and validity of an initiative petition, or to compel the elections board to place the initiative on the November ballot.

The Supreme Court held that initiative proponent failed to comply with the requirement that he file a signed initiative petition with the village clerk.

Initiative proponent failed to comply with the requirement that he file a signed initiative petition with the village clerk, and thus he was not entitled to mandamus relief compelling village clerk to certify to the elections board the sufficiency and validity of the initiative petition, or compelling the elections board to place the initiative on the November ballot; proponent attempted to file the petition with mayor and unpaid volunteer clerk in the mayor's office, however statute required proponent to file the initiative petition with the village clerk, whose duties had been consolidated with the village treasurer into an appointed position called "fiscal officer," and proponent never attempted to file initiative petition with fiscal officer.

PUBLIC MEETINGS - OHIO

Ison v. Madison Local School District Board of Education

United States Court of Appeals, Sixth Circuit - July 7, 2021 - 3 F.4th 887

Four attendees of school board meetings, who were interrupted or prevented from speaking for failing to comply with board's public participation policy, filed § 1983 action asserting that board's policy violated First Amendment facially and as applied to them, and they sought compensatory damages, declaratory relief, and an injunction.

The United States District Court for the Southern District of Ohio granted summary judgment in favor of board. Attendees appealed.

The Court of Appeals held that:

- Policy constituted impermissible viewpoint discrimination in violation of the First Amendment;
- Policy violated First Amendment as applied to attendee who was interrupted and removed from meeting;
- Board had significant governmental interest supporting policy's in-person preregistration requirement, as necessary for requirement to be valid time, place, or manner restriction;
- Preregistration requirement was narrowly tailored to that significant governmental interest, as necessary for it to be valid time, place, or manner restriction;
- Individuals who could not comply with preregistration requirement had ample alternative channels to communicate with board, and thus requirement was valid time, place, or manner restriction;
- Preregistration requirement did not violate First Amendment as applied to three attendees who were prevented from speaking; and
- Policy was not void for vagueness under the First Amendment.

PROCUREMENT - PENNSYLVANIA

U.S. Venture, Inc. v. Commonwealth

Supreme Court of Pennsylvania - July 21, 2021 - A.3d - 2021 WL 3073379

Distributor of fuel products petitioned for review of Board of Claims' order, No. 4180, dismissing distributor's contractual claims arising out of Commonwealth's nonpayment of two alternative and clean energy (ACE) grants that distributor obtained to add compressed natural gas fuel pumps to existing fuel stations.

The Commonwealth Court affirmed. Distributor petitioned for allowance of appeal, which was granted.

The Supreme Court held that ACE grants were "grants" that were not subject to limited waiver of sovereign immunity under Procurement Code.

Commonwealth's award of Alternative and Clean Energy (ACE) grants to fuel products distributor to support distributor's plans to add compressed natural gas fuel pumps to two existing fuel stations were "grants" that were not subject to limited waiver of sovereign immunity under Procurement Code, and thus Board of Claims did not have jurisdiction to resolve distributor's contractual claims arising from nonpayment of grants, despite argument that grants were awarded with a primary purpose to procure construction, where Commonwealth had no ownership, control of, or interest in the privately-owned fuel pumps located on privately-owned property, and Commonwealth received nothing from the deals other than advancement of its desire to promote ACE program and reduce harmful emissions.

LIABILITY - WASHINGTON

Norg v. City of Seattle

Court of Appeals of Washington, Division 1 - July 19, 2021 - P.3d - 2021 WL 3030524

Husband and wife filed suit against city, alleging that city was negligent in responding to wife's 911 call while husband was having heart attack.

City filed motion for summary judgment, and husband and wife filed motion for partial summary judgment. The Superior Court granted husband and wife's motion and struck city's public duty doctrine defense. City appealed.

The Court of Appeals held that public duty doctrine did not apply to bar husband and wife's claim.

City's duty to respond to 911 call was not public duty owed to general public at large but was instead common law duty to exercise reasonable care in providing emergency medical services, and therefore public duty doctrine did not apply to bar claims brought by husband and wife alleging that city was negligent in responding to wife's 911 call while husband was having heart attack.

BDA Fixed Income Insights Digital Magazine – Summer 2021

The BDA's quarterly digital magazine, Fixed Income Insights, is now available right here by clicking here.

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This month's edition contains articles by the industry's top contributors and relevant topics:

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- **Municipal Markets** – Articles from DPC Data and Hilltop Securities
- **Taxable Markets** – Kevin McPartland of Greenwich Associates
- **BDA Member Profile** – Ted Karn, President and Founder of The Karn Group

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If you have any questions or about the magazine or the new app, please contact Rebecca Rodriguez at rcrodriguez@bdamerica.org

Bond Dealers of America

August 6, 2021

A Municipal Finance Tool to Avert Another Deadly Condo Collapse.

