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S&P: Sudden-Stop Recession Pressures U.S. States' Funding For Pension And Other Retirement Liabilities.

Key Takeaways

- States continued to make progress on improving pension funding discipline, but the recession increases the potential they may reverse these gains to ease budgetary pressures.
- Low interest rates and equity market volatility may result in riskier asset allocations for plans to meet targeted rates of return.
- States have started to reduce headcount for budgetary relief, but declining payrolls will negatively affect contributions, as fewer active employees contribute to plan assets.
- Widening budget gaps this year may result in reducing contributions, extending amortizations, and other actions likely to slow the pace of pre-funding retirement liabilities.
- OPEB plans continued to be substantially underfunded as most states chose to direct limited surplus revenues to other priorities.

Continue reading.

SEC Publishes OCIE Risk Alert on LIBOR Transition Preparedness Examination Initiative: Dechert

The Securities and Exchange Commission's Office of Compliance Inspections and Examinations issued a National Exam Program Risk Alert on June 18, 2020 (Risk Alert),1 which introduces an examination initiative on the upcoming discontinuation of, and transition from, LIBOR2 to alternative risk-free reference rates (widely referred to as RFRs) (LIBOR Transition). The Risk Alert states that the examination initiative (LIBOR Exams), which has commenced recently, is intended to allow OCIE to assess the preparedness of SEC-registered investment advisers, broker-dealers, investment companies, municipal advisors, transfer agents and clearing agencies (collectively, Registrants) that may be impacted by the LIBOR Transition. The Risk Alert includes a sample list of documents that may be requested in a LIBOR Exam and is intended to assist Registrants with their preparations.

This Dechert OnPoint provides general background regarding LIBOR and the LIBOR Transition, describes key points for Registrants impacted by the LIBOR Transition or who are the recipients of a related examination request, and offers next steps that Registrants can consider in their LIBOR Transition preparations. Dechert has tracked developments related to LIBOR and the LIBOR

Transition – for further information, please refer to Preparing for the Replacement of LIBOR.

Background on LIBOR

On any given day, LIBOR is calculated across seven tenors for each of five currencies (USD, GBP, CHF, EUR and JPY). LIBOR is intended to be a measure, for each currency and tenor, of the average rate at which leading internationally active banks are willing to borrow wholesale, unsecured funds in the London interbank market.3 LIBOR and other interbank offered rates (IBORs) are global, long-standing and extensively used benchmarks or reference rates (reference rates) for determining interest rates in contracts related to financial transactions, adjustable-rate financial products and derivatives.4

In July 2017, Andrew Bailey, then-Chief Executive of the UK Financial Conduct Authority (FCA), announced that the FCA would no longer persuade or compel LIBOR panel banks to continue to make LIBOR data submissions after 2021.5 As a result, it is currently expected that around January 1, 2022, LIBOR will cease publication or will no longer be sufficiently robust or reliable to be representative of its underlying market.6 It follows that LIBOR (and most other IBORs) then will cease to be effective reference rates for financial transactions and other contractual arrangements.

Following Mr. Bailey's 2017 announcement, working groups began to plan in earnest for the eventual unavailability of LIBOR and other IBORs throughout the world. Each of these working groups aimed to identify and recommend alternative RFRs denominated in the relevant local currency. Since reference rates serve a critical commercial function, any alternative to LIBOR will need to be commercially similar in a variety of respects in order to assure consistent adoption by the financial community.7 It is expected that the majority of LIBOR (and other IBOR) replacements will be derived from RFRs developed by these working groups.

In the United States, the Federal Reserve Board and the Federal Reserve Bank of New York convened the Alternative Reference Rates Committee (ARRC), a working group of private-sector representatives and financial regulators, to recommend an alternative reference rate to USD LIBOR. The ARRC recommended the Secured Overnight Financing Rate (SOFR)8 as its preferred alternative reference rate. Launched in April 2018, SOFR is based on the cost of overnight loans, using repurchase agreements secured by U.S. government securities (which represents a larger section of transactions than is used to derive the Fed Funds rate). However, at this time, SOFR is not widely used as a reference rate. As LIBOR may become unavailable to be used in contracts in 2022, the timeline for the transition to using SOFR as the reference rate for USD LIBOR will be highly compressed. The ARRC and similar working groups are continuing their work on LIBOR replacement solutions.

Practically, transitioning to a new reference rate is not a flip-of-the-switch event, and the current timeline only emphasizes the need for a transition plan. Given the widespread use of LIBOR as a reference rate in common commercial arrangements, the LIBOR Transition no doubt will have a significant and broad-reaching impact on many Registrants (including their business activities, operations and service provider relationships). Based upon a Registrant's business model, the Registrant will need to implement LIBOR Transition solutions (such as those recommended by the ARRC or other similar working groups) in a manner appropriate to its businesses and operations.

In light of the commercial importance of LIBOR and other IBORs, coverage in the financial press has been widespread, and issues related to LIBOR and its expected discontinuation are high on regulatory agendas worldwide.9 Financial services regulators – including the staffs of OCIE and various other SEC divisions and offices – have repeatedly emphasized the importance of Registrants' careful and considered preparation for the LIBOR Transition.10 In addition, the LIBOR Transition is listed as one of OCIE's 2020 examination priority "risk themes" that would be used to "tailor its risk-based program" this year.11 Consistent with those messages, the Risk Alert further emphasizes the importance of Registrants' preparations, and provides OCIE's views regarding the preparations required for a Registrant to effect an orderly transition away from LIBOR.

Risk Alert

The Risk Alert describes the "scope and content" for a series of risk-based examinations (often referred to as "sweep exams") that will focus on Registrants' preparedness for the LIBOR Transition.12 The Risk Alert further emphasizes the theme of preparedness and provides some insight into what OCIE staff may view as steps Registrants could take in anticipation of the LIBOR Transition. The Risk Alert states OCIE's view that "[p]reparation for the transition away from LIBOR is essential for minimizing any potential adverse effects associated with LIBOR discontinuation" and that the "risks associated with this discontinuation and transition will be exacerbated if the work necessary to effect an orderly transition to an alternative reference rate is not completed in a timely manner." As such, OCIE staff stresses that the LIBOR Exams are intended to "help promote and facilitate an orderly discontinuation … and transition."

Examinations

Consistent with the above themes, the Risk Alert states that LIBOR Exams will assess (among other matters) "whether and how the registrant has evaluated the potential impact of the LIBOR transition on the organization's: (i) business activities; (ii) operations; (iii) services; and (iv) customers, clients, and/or investors" (collectively, investors). By way of example, the Risk Alert states that OCIE will seek to review the Registrant's preparation, plans and actions related to the LIBOR Transition, which could include an evaluation of:

- *Exposure to LIBOR and mitigation efforts.* OCIE will seek to understand and evaluate, to the extent relevant, the exposure of the Registrant and its investors to contracts that use LIBOR as a reference rate beyond the expected LIBOR Transition date, "including any fallback language incorporated into these contracts";
- *Operational readiness for LIBOR Transition.* OCIE will review and evaluate enhancements or modifications the Registrant has made to its "systems, controls, processes, and risk or valuation models" in connection with the LIBOR Transition to a new reference rate;
- *Investor communications relating to the LIBOR Transition.* OCIE will examine the Registrant's "disclosures, representations, and/or reporting to investors regarding its efforts to address LIBOR discontinuation and the adoption of alternative reference rates";
- *Potential conflicts of interest.* OCIE will seek to understand and evaluate the Registrant's identification and mitigation of "any potential conflicts of interest" related to the LIBOR Transition; and
- *Efforts to replace LIBOR.* OCIE will examine the Registrant's actions taken to transition to an "appropriate alternative reference rate."***Sample Document Request List***

The Risk Alert states that the sample document request list included in the Risk Alert is intended to "empower compliance professionals" to assess and assist with Registrants' preparedness for the LIBOR Transition. While this list is a "resource" for Registrants to consult, it is not "all-inclusive" or "specifically indicative of the validation and testing" OCIE could perform. Thus, an actual document request list received by a Registrant is likely to vary based on the facts and circumstances. The Risk Alert also references the OCIE staff's potential "review [of] certain information onsite."

The types of documents set forth in the document request list can be broadly categorized as pertaining to:

- *Organizational structure and management.* This consists of information identifying aspects of a Registrant that might be impacted by the LIBOR Transition, as well as the personnel responsible for assessing, overseeing and managing LIBOR Transition efforts, including any third parties, and documentary evidence of the same (e.g., meeting minutes).
- *Assessment and management of LIBOR exposure.* This is documentation identifying: (i) potentially affected contracts or obligations of the Registrant or its investors, performance composites or advertisements, LIBOR-based models (e.g., risk, valuation), and investors (e.g., fee structures, performance reporting); (ii) the related underlying documents; and (iii) information regarding dependence on third-party service providers and the potential impact on their services. This also includes strategic plans or timelines for remediation, and any risk matrices "that reference" the LIBOR Transition.
- *Disclosures to stakeholders.* This includes information provided to governing bodies and filed with the SEC.13
- *Guidance provided by the Registrant to its employees or supervised persons regarding recommendations or advice to investors, issuers or clients.* This includes: recommendations to investors regarding "LIBOR-linked instruments or contracts that extend past the current expected discontinuation date, reviews of portfolios containing such instruments, or the underwriting of new instruments referencing LIBOR"; advice to issuers as to "new LIBOR-linked instruments"; and advice to clients regarding outstanding contracts or obligations that replace LIBOR with an appropriate reference rate.
- *Modifications to operations or compliance programs made or anticipated.* This includes planned or implemented changes to various systems (e.g., "accounting, investor reporting, risk, valuation or trading") and "compliance procedures, controls, or surveillance systems."***Resources to Aid Registrants with the LIBOR Transition***

The Risk Alert encourages continued engagement by: suggesting that Registrants' personnel keep up-to-date on developments related to the LIBOR Transition via the AARC website; and inviting "the public to share information about the potential impact" of the LIBOR Transition via LIBOR@sec.gov.

Implications for U.S. and Non-U.S. Registrants

While the Risk Alert is the statement of one office of one regulator regarding how to prepare for the LIBOR Transition, its message should resonate across all market participants and jurisdictions. The message is consistent with statements from other regulators internationally: the issue of LIBOR Transition is not going away, and it is now time for Registrants and other market participants to focus on preparations for the LIBOR Transition. The Risk Alert is a signal that Registrants and other market participants are expected to be preparing for the transition from LIBOR and other IBORs. As indicated by the document request list, Registrants can begin by evaluating the potential impact of the LIBOR Transition on their businesses and operations, with a view toward implementing solutions that are appropriate in light of their exposure to LIBOR or other IBORs.

Regardless of a Registrant's state of preparation, the Risk Alert can prove valuable in helping Registrants better understand OCIE's view as to the type of preparations that could best effectuate an orderly transition. Registrants at the beginning stages of preparedness can use the Risk Alert to assess the scale and scope of the Registrant's current exposure to LIBOR, as well as a road map for managing an orderly LIBOR Transition. Registrants that are further down the road might view the Risk Alert as a checklist to assess their own progress. The Risk Alert (in particular, the sample document request list) also could be instructive to Registrants and other market participants in determining key documents that might be useful in identifying and managing any emerging risks across their businesses, and engaging and sharing information with various stakeholders about those risks and the Registrant's efforts to manage and/or mitigate them.

Dechert LLP – Philip T. Hinkle, Michael L. Sherman, Jonathan D. Gaynor, Ashley N. Rodriguez and Karen Stretch

July 30 2020

Dechert's Financial Services and Finance and Real Estate practice groups have significant experience and are available to assist firms on a collaborative basis to address concerns related to the LIBOR Transition, including guiding a Registrant through any SEC examinations.

Footnotes

1) Examination Initiative: LIBOR Transition Preparedness, National Exam Program Risk Alert, U.S. SEC Office of Compliance Inspections and Examinations (June 18, 2020). The Risk Alert indicates that it "has no legal force or effect: it does not alter or amend applicable law, and it creates no new or additional obligations for any person."

2) LIBOR also is referred to as ICE LIBOR and formerly as the London Interbank Offered Rate.

3) The methodologies used to determine LIBOR for a particular currency and tenor are based on submissions made by panel banks to the LIBOR benchmark administrator, ICE Benchmark Administration Limited (IBA), each London business day. The methodologies and panel banks per currency and tenor used are listed on IBA's webpage. As a UK-based benchmark administrator, IBA is regulated by the UK's Financial Conduct Authority.

4) Libor: Entering the Endgame, Andrew Bailey, Governor of the Bank of England (July, 13, 2020) (including an indication that LIBOR rates directly impact the cash flows and values of an estimated $400 trillion of financial products globally).

5) The Future of LIBOR, Andrew Bailey, then-Chief Executive of the FCA (July, 27 2017).

6) Panel banks have agreed to continue submitting the relevant data through 2021. However, absent an active market for unsecured term lending to banks, the FCA has determined not to compel banks to provide this information after 2021. The limitations of LIBOR as a reference rate have been widely reported, and the July 2020 speech by Andrew Bailey (footnote 4 supra) includes a discussion of this topic.
More generally, and historically, regulatory investigations in Europe and the United States following the 2007-2008 financial crisis revealed that for some years, both preceding and during the financial crisis, the volume of transactions in the interbank markets of the relevant currencies had decreased significantly. It was determined that the panel banks that contribute to the production of LIBOR were relying on their expert judgment, rather than observable market rates, for some of their submissions, and in many cases were manipulating their submissions to the benchmark administrator and, thus, manipulating LIBOR for certain tenors and currencies.

7) RFRs generally measure market rates for secured overnight borrowing. RFRs do not purport to capture the sort of counterparty credit risk or term component that may be represented in unsecured term borrowing rates, like LIBOR or other IBORs; thus, a spread adjustment would be needed for an RFR to serve as a commercially practical replacement reference rate for LIBOR or other IBORs.

8) SOFR and the SOFR Averages are published by the Federal Reserve Bank of New York.

9) For example, regulatory investigations in Europe and the United States following the 2007-2008 global financial crisis revealed that for some years, both preceding and during the financial crisis,

the volume of transactions in the interbank markets of the relevant currencies had decreased significantly. It was determined that the panel banks that contribute to the production of LIBOR were relying on their expert judgment, rather than observable market rates, for some of their submissions, and in some cases were seen as manipulating their submissions to the benchmark administrator (and, thus, manipulating LIBOR for certain tenors and currencies).

10) For example, see SEC Public Statement, Staff Statement on LIBOR Transition (July 12, 2019); for further information, please refer to Dechert OnPoint, SEC Staff Issues Statement on LIBOR Transition; Practical Considerations for Investment Companies, Investment Advisers and Other Financial Institutions in Proactively Addressing LIBOR Cessation and Transition.

11) 2020 Examination Priorities, U.S. Office of Compliance Inspections and Examinations (Jan. 7, 2020) ("The risk-based approach, both in selecting registrants as examination candidates and in scoping risk areas to examine, provides OCIE with greater flexibility to cover emerging and exigent risks to investors and the marketplace as they arise. For example, as our registrants and other market participants transition away from LIBOR as a widely used reference rate in a number of financial instruments to an alternative reference rate, OCIE will be reviewing firms' preparations and disclosures regarding their readiness, particularly in relation to the transition's effects on investors. Some registrants have already begun this effort and OCIE encourages each registrant to evaluate its organization's and clients' exposure to LIBOR, not just in the context of fallback language in contracts, but its use in benchmarks and indices; accounting systems; risk models; and client reporting, among other areas. Insufficient preparation could cause harm to retail investors and significant legal and compliance, economic and operational risks for registrants"). For further information, please refer to Dechert OnPoint, OCIE Releases 2020 Examination Priorities.

12) Typically, the federal securities laws subject Registrants (and those required to be registered) to examination by the SEC. The SEC views examinations as a front-line means to protect investors and ensure compliance with the federal securities laws. Sweep examinations are focused on identified risks, and these examinations tend not to be as broad as routine examinations of Registrants.

13) The sample document request list indicates that the relevant period for filings with the SEC is from January 2019 to present.

LIBOR Summer Update: Regulatory Scrutiny Heats Up on Transition Preparedness - Sherman & Sterling

With fewer than 18 months until the expected cessation of the London Interbank Offered Rate (LIBOR), regulators have developed a keen interest on how financial institutions are preparing to transition from what has been called the "world's most important number." In recent weeks, a number of U.S. and global regulators have issued statements on the need for financial institutions to make actionable progress. On July 13, 2020, John C. Williams, President of the Federal Reserve Bank of New York, said "the importance of transitioning from LIBOR is so great that despite the effects of the COVID-19 pandemic, the overall timeline remains the same."[1] Notably, the transition was the focus of his first speech since the advent of the pandemic on a topic other than economic and monetary policy. Emphasizing the need for the market to "work together to ensure we are all ready for January 1, 2022," Mr. Williams stressed that "[i]t doesn't matter whether you're a large global bank or a local company with a handful of employees, you need to be prepared to manage your institution's transition away from LIBOR."

In this memorandum, we summarize some of the more recent statements by regulatory authorities on the LIBOR transition.