Local governments could turn to special assessment districts to cost-effectively assure safety improvements, bypassing occupants' foot-dragging and dysfunctional homeowners' associations.

Experts have yet to determine the precise causes of the June 24 collapse of a Surfside, Fla., condominium tower in which 98 residents died. But policymakers don't need to wait for engineering reports to tell us what is painfully obvious: Condo ownership associations and their volunteer boards are ill-equipped to tackle serious safety deficiencies in high-rise buildings. Of the 160,000 condominium buildings in the U.S., tens of thousands are precariously underfunded.

The public finance profession has long understood the "tragedy of the commons," in which everybody enjoys the benefits of community property but their self-interested collective neglect leads to its demise. In the Surfside property, the homeowners' association had been delivered a clear warning that structural defects were mounting and collective remedial action was required. Yet the building's HOA board became so frustrated with securing unit owners' consent that many of its members resigned, and costs kept mounting. A problem that might have been solved a few years ago expanded — "exponentially," in the words of an inspector — to the point of no return. The Champlain Towers South disaster goes down as one of American history's most horrific and insightful examples of the tragedy of the commons.

Finger-pointing and blame-laying will go on for months, and undoubtedly there will be new laws to require more frequent safety inspections. But where local governments also need to focus their policy reforms is on the remediation process itself, to provide a cost-effective mandatory protocol for timely funding of structural repairs in isolated cases when private ownership fails.

Anybody who's lived in a residential community with HOA fees knows how much carping goes on over dues assessments to advance-fund repairs and replacements of common facilities. "Why should we pay now for benefits that will be enjoyed by future owners?" is the all-too-familiar complaint of the tightwads and procrastinators. Even if an HOA is able to borrow money for necessary repairs and bill the owners through installments, there will be defaults and delinquencies. In the Champlain Towers case, the cost per unit for remediation was estimated to be six figures, a staggering cost for some occupants. Would you want to serve on an HOA board facing such opposition and likely litigation from all ends?

A SAD Opportunity

Fortunately, there is a legal and financial tool that can be adapted to solve the problem of the tragedy of the condominium commons: special assessment districts. In California, they are known as Mello-Roos districts, and most states have laws on the books that authorize municipalities to levy a special charge on properties for a wide variety of public improvements that benefit the owners within a designated district, or in some cases even a single building. The bill can be per owner or (in some states) ad valorem based on property values. The municipality that establishes such SADs, as they are known, can take out bank loans or sell bonds, often at lower tax-exempt interest rates, to finance the improvements that are secured by the liens on the properties. In the case of condos, the special financing bonds would have to be secured by a senior tax lien on the underlying land, and in some states, new laws may be needed for single-building districts.

Few condo boards can ever hope to attain long-term financing at such low costs. Most importantly, the SAD tax collections are liens on property and payable by installments so that owners don't have to cough up the full cost of repairs immediately. When a unit is sold, some states and escrow companies require that the entire assessment be paid off to remove the lien, and the new owner essentially absorbs that cost in the mortgage. But however they are structured, SADs can accomplish what HOAs sometimes cannot.

Of course there are drawbacks. For municipal finance departments and property tax collectors, administering these special districts poses a thankless task. Most assessment districts are relatively small and clutter the books, so many localities charge modest administrative fees to compensate for the staff work they require. Unless consolidated into an annual debt issue, the litter of small individual SAD debt issues can become a fiscal management nuisance — but nothing in comparison with the resources demanded of a municipality that suffers a building collapse. It's important to retain perspective here and put safety before bureaucracy.

When Lives Are at Risk

This brings us to the implementation process, which will require thoughtful policy design. In some localities, existing laws and policies may require tweaking. One example is how timely intervention could be triggered proactively by the municipal governing body, either upon recommendation of the building inspection department or the HOA board. Usually such municipal actions require a public hearing, but the authority ultimately resides with the municipal governing body. Typically the project work is performed by the local government by contract, which raises questions about eminent domain, indemnification, property access and possibly private activity bond tax rules that may require updated laws and local policies.

Those laws and policies should establish criteria for declaring a demonstrable and documented public safety interest in mandatory improvements to a privately owned building. Doing this without stigmatizing the property is an issue to address. By state law, an intervening local government should be indemnified, given the legal jeopardy and certified structural risks. Statutory or written criteria could provide a checklist for local officials to follow before instigating public intervention.

Perhaps every new high-rise building's land-use permit and periodic recertification should require creation of a dormant special assessment district that can be activated and invoked immediately upon certification of major structural remediation requirements. If time allows and depending on the severity of defects and risks, the HOA could be given a short grace period to undertake repairs on its own. But the community interest should not be hamstrung by time-wasting protocols or stalling tactics, especially when lives are at risk. In some cases, precautionary evacuations may be necessary, with temporary housing allowances added to an owner's amortized project assessment.