Global Regulatory Bodies Urge Action

The LIBOR transition has been called an "essential task" by the Financial Stability Board (FSB), and one that is directly related to global financial stability.[2] With the transition having been identified as a G20 priority, the FSB has joined the Basel Committee on Banking Supervision in issuing a report that identifies several remaining supervisory and other challenges to the transition, based on surveys taken by the FSB, the Basel Committee and the International Association of Insurance Supervisors.[3]

Among other findings, the report noted:

- Authorities are expecting financial institutions to make "significant progress" in 2020.
- From a microprudential perspective, the key concerns related to the LIBOR transition are in terms of operational risks; legal risks; prudential risks; conduct, litigation and reputational risks; hedging risks; and accounting risks.
- From a system-wide perspective, the uncertainty about the future of LIBOR as we get closer to the end of 2021 could increase macroprudential risks from heightened volatility or disorderly markets, as users are unable, unaware or unwilling to move to the new benchmarks.
- Challenges relating to contract amendments and the lack of term rates for risk-free rates (RFRs) are widely cited as the main obstacles to a successful transition for financial institutions.
- Lack of liquidity in new RFR products and the uncertainty of when sufficient liquidity will be achieved make it difficult to motivate market participants to shift to RFRs.
- For derivative contracts, financial institutions are awaiting the finalization of the ISDA fallback language and largely plan to adopt the ISDA protocol for the alternative reference rates. For cash products, authorities in many jurisdictions have raised concerns about the complexity of incorporating robust/standardized fallbacks into legacy contracts that do not have them, and the required operational readiness to facilitate their use.
- Authorities are concerned about the differing supervisory expectations for transition across jurisdictions, especially on legal and conduct risks. The varying transition timelines for different products is complicating the monitoring. There is a lack of clarity regarding the readiness of external systems used by financial institutions and others. Supervisors also have limited insight into, and communication with, the non-regulated clients of regulated financial institutions.
- Authorities have identified number of available tools of increasing supervisory intensity to speed up transition in case the increased monitoring and scrutiny do not prove sufficient. In the first stage these would include meetings with banks' senior management, board of directors and the issuance of non-binding best practices. More intensive measures may include on-site inspections and requests to improve operational capabilities (e.g., risk-mitigation plans, requirements to increase resources aimed at supporting transition). In exceptional circumstances, some jurisdictions pointed to the use of capital charges and restrictions on specific product offerings, and finally administrative sanctions or other legal actions.

US Banking and Consumer Regulators Ramping Up LIBOR Transition Focus

On July 1, 2020, the Federal Financial Institutions Examination Council (FFIEC) issued a statement highlighting the financial, legal, operational and consumer protection risks that financial institutions will need to address as they prepare to transition away from LIBOR.[4] The discontinuation of LIBOR will affect nearly every financial institution, though larger institutions and those engaged materially in capital markets activities will face a more substantial impact.

The FFIEC’s statement does not constitute new guidance, nor it is a regulation, but it suggests an increasing emphasis within the bank examiner community that the LIBOR transition needs to be properly planned for and prioritized.

According to the FFIEC’s statement, institutions should first identify risks in their own on- and off-balance sheet assets and contracts that reference LIBOR, including derivatives, commercial and retail loans, investment securities and securitizations. Potential risks include:

- operational difficulty quantifying the exposure;
- financial, valuation and model risk related to reference rate transition;
- inadequate risk-management processes and controls to support the transition;
- consumer protection-related risks;
- limited ability of third-party service providers to support operation changes; and
- potential litigation and reputational risk arising from reference rate transition.

Following an identification of key risks and dependencies, institutions should quantify their LIBOR exposure. Generally, exposure is measured as the size of any activity and the number of counterparties or consumers with financial contracts that reference LIBOR across all products. This quantification should also include an assessment of the viability of existing contract fallback language. For contracts with inadequate fallback language, institutions need to develop a remediation strategy. To limit additional exposure, institutions should also discontinue the origination or purchase of LIBOR-indexed instruments.[5] For derivatives exposures, the FFIEC recommends that financial institutions and their clients eventually adhere to the International Swaps and Derivatives Association’s protocol upon its release.

In planning for the transition, institutions should consider the various legal, operational and other risks associated with various consumer financial products that reference LIBOR. Any replacement rate not already included in fallback language may impact consumers, increase reputation risk and result in legal exposure to institutions and the financial industry. Transition plans should, among other things, identify affected consumer loan contracts, highlight necessary risk mitigation efforts and address development of clear and timely consumer disclosures regarding changes in terms.

Relationships with third-party service providers is another key aspect of sound transition planning. When addressing third-party service providers that use LIBOR to provide valuation/pricing, modeling, accounting or other services, institutions should evaluate the preparedness and transition planning of those providers and consider whether they will be able to accommodate an alternative reference rate.

Significantly, the FFIEC has indicated that “the supervisory focus on evaluating institutions’ preparedness for LIBOR’s discontinuation will increase during 2020 and 2021, particularly for institutions with significant LIBOR exposure or less-developed transition processes.” Looking ahead, supervisory staff will ask institutions about their exposures to LIBOR-indexed instruments and details on their specific plans to transition away from LIBOR during regularly scheduled examinations and monitoring activities. In particular, the FFIEC identified the following areas as points for discussion with supervisory staff:

- identification and quantification of LIBOR exposure across product categories and lines of business;
- risk assessment of LIBOR exposures, which may include scenario testing, legal review and other analysis;
- transition plans with milestones and key completion dates addressing areas such as:
- strategies to inventory, analyze and assess risk posed by existing contracts;

- strategies to identify replacement rates, modify spreads and revise existing contracts, as necessary;
- strategies to address third-party risk management;
- potential impact to the institution's customers;
- communication plans for engaging with customers and other stakeholders; and
- plans to identify, monitor and resolve system and other operational constraints;
- management's assessment of revisions that may be necessary to update the institution's policies, processes and internal control systems;
- responsibility for LIBOR transition oversight (to a committee, team or officer); and
- progress reporting to a supervised institution's board of directors and senior management on the LIBOR transition plan.

While there is a recognition that the supervisory focus itself will depend on the size and complexity of each institution's LIBOR exposures, examiners expect "[a]ll institutions" to have transition plans and risk management processes in place.

SEC Eyes LIBOR Preparedness of Registrants

On June 18, 2020, the Securities Exchange Commission's (SEC) Office of Compliance Inspections and Examinations announced the details of an examination initiative specifically focused on the LIBOR preparedness of firms on the "buyside" of LIBOR-based products: SEC-registered investment advisers, broker-dealers, investment companies, municipal advisors, transfer agents and clearing agencies.[6] The announcement was accompanied by a sample document request that included items ranging from the assessments and plans undertaken to date, the identity of third parties that have been engaged to assist with the transition and materials referencing the LIBOR transition that have been provided to a registrant's board of directors. We have summarized the SEC's release in our memorandum of July 20, 2020.

Next Steps

Financial institutions of all kinds need to take recent statements by regulators seriously. Indeed, many financial institutions have already designed transition-related infrastructure and formulated plans. But having plans is not the same as actually executing them. There needs to be a full understanding of how to properly mitigate the various legal and other risks that arise from such tasks as executing contract amendments, communicating with customers and counterparties and responding to inquiries from regulators.

Footnotes

[1] John C. Williams, President and Chief Executive Officer, Federal Reserve Bank of New York, "537 Days: Time Is Still Ticking" (July 13, 2020).
[2] FSB, "FSB Statement on the Impact of COVID-19 on Global Benchmark Reform" (July 1, 2020).
[3] FSB and the Basel Committee on Banking Supervision, "Supervisory Issues Associated with Benchmark Transition: Report to the G20" (July 9, 2020).
[4] FFIEC, "Joint Statement on Managing the LIBOR Transition" (July 1, 2020). The FFIEC is composed of the principals of the following: the Federal Reserve Board, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, the State Liaison Committee and the Consumer Financial Protection Bureau. Various agencies with representatives on the FFIEC have made separate statements indicating that the LIBOR transition is a key supervisory priority for 2020 and 2021.
[5] The U.S. Alternative Reference Rates Committee (ARRC) has recently issued a set of "recommended best practices," which contained specific timelines for a variety of products.

According to the ARRC, USD LIBOR should not be used in new transactions, with timing varying on the particular product: for floating rate notes, by December 31, 2020; for business loans, by June 30, 2021; for mortgages, by September 30, 2021; for securitizations other than CLOs, by June 30, 2021, and for CLOs by September 31, 2021; and for derivatives, by June 30, 2021. See "ARRC Recommended Best Practices for Completing the Transition from LIBOR" (May 27, 2020).
[6] SEC, "Examination Initiative: LIBOR Transition Preparedness" (June 18, 2020).

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July 23 2020

Moody's Announces Completion of a Periodic Review of Ratings of MBIA Inc.

New York, July 31, 2020 — Moody's Investors Service ("Moody's") has completed a periodic review of the ratings of MBIA Inc. and other ratings that are associated with the same analytical unit. The review was conducted through a portfolio review in which Moody's reassessed the appropriateness of the ratings in the context of the relevant principal methodology(ies), recent developments, and a comparison of the financial and operating profile to similarly rated peers. The review did not involve a rating committee. Since 1 January 2019, Moody's practice has been to issue a press release following each periodic review to announce its completion.

This publication does not announce a credit rating action and is not an indication of whether or not a credit rating action is likely in the near future. Credit ratings and outlook/review status cannot be changed in a portfolio review and hence are not impacted by this announcement. For any credit ratings referenced in this publication, please see the ratings tab on the issuer/entity page on www.moodys.com for the most updated credit rating action information and rating history.

Key rating considerations are summarized below.

The Ba3 senior unsecured debt rating of MBIA Inc. (MBIA) and Baa2 insurance financial strength (IFS) rating of National Public Finance Guarantee Corporation (National) reflect National's capital resources, the meaningful delinking from MBIA Insurance Corporation (MBIA Corp., IFS rating Caa1) and the amortization of its insured portfolio. Offsetting these strengths is National's run-off status, which results in a weaker alignment of interests between shareholders and policyholders, its significant exposure to below investment grade credits, as well as the firm's transition toward a higher risk investment portfolio, which includes substantial investments in debt and equity securities issued by MBIA.

The Caa1 IFS rating of MBIA Corp. reflects the firm's weak liquidity and capital position following large claims payments in recent years, as well as uncertainties associated with the outcomes of several ongoing loss recovery efforts, which could put either upward or downward pressure on the rating.

The Caa1 IFS rating of MBIA Mexico, S.A. de C.V. (MBIA Mexico) is based on the implicit and explicit support from its parent, MBIA Corp.

This document summarizes Moody's view as of the publication date and will not be updated until the next periodic review announcement, which will incorporate material changes in credit circumstances (if any) during the intervening period.

The principal methodology used for this review was Financial Guarantors Methodology published in November 2019. Please see the Rating Methodologies page on www.moodys.com for a copy of this methodology.

This announcement applies only to EU rated and EU endorsed ratings. Non EU rated and non EU endorsed ratings may be referenced above to the extent necessary, if they are part of the same analytical unit.

This publication does not announce a credit rating action. For any credit ratings referenced in this publication, please see the ratings tab on the issuer/entity page on www.moodys.com for the most updated credit rating action information and rating history.

As Virus Aid Talks Stalemate, Trump Scorns Help for Cities.

WASHINGTON (AP) — President Donald Trump on Wednesday dismissed Democratic demands for aid to cash-strapped cities in a new coronavirus relief package and lashed out at Republican allies as talks stalemated over assistance for millions of Americans. Another lawmaker tested positive for the virus.

Republicans, beset by delays and infighting, signaled a willingness to swiftly approve a modest package to revamp a $600 weekly unemployment benefit that's running out. But House Speaker Nancy Pelosi, D-Calif., roundly rejected that approach as meager, all but forcing Republicans back to the negotiating table. Without action, the aid expires Friday.

"We're nowhere close to the deal," said White House chief of staff Mark Meadows. He said they're "miles apart."

Stark differences remain between the $3 trillion proposal from Democrats and $1 trillion counter from Republicans, a standoff that is testing Trump and Congress ahead of the November election and putting aid for communities nationwide at risk.

Pelosi said the best way to reopen schools and the economy is to defeat the virus, and that can't be done with the "skinny" bill Republicans are rushing to cobble together. "They still don't get it," Pelosi said.

The virus toll continued to mount in the U.S., with 4.4 million confirmed cases and deaths passing 150,000. Outspoken Rep. Louie Gohmert, R-Texas, who often objects to mask-wearing, became the latest lawmaker at the Capitol to test positive for the virus.

Money for states and cites is a crucial dividing line as local governments plead for help to shore up budgets and prevent deeper layoffs as they incur COVID-19 costs and lost tax revenue in shutdown economies.

Trump complained about sending "big bailout money" to the nation's cities, whose mayors he often criticizes.

"It's a shame to reward badly run radical left Democrats with all of this money they're looking for," he said at the White House.

Democrats proposed nearly $1 trillion for the local governments, but Trump and Republicans are resisting sending the states and cities more cash.

Instead, the GOP offers states flexibility to use $150 billion previously allotted for the virus on other needs. At one point this year, Senate Majority Leader Mitch McConnell, R-Ky., said states could just declare bankruptcy.

Governors and mayors who have been urging Congress to help warned that inaction would hit hard.

“If Congress fails to dedicate financial assistance to state and local governments, it will force deep cuts to the very programs workers and families need to get back on their feet,” said Tara Lee, spokeswoman for Washington Gov. Jay Inslee, a Democrat.

Most states have built up reserves since the Great Recession, but the pandemic stopped swaths of the economy in March.

Municipal cutbacks and layoffs began. By June, about 1.5 million fewer people were working for governments in the U.S. compared with February, according federal data. More than half the government layoffs have been in education, a sector facing daunting costs as schools prepare to reopen to students.

Last month, Moody’s Analytics said states were facing a cumulative budget gap of $312 billion over the next two years and local governments would need nearly $200 billion more. Some estimates have calculated the budget gaps as even bigger.

“These are not fancy actions,” said Democrat Nan Whaley, the mayor of Dayton, Ohio, and vice president of the U.S. Conference of Mayors. “These are actions around emergency medical providers, fire, police, services the president claims he values.”

It’s clear that Democrats are trying to push an advantage in the negotiations because Republicans are so deeply divided over the prospect of big government spending.

Trump dismissed the GOP bill as “semi-irrelevant” as his team launched talks with Pelosi and Senate Democratic leader Chuck Schumer of New York.

McConnell defended his approach as “serious,” but he was unable to bring his majority on board. Many Republicans came around to the White House’s pitch for a smaller package by Friday.

That’s when the $600 unemployment benefit boost as well as a federal eviction moratorium on millions of rental units expire, potentially sending households into devastating turmoil.

Speaking at the White House, Trump signaled his interest in reaching a deal and averting an eviction crisis.

Treasury Secretary Steven Mnuchin, who is leading the negotiations, said “the president is very focused” on unemployment aid and assistance for renters.

But the president said his GOP allies should “go back to school and learn” after they balked at $1.7 billion for FBI headquarters in the bill. Trump wants the FBI’s central building to remain in Washington, across the street from his Trump International Hotel. McConnell opposed the request as unrelated to virus relief.

But Pelosi showed no interest in going small bore on aid. Asked what she thinks of that approach, Pelosi said: “Nothing. Not even ‘not much.’ Nothing.”

Republicans propose cutting the $600 weekly unemployment benefit bump to $200 a week as an incentive to push people back to work. On the eviction freeze put in place in March, Democrats proposed extending it, but Republicans did not include it in their bill and Trump hasn’t specified what he’s wants to do.

“There’s no consensus on anything,” said Sen. John Cornyn, R-Texas.

At the Capitol, Pelosi used a zoo metaphor to explain to Mnuchin and Meadows the divide. You see a giraffe, you see a flamingo, Pelosi told the White House team late Tuesday during private talks. These two bills, she said, “aren’t mateable.”

The conversations were relayed by two people who were not authorized to publicly discuss the private session and spoke on condition of anonymity.

The Associate Press

By LISA MASCARO AP Congressional Correspondent Jul 29, 2020 Updated Jul 29, 2020

Associated Press writers Geoff Mulvihill in Cherry Hill, New Jersey; Rachel La Corte in Olympia, Washington; and Jill Colvin, Mary Clare Jalonick and Andrew Taylor in Washington contributed to this report.

Pandemic Brings Fresh Challenges for City Budgeting.

Officials from Philadelphia and other cities discuss how they’re responding to economic shock

For city governments, the budget process is never easy. But this year, the COVID-19 pandemic and resulting recession have made that work exceedingly difficult—and the pain is only just beginning.

This was the consensus from several top city budget officials speaking at a July 8 online panel discussion organized by The Pew Charitable Trusts. The spending plans being adopted by major cities throughout the country are based on revenue estimates containing more than the usual dose of uncertainty.

“We expect there will be need for some adjustments,” said Philadelphia Budget Director Marisa Waxman, referring to the $4.8 billion budget the city adopted in late June. “This has been a very challenging time. Philadelphia will survive; it has been around for 300 years and isn’t going away.”

The virtual panel discussion featured Waxman, San Francisco Controller Ben Rosenfield, Houston Deputy Finance Director William Jones, and budget consultant John W. Hill, who served as Detroit’s chief financial officer during its 2013 bankruptcy. The hour-long conversation before an online audience of more than 100 city policymakers, public finance experts, and other stakeholders was part of Pew’s project on local fiscal oversight.

Houston and Philadelphia have approved spending plans for the fiscal year that started July 1. Although San Francisco's fiscal year also began July 1, its leaders delayed the new budget for three months to give themselves more time to deal with the economic shock.

During the discussion, the officials detailed how they scrambled to make cuts and offset the decline in local revenues, which was greater in cities like Philadelphia that rely more on income and sales taxes than on less-volatile property taxes. (Unlike the federal government, local governments cannot run budget deficits.) For now, none of the jurisdictions plans to reduce city employee pension contributions or borrow new money to close budget gaps. Each received funding from the federal coronavirus aid package, which must be spent on COVID-19-related expenses by December.

Houston, whose mayor initially talked about widespread furloughs of city workers, managed to avoid those and pass a budget roughly equal to the previous year's $2.5 billion spending plan. The city is seeing a big drop in sales tax revenue, and the law limits the amount it can get from property taxes, its main source of revenue, Jones said. This left Houston with a gap of about $170 million, which it filled by cutting costs, by taking about $90 million from its reserves, and by "redeploying" workers and jobs into COVID-19 relief work.

That redeployment enabled Houston to fund those workers and jobs with some of its $404 million in coronavirus aid, Jones said. Houston also projected having enough revenue this year to avoid tapping into its small rainy day fund. Neither Philadelphia nor San Francisco took such steps with that aid ($276 million and $154 million, respectively), and neither city is expected to replenish its rainy day fund this year.

San Francisco is likely to cut its fiscal 2021 budget below last year's $6.5 billion, Rosenfield said. The city's property tax revenues have held steady, but just about everything else has plunged: Hotel tax revenues this spring, for example, fell from $100 million to approximately $10 million. The projected budget gap stands at $750 million. The mayor has ordered all departments to plan for 10% cuts and brace for even more.