This financial tool is no panacea, and should be used only in rare cases. But its availability will provide a safety net. Municipal attorneys, along with policy and professional organizations, can guide the way for precautionary enabling legislation and local risk management policies.

governing.com

August 3, 2021 • Girard Miller

Quick Thoughts: Are You Pricing in Water Risk?

Our Chief Market Strategist, Stephen Dover, believes that water risk is global now—devastating *floods, unseasonal hurricanes, droughts, megafires, and more demonstrate this. The economic implications of risks related to water are significant and should be considered when investing.*

Devastating floods, unseasonal hurricanes, excessive droughts, megafires, and more demonstrate how extreme water risk is global now. From an investor's perspective, the economic implications of risks related to water are significant and should be a consideration when investing.

- By 2030, the global population will likely exceed nine billion and the world will require 40% more fresh water than it does today.1 The global supply of accessible freshwater accounts for less than 1% of water supplies.
- In my view, risks associated with water affect economic policies, constrain economic growth, and should be incorporated along with other climate-related market risks. Critical investments in water purification, reuse, efficiency, and delivery infrastructure are required on a global scale and could provide opportunity to investors.
- The projected declines in freshwater availability will likely affect gross-domestic-product (GDP) growth, present wide-ranging risks for investors across all asset classes, and encompass a broad range of sectors, from those with logical connections, like agriculture and utilities, to those that may not be so apparent, like packaging and semiconductors.
- Communities and companies must consider how to plan for and mitigate water risk. Companies that lack a full understanding of water risk, lag in disclosing water risk, or postpone adjustments to regulatory reforms, present long-term risks for both the communities and investors that invest in those companies.
- Infrastructure investment opportunities may be found globally as governments and municipalities prioritize managing water risk. China's Maritime Silk Road and Russia's Ice Silk Road expand their water infrastructure. The US bipartisan infrastructure proposals include investment in sewage systems, water supplies, and replacing lead pipes.

There are also opportunities in identifying companies that can provide solutions to deal with water scarcity, water sanitation, and water efficiency. Water impacts the day-to-day operations of companies and how they think through their business models. For details on water risk and investing, read "Water Disruption: Investment Risk From Multiple Angles," a 2020 research epitome from Franklin Templeton and K2 Advisors. In "Muni Market View on the American Jobs Plan," Jennifer Johnston, Director of Research, Franklin Templeton Municipal Bonds, discusses how infrastructure funding could filter through the US municipal bond market.

What Are the Risks?

All investments involve risk, including possible loss of principal. The value of investments can go down as well as up, and investors may not get back the full amount invested. Stock prices fluctuate, sometimes rapidly and dramatically, due to factors affecting individual companies, particular industries or sectors, or general market conditions. Special risks are associated with foreign investing, including currency fluctuations, economic instability and political developments; investments in emerging markets involve heightened risks related to the same factors. To the extent a strategy focuses on particular countries, regions, industries, sectors or types of investment from time to time, it may be subject to greater risks of adverse developments in such areas of focus than a strategy that invests in a wider variety of countries, regions, industries, sectors or investments.

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by Stephen Dover of Franklin Templeton, 8/5/21

Fitch: U.S. Labor Market Job Loss Mismatch to Persist Through 2022

Fitch Ratings-New York-04 August 2021: Employment recovery is far from complete and largely unequal, with a new Fitch Ratings report pointing to how the pandemic is disproportionately hitting relatively lower-wage service jobs where human interaction is essential.

There are early signs of this labor market mismatch in some states. For instance, while the labor market is very tight in Vermont and New Hampshire, the labor market is showing more slack in Hawaii, California and New York. Relatively low wage service jobs in the leisure and hospitality sector are accounting for a disproportionate share of these job losses, a disconnect that will likely remain in place at least through the end of next year.

“It would be hard to design a labor market shock that more drastically targeted low-wage workers. We’re seeing widening of existing inequalities and a rise in the risk of long-term labor force detachment and economic scarring in the most affected states,” said Fitch Senior Director Olu Sonola. ‘The segment of the population that has been unemployed for an extended period of time is most at risk for the impending government support cliff.’

This mismatch shines more of a light on the employment to population ratio (EPR), which Fitch views as a more holistic measure of disequilibrium than the unemployment rate because it combines the impact of both labor force participation and unemployment. South Dakota, Kansas and Mississippi are the only states that are now back to pre-pandemic EPR levels. However, despite significant recovery, Mississippi, West Virginia and New Mexico have the lowest three EPR levels. This suggests that that the long-term economic growth trajectory of these states will likely continue to be slower, relative to other states, absent offsetting productivity gains. ‘U.S. States Labor Market: Disparities in Pandemic Job Losses to Persist Beyond 2022’ is available at ‘www.fitchratings.com’.

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