Like Waxman, Rosenfield understands that the uncertainty surrounding the coming months means that San Francisco's budget will probably have to be revised early and often. "We have an office pool going on how soon the first readjustment will have to be made. I'm guessing three months," Rosenfield said. In addition, he expressed hope that cities will increasingly use technology to deliver services—such as license renewals—remotely and more efficiently, a point echoed by the others.

Philadelphia's $4.8 billion operating budget is about 8% smaller than the one that Mayor Jim Kenney proposed in early March before the outbreak. Then the recession hit sales tax and income-based taxes hard: The city initially warned of a $649 million shortfall, then increased it to $749 million as the numbers came in. To close the gap, the city took $229 million from its reserves and rainy day fund and made up the rest with targeted tax and fee increases as well as layoffs. But that has left little cushion for another shock.

"We won't be able to dig $100 million from the seat cushions again," Waxman said, agreeing with the others that some of the budget-balancing tactics used this year won't be available next year. Among the cities with current officials on the panel, only Philadelphia has laid off city workers at this point—454 in total, mostly part-time and temporary employees.

Hill said the economic shock, even though it came suddenly, is not a passing blip after which urban life—and the items and activities that cities tax—will return to normal. "There will be some changes in how corporations do business," he said, "how we deal with physical infrastructure, how we deal with distance learning and work—and those are likely to be permanent."

These changes and others, Hill said, are likely to complicate city budgeting for years to come.

The Pew Charitable Trusts

By: Larry Eichel & Thomas Ginsberg

July 27, 2020

[Federal Aid Delay Will Mean Damaging State Cuts With Long-Term Impacts.]

States need substantial federal aid — now — to stem the fiscal crisis caused by COVID-19 and the resulting recession. States' revenues are plummeting and their costs are rising and, as a result, they face budget shortfalls that could total more than $550 billion through fiscal year 2022. Without substantial federal aid, they likely will address these shortfalls by deeply cutting education, health care, and other critical program areas; laying off even more teachers and other workers than they already have; and canceling contracts with many businesses.

State are about to make damaging, permanent budget cuts. Due to COVID-19, state revenues fell sharply and their costs rose dramatically when states had only three months left in their last fiscal year (2020). To balance their budgets while waiting for federal aid and assessing the full extent of the recession's impact on their budgets, states used their traditional ways of addressing mid-budget shortfalls — tapping rainy day funds and other reserves, postponing projects, and furloughing workers. But many of these less-damaging budget fixes are no longer available for the current fiscal year.

States haven't finished shaping their current budgets. Many state budgets for the current, 2021 fiscal year (which started on July 1 in most states) depended on revenues that are now expected to be substantially lower and did not fully account for costs that have risen.

Continue reading.

Center on Budget and Policy Priorities

by Elizabeth McNichol

July 30, 2020

[Roundup: Need for More State Fiscal Relief Continues.]

States remain in dire straits due to the COVID-19 pandemic and resulting economic crisis; we estimate that their budget shortfalls will total $555 billion over state fiscal years 2020-2022. These figures underscore the continued urgency of the President and Congress enacting substantially more fiscal relief and maintaining it for as long as economic conditions warrant.

Here are some recent CBPP pieces detailing the need for state fiscal relief, the harmful budget cuts states are already beginning to make, and why recent proposals from Senate Republicans are severely inadequate.

States Continue to Face Large Shortfalls Due to COVID-19 Effects

We now project that the state budget shortfalls expected from COVID-19's economic fallout will total a cumulative $555 billion over state fiscal years 2020-2022.

Continue reading.

CBPP

JULY 27, 2020 AT 4:30 PM

Municipalities Tapping Markets To Finance Gaps: Mysak (Radio)

MUNIS IN FOCUS: Joe Mysak, Munis Editor for Bloomberg Briefs, discusses muni markets: lack of stimulus deal and how governors and mayors are warning of big cuts. Hosted by Paul Sweeney and Vonnie Quinn.

Play Episode

Bloomberg Radio

July 31, 2020 — 11:25 AM PDT

Despite GOP Bill, Muni Market Keeps Faith in U.S. Rescue for States.

- **Analysts expect aid with budget gaps to emerge in compromise**
- **Some bonds gain even with massive fiscal crisis ahead**

Wall Street appears confident that Washington won't abandon states and cities that are veering into what may be the worst financial crisis in decades.

A day after Senate Republicans released a $1 trillion plan that provided no new aid to help governments contend with the deep budget shortfalls left by the pandemic shutdowns, analysts said they still expect such help to be included in any compromise with Democrats.

The expectation that states and cities would receive an influx of funds has helped support the $3.9 trillion municipal-bond market, where a steady flow of cash has driven yields to the lowest in more than sixty years.

On Tuesday, the prices of some top-rated debt edged higher, with 10-year yields holding at just 0.68%. So did the bonds of California, Illinois and New York's Metropolitan Transportation Authority, all of which are feeling the hit of the recession.

Kathleen McNamara, senior municipal bond strategist at UBS Global Wealth Management, said the trading prices show that analysts and investors expect that states and cities will ultimately receive some financial assistance. She said Wall Street is anticipating between $400 billion to $500 billion of such aid, roughly half what Democrats included in the House bill that passed in May.

“Most market participants think there will be a compromise,” McNamara said. “We have zero versus a trillion. The final outcome is going to be somewhere in the middle.”

States alone may face shortfalls of $555 billion through 2022, exceeding those left behind after the last recession over a decade ago, according to the Center on Budget and Policy Priorities. Cities and counties are also forecasting large deficits.

Without help, governments will be forced to cut spending, fire employees or raise taxes, all of which could further slow any economic recovery.

But Bank of America Corp. analysts have said they expect as much as $400 billion in aid by the third quarter, while Morgan Stanley has forecast they will get as much as $500 billion.

Eric Kazatsky, municipal strategist for Bloomberg Intelligence, said that he expects Congress to meet somewhere in the middle of the two parties’ proposals, which would put the aid in line with what banks have been forecasting.

He said the devastating budget figures released by states and cities so far, paired with the spike in virus cases across the country, will worsen the fiscal situation facing municipalities. He said they may need even more than the $1 trillion House Democrats proposed in order to “get everybody on their feet again.”

“I’m not sure if even that’s enough,” he said.

Bloomberg Markets

By Danielle Moran, Shruti Singh, and Emmy Lucas

July 28, 2020, 10:46 AM PDT

— With assistance by Amanda Albright

Governors and Mayors Warn of Drastic Spending Cuts Without New Aid.

- **Republican plan compares with $1 trillion in Democrats’ bill**
- **N.Y. schools, localities face 20% cut without fed help: Cuomo**

After Senate Republicans balked at extending new federal aid to help cover states’ and cities’ swelling budget shortfalls, governors and mayors warned that they’re facing drastic spending cuts that will put the nation’s economic recovery at risk.

Senate Majority Leader Mitch McConnell and other top Republicans on Monday released a $1 trillion package, setting off negotiations with Democrats. The plan doesn’t include additional funding to address states and local government budget deficits, a stark contrast to the approximately $1 trillion that Democrats included in the bill the House passed in May. It does loosen restrictions on the use of previously allocated funds and would provide about $105 billion in funds for schools and $16 billion for expenses tied to Covid-19 testing.

But without broader aid from Washington, the budget crisis building in state capitals and city halls threatens to worsen the economic downturn by forcing governments to cut spending deeply, fire workers or raise taxes. After the last recession over a decade ago, such steps exerted a major drag on the recovery for more than two years, according to Commerce Department figures.

New York Governor Andrew Cuomo said the state would be forced to slash aid to localities, hospitals, and schools by 20% without federal aid. State revenues in New York have been decimated, he said.

“The funding has to come from somewhere,” Cuomo said on conference call with members of the media. “It can’t be more clear. It can’t be more obvious. No fog of war on this one. This is real consequences.”

Most states have already allocated the bulk of funding they received from the Cares Act, limiting the impact of a GOP plan allowing that money to be used to fill budget gaps — instead of just covering virus-related costs, the National Conference of State Legislatures said in a statement on Tuesday.

“For many states it will take years to recover from the abrupt drop-off in revenue caused by this pandemic,” the group said.

If Congress doesn’t come through, residents and commuters will be on the hook. New York state property taxes, subway fares, and even bridge tolls will go up if the federal government does not provide aid, Cuomo said on a conference call with reporters.

“There is nothing conceptual or abstract about this exercise. It’s going to have a dramatic practical effect on New York,” Cuomo said.

New York State, which received $5.1 billion in funding for coronavirus-related expenses, has committed $2.2 billion of those funds to respond to the public health crisis, with the rest allocated to be spent by the end of the year on operations like testing and contact tracing, according to a spokesperson for the New York State Division of the Budget. California has already appropriated the $9.5 billion that the state received and is in the process of distributing those funds, according to a spokesperson for the California Department of Finance.

Michigan’s budget office says more aid is needed to avoid cuts since it has already allocated $3.1 billion in Cares Act funding as part of its public health and safety response, according to its website. The office says the state has seen a more than $6 billion revenue loss over fiscal 2020 and 2021.

“Because of this deadly virus, every state in the nation — no matter if they’re red or blue — has challenges, including dramatic shortfalls in revenues that fund vital services,” Jordan Abudayyeh, a spokesperson for Illinois Governor J.B. Pritzker, said in a statement. “The federal government needs to help every state weather this pandemic so vital services continue without interruption.”

States alone are projected to face budget shortfalls of about $555 billion through 2022, according to the Center on Budget and Policy Priorities.

While any aid in the Republican plan was expected to fall far short of what Democrats proposed — given their intention to hold the overall cost of the stimulus to $1 trillion — Wall Street analysts and local officials are counting on some money from Washington. Bank of America Corp. analysts have said they expect as much as $400 billion in aid by the third quarter, while Morgan Stanley has forecast they will get as much as $500 billion.

Any deal between Republicans and Democrats that ultimately leaves out such aid will deal a fresh hit to many states, including California, that have been counting on federal funds. State and local governments have already cut nearly 1.5 million jobs since the pandemic shutdowns began.

According to Moody's Investors Service, as of July, five states enacted temporary spending plans, allowing them to briefly avoid some difficult decisions as they contended with the uncertainty of the coronavirus and waited for federal aid. That includes New Jersey, where lawmakers passed a three-month stopgap spending plan. Governor Phil Murphy has warned that tax increases may be necessary to cope with the fiscal fallout from the pandemic if no help arrives.

California's budget deferred $12.9 billion in payments to schools and community colleges and borrows $9.3 billion from other funds to avoid steep cuts in the hope that Washington would send additional aid by October. Illinois, the lowest-rated state, relied on borrowing to plug its budget gap.

The leader of the American Federation of State, County and Municipal Employees union, Lee Saunders, said in a statement on Monday that Senate Republicans are "seemingly content to let state and local governments go bankrupt."

The head of the National League of Cities, Clarence Anthony, said the Republican proposal "is out of touch with the grim reality facing communities large and small across the nation."

"There will be no national economic recovery without an clear commitment from the federal government to address the staggering revenue shortfalls and skyrocketing costs that local governments have been forced to incur," he said in a statement. The Republican proposal ignores "economists who have cautioned lawmakers about the devastating long-term impacts of failing to address local government revenue shortfalls."

Bloomberg Politics

By Shruti Singh and Amanda Albright

July 27, 2020, 4:15 PM PDT Updated on July 28, 2020, 9:30 AM PDT

— With assistance by Erik Wasson, Laura Litvan, Romy Varghese, Fola Akinnibi, Martin Z Braun, and Keshia Clukey

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[Local, State Aid In Question As GOP Loiters On Stimulus (Radio)]()

MUNIS in FOCUS: Eric Kazatsky, Senior U.S. Municipals Strategist for Bloomberg Intelligence, discusses the lack of progress on Federal stimulus. Hosted by Paul Sweeney and Vonnie Quinn.

[Play Episode]()

Bloomberg Markets

July 24, 2020 — 10:14 AM PDT

[State, Local Disagreements About Coronavirus Funding Boil Over.]()

In Miami-Dade County, officials with the city of Miami are threatening a possible lawsuit, saying the county has shortchanged them. County officials say they need to be conservative with the limited funding.

The limited amount of federal coronavirus aid available to local governments is leading to legal disputes between some cities, counties and states over how the funds are disbursed.

Miami Mayor Francis Suarez said this week that the city is exploring the possibility of taking legal action against Miami-Dade County after lawmakers reduced the amount of money they plan to dole out to 34 cities located in its boundaries.

“Our citizens were entitled to receive, based on population, $81 million in federal help,” Suarez said. “The county proposal would get our citizens as little as $8 million.”

Continue reading.

Route Fifty

By Andrea Noble,
Staff Correspondent

JULY 29, 2020

Virus’ Hit to Sales Tax Revenues is Coming Into Focus and It’s Not Good.

New data shows a 10%, or $42 billion, drop in state and local sales tax receipts in the second quarter. Factors like whether groceries are taxed appear to be affecting collections in some states.

State and local government sales tax collections nationwide were down by nearly 10% during the second quarter of this year, compared to the same three-month period last year, according to federal estimates released this week.

The figure gives a sense of how badly the economic crash caused by the coronavirus is eating into an important revenue source for many states and localities. The U.S. Bureau of Economic Analysis estimates show that, across April, May and June, state and local sales tax revenues totaled $389.5 billion, down 9.8% from $431.8 billion during the second quarter of last year.

A roughly $42 billion decline in revenues is not good when it comes to states and localities avoiding cuts to services and layoffs in the coming months and into next year.

Lucy Dadayan is a researcher with the Urban-Brookings Tax Policy Center who actually assembles a significant portion of the data that the Bureau of Economic Analysis uses to come up with a set of state and local tax receipt estimates it released this week.

“We know that it’s double digit declines, at least in the months where the economy was mostly shut down,” she said, referring to the recent percentage decreases in sales tax revenues.

In an analysis published earlier this month, Dadayan said that May sales tax receipts for just states shrank by nearly $6 billion, or 21%, compared to May 2019.

States where the virus hasn’t been as bad tend to have seen their sales tax collections fall less, Dadayan said. The same goes for states that have imposed less-strict mandates when it comes to business closures and stay-at-home orders.

But, on the flip-side, some states that adopted more relaxed policies to protect against the spread of the virus have seen it flare up, and that can be bad for commerce.

In Florida, a state that became a hotspot for the virus over the past few weeks, sales tax revenues were down by about 15% in June, Dadayan said. While the state had extended a payment deadline, Dadayan said she believes the drop is mostly attributable to the virus' surge.

During fiscal year 2019, Florida relied on general state sales taxes for between 60% and 65% of its total tax revenues, according to information compiled by the Tax Policy Center. Other states that depend heavily on the tax include Texas, Washington, South Dakota, Nevada and Tennessee.

State and local officials around the country have been looking for ways to rework their budgets to account for thinner tax and fee collections, while they also must pay for added expenses that the virus outbreak has brought on. An infusion of about $200 billion of federal aid to states, localities and schools included in an emergency law that President Trump signed in late March has helped.

But many state and local leaders say more federal aid is necessary. Even so, Republicans in Congress haven't shown much enthusiasm so far for another state and local relief package.

There is a wide variety of state and local revenues that could ultimately be affected by the economic fallout from the virus—which has contributed to historic job losses, business closures, bankruptcies, and collapses in business travel and tourism.

The BEA data show that state and local income tax collections were down about 7% in the second quarter, compared to the second quarter of last year. But this drop is likely tied to most states extending income tax filing deadlines to July, which is in the third quarter.

If states do take a major hit to income taxes due to their residents losing work, or other slowdowns in commerce, this is apt to show up in next year's tax collections, given that this year's payments are for earnings in 2019, prior to the pandemic.

Declines in property tax revenues—a crucial source of funding for local governments and school districts—are also more likely to lag, coinciding with any eventual slides in property value that won't immediately show up in tax receipts. Commercial real estate, in particular, could be a cause for concern here if office and retail spaces that are empty stay so for many months.

Other revenues, like highway tolls, transit fares and parking fees, are all in line to fall as well.

But in terms of general government tax collections, sales taxes are one of the main revenue streams where the fiscal damage from the virus is readily apparent in data that's now available.

That said, understanding what is happening in each state with sales tax collections, and how sales tax revenues changed month-to-month through June, is complicated by factors like differences in what is subject to sales tax in each state and delayed payment deadlines.

"It's a mixed picture, it's very messy for a number of reasons," Dadayan said.

She pointed out that in June there was an uptick in sales tax collections, with the national average growing by about 5%. But she added: "That doesn't tell the story at all."

The June increase to some extent resulted from states like California and Connecticut delaying the deadline for when businesses had to turn in their sales taxes. In other words, at least some of the June bump had to do with businesses paying taxes that would have otherwise been due earlier, rather than being a sign of surging economic activity.

There are also indications that states that tax grocery sales are faring somewhat better than those that do not, Dadayan said.

Beyond taxes collected on usual grocery sales, people have been eating-in more, and therefore buying more groceries, due to restrictions on restaurant service and concerns about the virus spreading in public places. There was also some panicked grocery buying earlier in the outbreak, when people stocked up on items like canned goods and cleaning supplies.

The added revenues from taxes on groceries may help to steady state coffers. But taxes on food and similar necessities are also regressive, placing an outsized burden on poorer households who spend a greater share of their income on those goods than wealthier people.

Dadayan said another factor buffering states from worse sales tax losses is that most of them enacted new laws to tax online retail transactions following a landmark U.S. Supreme Court ruling in 2018 that cleared the way for them to do so more easily.

Route Fifty

By Bill Lucia,
Senior Reporter

JULY 31, 2020

Fitch Fiscal 2019 Median Ratios for U.S. Colleges and Universities (Performance Holds but Revenue Pressures Persist)

Fitch Ratings sees steady margins amid pressured revenue for U.S. colleges and universities in fiscal 2019 amid thin prospects for growing student-fee revenue and persistent demand pressures. Credit gaps continue to widen, particularly for institutions rated in the 'BBB' rating category and below. Liquidity and leverage metrics were stable, marked by some growth in debt issuance countered by solid investment market performance. Median ratings were steady at 'AA' for public institutions and 'A–' for private institutions. Fiscal 2019 ratios do not show any effects from the coronavirus pandemic on university operations, but they are expected to be significant in fiscal years 2020 and 2021. We expect more rating and rating outlook pressure on both regional public and smaller, lower-rated private universities due to the pandemic. Operating Performance Stable Median operating results for public and private universities remained largely stable again in fiscal 2019, particularly on a cashflow basis and for institutions in the 'A' rating category and higher.

ACCESS REPORT

Mon 27 Jul, 2020 – 12:00 PM ET

Fitch: Medians Resilient For U.S. Colleges; Stiff Test Begins in the Fall

Fitch Ratings-Chicago-27 July 2020: Medians held steady for U.S. colleges and universities this past year, though a new Fitch Ratings report says that the ratings gap between larger institutions and smaller, private schools will likely widen heading into the fall 2020 academic season.

‘Prospects for growing student-fee revenue remain thin and demand pressures will persist as universities focus on enhancing affordability and limiting tuition student cost increases,’ said Director Emily Wadhwani. ‘Somewhat constrained operating appropriations and external funding for public institutions will suppress net operating revenues and cash-flow operating margins further.’

Liquidity and leverage metrics were stable in fiscal 2019, while debt issuance increased marginally, countered by solid investment market performance. Median portfolio ratings held steady at ‘AA’ for public institutions and ‘A-‘ for private institutions. Across the public and private institution portfolios, median coverage of current debt service and the median current debt burden were flat in fiscal 2019, reflecting moderate new money debt issuance, advantageous refunding issuance and relatively steady cash flow operations.

However, little to no growth in state support in fiscal 2019 and stunted median increases in student-fee revenue (under 3%) will exacerbate operational pressures and remain a key consideration in Fitch’s negative sector outlook. Credit gaps will also continue to widen, particularly for institutions rated ‘BBB(cat)’ and below.

While fiscal 2019 ratios do not show any effect of the coronavirus on university operations, the same will not be said for colleges and universities over the next two fiscal years. Not helping matters is overall funding for higher education, which could decline to levels not seen in nearly a decade.

‘Additional rating and Outlook pressure on both regional public and smaller lower rated private universities due to the novel coronavirus is likely for both fiscal 2020 and 2021,’ said Wadhwani. ‘Colleges will be contending with high or inflexible human resource costs and pressured enrollment, which will have a more acute impact on institutions with weaker demand prospects.’

Fitch’s ‘Fiscal 2019 Median Ratios for U.S. Colleges and Universities’ is available at ‘www.fitchratings.com’. Please join us Aug. 6 at 11 a.m. EST as Emily Wadhwani and Arlene Bohner discuss the 2019 median ratios, sector pressures and expectations for the remainder of 2020. Click here to register

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Additional information is available on www.fitchratings.com

[MSRB Board Prioritizes Investing in Technology and Reducing Compliance]

Burdens.

Washington, DC – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) convened virtually on July 29–30, 2020 for its final quarterly meeting of Fiscal Year 2020. The Board adopted an operating budget of $41.5 million for FY 2021 and approved designating $10 million of reserves for a multi-year strategic investment to modernize its market transparency systems to leverage the power of the cloud.

“We are poised to seize the potential of cloud-based technologies to begin delivering new market transparency tools and functionality to the market,” said Ron Dieckman, Chair of the Board’s Technology Committee. “We are tremendously excited to continue working with our Market Transparency Advisory Group to test out several promising prototypes in our new EMMA Labs platform.”

The MSRB is developing EMMA Labs as an innovation hub where market stakeholders can collaborate on active prototypes and share feedback on preliminary concepts that could eventually make their way to the Electronic Municipal Market Access (EMMA®) website.

The MSRB will publish its budget detailing its operating expenses and technology investment when the fiscal year begins October 1, 2020. The Board also will announce the results of its elections for FY 2021 chair and vice chair in the coming weeks.

The MSRB could begin the fiscal year with a smaller Board under a proposal before the Securities and Exchange Commission (SEC) for approval. The MSRB’s governance proposal also enhances the independence standard for public members of the Board and establishes a six-year lifetime service limit.

At its meeting the Board also discussed several major initiatives aimed at reducing compliance costs and burdens for regulated entities. Finally, the Board discussed its search for a new Chief Executive Officer and senior staff promotions.

Reducing Compliance Burdens

As part of its retrospective rule review, the Board discussed supervision requirements for dealers under MSRB Rule G-27 and approved a staff-led effort to conduct a comprehensive review of the historical body of interpretive guidance in the MSRB Rule Book. The review of guidance aims to identify opportunities to clarify, amend or delete guidance to help ensure it continues to achieve the intended purposes and takes into account the current state of the municipal securities market. The Board noted that input from stakeholders would be essential throughout this multi-year project.

“In our 45 years as the market’s regulator, we have produced a vast library of interpretive guidance,” said Gail Marshall, the MSRB’s Chief Compliance Officer. “We believe this initiative will be an impactful way to support compliance and reduce unnecessary costs and burdens for regulated entities while balancing our regulatory obligation to protect investors and issuers.”

The Board continued its discussion of the practice of pennying in the municipal securities auction process and directed staff to remain coordinated with the Financial Industry Regulatory Authority (FINRA).

The Board also discussed its efforts to advance regulated entities’ understanding of MSRB rules through MuniEdPro®, a free online learning service featuring courses on core MSRB regulatory obligations and their application in practical scenarios.

Corporate Leadership

The MSRB announced today that it is promoting Jacob Lesser to Deputy General Counsel to lead the team responsible for governance and corporate legal matters. Lesser joined the MSRB as an associate general counsel and has played a critical role in the development of the Board's proposed enhancements to its governance rules. The MSRB also named Gail Marshall Interim Chief Regulatory Officer and Chief Compliance Officer, a role in which she will continue to lead the MSRB's market regulation activities, including rulemaking, enforcement coordination and professional qualifications. The MSRB is naming Leah Szarek Interim Chief External Relations Officer in recognition of her leadership of the MSRB's corporate communications and stakeholder engagement initiatives, as well as new responsibility for government relations.

"The Board is consistently impressed with the dedication and commitment of the staff, particularly as our market continues to feel the effects of the pandemic," said Board Vice Chair Manju Ganeriwala. "We are tremendously grateful for these individuals and the entire senior leadership team, whose experience and thoughtfulness help to advance our important mission."

The Board's CEO Search Special Committee is continuing its work to identify a new CEO. MSRB Chief Financial Officer Nanette Lawson has led the organization as interim CEO since October 1, 2019. [Hear Lawson and other MSRB leaders speak about the MSRB's strategic initiatives and proactive response to the pandemic in a recent MSRB Podcast].

Bill Fitzgerald, Chair of the Board's CEO Search Special Committee, said, "Few decisions are more important for a Board than selecting the executive to lead and inspire the organization into the future. The pandemic has certainly changed the way our Board is going about its search process, but we remain optimistic that we will identify our candidate in the near future."

Date: July 31, 2020

Contact: Leah Szarek, Director of Communications
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TAX - MICHIGAN

[Rafaeli, LLC v. Oakland County]

Supreme Court of Michigan - July 17, 2020 - N.W.2d - 2020 WL 4037642

Former property owners brought action against county and its treasurer, alleging due-process and equal-protection violations as well as unconstitutional taking by selling their real properties in satisfaction of their tax debts and retaining surplus proceeds from tax-foreclosure sale of their properties.

The Circuit Court granted summary disposition to county and treasurer, and denied reconsideration. Taxpayers appealed. the Court of Appeals 4803570, affirmed. Taxpayers appealed.

The Supreme Court held that:

- Former owners did not "forfeit" all rights, titles, and interests they had in their properties under the General Property Tax Act (GPTA) by failing to pay their real-property taxes;
- GPTA did not create new rights beyond those prescribed in Michigan and United States

Constitutions;
- Nature of former owners' claim was taking without just compensation, not deprivation of property without due process of law;
- Aggrieved property owners had cognizable, vested, common law right to collect surplus proceeds from tax-foreclosure sale of his or her property;
- Amendments to GPTA did not abrogate aggrieved property owners' cognizable, vested, common law right to collect surplus proceeds from tax-foreclosure sale of his or her property;
- Government's retention of surplus proceeds from tax-foreclosure sale was unconstitutional taking; and
- Government could not rely on its taxing power to justify retention of surplus proceeds from tax-foreclosure sale under GPTA.

Under the General Property Tax Act (GPTA), "forfeiture" simply permits defendants to seek a judgment of foreclosure; forfeiture does not affect title, and it does not give the county treasurer, or the state if the state is the foreclosing governmental unit, any rights, titles, or interests to the forfeited property.

Former property owners did not "forfeit" all rights, titles, and interests they had in their properties under the General Property Tax Act (GPTA) by failing to pay their real-property taxes; former owners did not use their properties for illicit purposes or commit criminal offense by not paying their property taxes.

General Property Tax Act (GPTA) did not create new rights beyond those prescribed in Michigan and United States Constitutions, and therefore former property owners could not contest legitimacy of government's authority to foreclose on their properties for unpaid tax debts and they could not contest sale of their properties to third-party purchasers on due process grounds to extent government complied with due-process, since GPTA stated its intent to only comply with minimum requirements of due process.

Nature of former property owners' claim was taking without just compensation, not deprivation of property without due process of law, where former owners alleged that compliance with General Property Tax Act (GPTA) notice provisions did not justify defendants' retention of surplus proceeds from tax sale and asked court to reverse decision of Court of Appeals and remand to circuit court for determination of just compensation.

Aggrieved property owners had cognizable, vested, common law right, protected by Michigan's Takings Clause in inverse-condemnation action, to collect surplus proceeds from tax-foreclosure sale of his or her property, although General Property Tax Act (GPTA) did not recognize divested property owner's right to surplus proceeds.

Amendments to General Property Tax Act (GPTA) did not abrogate aggrieved property owners' cognizable, vested, common law right, protected by Michigan's Takings Clause in inverse-condemnation action, to collect surplus proceeds from tax-foreclosure sale of his or her property.

Although government was entitled to seize owners' properties under General Property Tax Act (GPTA) to satisfy unpaid delinquent real-property taxes, as well as any interest, penalties, and fees associated with foreclosure and sale of those properties, government's retention of surplus proceeds from tax-foreclosure sale was unconstitutional taking.

Government could not rely on its taxing power to justify retention of surplus proceeds from tax-foreclosure sale under General Property Tax Act (GPTA), since government's ability to take taxpayers' properties was limited by what taxpayers actually owed as result of failing to pay their taxes and therefore any physical taking of property was arbitrary and disproportionate tax.

SPECIAL ASSESSMENTS - NORTH DAKOTA

Holter v. City of Mandan

Supreme Court of North Dakota - July 22, 2020 - N.W.2d - 2020 WL 4210906 - 2020 ND 152

Landowner sought review of city's decision to specially assess her undeveloped residential lots for street improvements.

The District Court dismissed. Landowner appealed.

The Supreme Court held that special assessments, based on linear feet, were not arbitrary, capricious, or unreasonable.

City's special property tax assessments, based on linear feet, on undeveloped residential lots for street improvements were not arbitrary, capricious, or unreasonable, even if assessments were slightly less than total value of the properties, where properties were assessed under city special assessment policy, city used policy to determine benefits and assessments to properties in an improvement district, and special assessment commission did more than simply take total cost of project and divide it by using a formula.

TAX - MINNESOTA

Enbridge Energy, Limited Partnership v. Commissioner of Revenue

Supreme Court of Minnesota - July 8, 2020 - N.W.2d - 2020 WL 3818130

Taxpayer filed petitions to challenge valuation of pipeline system for two tax years.

The Tax Court entered judgment in favor of Commissioner of Revenue. Taxpayer appealed.

The Supreme Court held that:

- Tax Court was not required to exclude indirect construction expenses from the cost indicator of value;
- It did not commit clear error in determining that taxpayer did not carry its burden regarding expenditures listed in its construction work in progress (CWIP) accounts;
- Taxpayer was not entitled to include only expansionary construction work in progress (CWIP) expenses;
- Tax Court error in requiring taxpayer to show that nationwide or industrywide factors contributing to pipeline obsolescence affected pipeline to a greater extent than other pipelines was harmless; and
- Tax Court had discretion to depart from default weightings to pace equal weight on the cost and income indicators of value.

Tax court was not required to exclude indirect construction expenses from the cost indicator of value for pipeline system under construction; under general appraisal practices and industry standards for pipeline company accounting, construction work in progress (CWIP) expenses included the direct and indirect costs of construction.

Tax court valuing pipeline under construction did not commit clear error in determining that taxpayer did not carry its burden to show that expenditures listed in its construction work in progress (CWIP) accounts reflected the cost of items that were not installed as of the valuation dates; although taxpayer argued that evidence of in-service dates it offered were synonymous with when projects were installed, it conceded that the in-service dates could relate to an entire project and might not capture when portions of that project were installed.

Taxpayer was not entitled to include only expansionary construction work in progress (CWIP) expenses and exclude non-expansionary expenses for valuing pipeline system under cost approach.

Tax court error in requiring taxpayer to show that nationwide or industrywide factors contributing to pipeline obsolescence affected pipeline to a greater extent than other pipelines was harmless; although court erred by expecting proof that governmental regulations affected taxpayer more than others, its underlying finding that governmental regulations did not adversely affect taxpayer since it was regulated on a cost-of-service basis was not clearly erroneous, record indicated taxpayer's inability to meet existing demand undercutting claims that drop in oil prices negatively affected demand and competitors were interfering with business, and evidence supported court's concerns regarding appraiser's methodology.

Tax court had discretion to depart from default weightings to pace equal weight on the cost and income indicators of value to calculate the unit value of the pipeline system if dictated by the circumstances of the case.

COVID-19 And Marijuana: Can Cannabis Municipal Bonds Help Government Budgets?

Cannabis Based Municipal Bonds (CMBs) could offer governments and financial institutions a viable and creative way to aid in the recovery of lost revenues due to the COVID-19 pandemic, says a newly released report from cannabis and hemp advisory firm MPG Consulting.

As the cannabis industry continues to grow at a rapid pace and regulations mature, it is time for state and local governments, as well as traditional financial institutions, to start taking a serious look at the validity of CMBs as a source of financing for local initiatives and infrastructure, MPG analysts argue. In fact, they point to similar initiatives in place in the form of special tax bonds, typically backed by taxes, on certain activities or assets classes like tobacco, alcohol and gaming — the so called "sin taxes."

How This Could Work

To demonstrate how this could work, MPG conducted a theoretical analysis, using Denver as an example.

Continue reading.

Benzinga

Javier Hasse, Benzinga Staff Writer

July 30, 2020

Loan Woes Heighten Risks to American Dream Bonds.

Three missed mortgage payments on another megamall property operated by the owners of the bond-financed American Dream development have investors concerned whether the large-scale New Jersey project can withstand the lengthy closure caused by the COVID-19 pandemic.

American Dream developer Triple Five Group missed three straight monthly loan payments on a $1.4 billion mortgage for the Mall of America in Minnesota that it also owns. Last year, Triple Five was forced to put up Mall of America as collateral on a construction loan for American Dream.

“The unknowns of whether the developers will step up makes it very hard for bondholders,” said municipal bond analyst Joseph Krist. “At the end of the day you want to know you have someone behind the credit that will step up and carry a deal during trying times.”

Continue reading.

National Mortgage News

By Andrew Coen

July 29, 2020, 4:06 p.m. EDT

Small Ways Muni Investors Can Make A Big Difference.

Summary

- Municipal bonds issued by state and local entities fund projects across various sectors that create the foundation upon which local economies thrive.
- Helping children and promoting equity in schools is a primary focus of our strategy around primary/secondary education.
- US municipal bonds are uniquely positioned to provide an array of channels for investors to make meaningful and impactful investments at a grassroots level, from education and environmental cleanup to health and workforce development.

Continue reading.

Seeking Alpha

Jul. 28, 2020

Fiscal First Aid for School Districts: GFOA Webinar

August 7, 2020 | 2 p.m.-3 p.m. ET

Details:

While great uncertainty remains on multiple fronts related to the impacts of COVID-19, this webinar will highlight the tools and resources from GFOA's Fiscal First Aid project that school districts can utilize now to help deal with current challenges. Examples will be provided of key pieces of FFA that school districts can leverage now to help offset likely financial impacts from potential losses of revenue and redirection of expenditures to re-open school in the fall – whether in-person, virtually, or somewhere in between. In addition, the webinar will highlight GFOA's work through its Smarter School Spending project that emphasize better long -term planning and connections between outcomes and resource allocations – as the impacts of the pandemic and subsequent economic downturn will likely have multi-year ramifications for school districts, their operations and corresponding budgets.

Member Price: Free
Non-member Price: Free

REGISTER

GFOA Disclosure Update.

August 13, 2020 | 2 p.m.-4 p.m. ET

Details:

Issuers of municipal securities have numerous disclosure responsibilities related to their bond transactions. This includes mandated filings of annual financial information and material event notices in the MSRB's EMMA system, and other types of voluntary disclosures. Industry experts will discuss these issues as well as recent SEC activities related to disclosure. A review of GFOA's best practices and the importance of developing and maintaining disclosure policies and procedures will also be addressed.

Member Price: $85.00
Non-member Price: $160.00

REGISTER

GFOA School District Roundtable on COVID-19 Financial and Related Impacts.

August 12, 2020 | 1 p.m.-2 p.m. ET

Details:

With the traditional first day of school fast approaching, school districts are hard at work creating plans to begin classes again amid vast uncertainty. Whether classes end up being remote, in-person, or somewhere in between, there are no easy decisions in trying to determine what is best for students, teachers, staff, and the overall community. While plans have been made, re-made and adjusted, nothing seems to be a given in this time of COVID-19, including how to budget and finance a district's strategy for moving forward. This webinar is designed as an opportunity for districts to present questions and hear more about the re-opening plans of a number of districts from across the country – including how classes will resume, the related financial impacts of re-opening, and the process for how their plans and contingency plans were developed as well.

Member Price: Free
Non-member Price: Free

REGISTER

Insurers Seen Boosting Muni Stakes as Yields Surpass Corporates.

- **15% of clients increased allocations to munis, DWS Group finds**
- **Taxable munis offer more yield than similarly-rated corporates**

Insurance companies appear to be stepping up their buying of American municipal bonds.

DWS Group, an asset-management firm, said a survey of its insurance company clients in the U.S., Canada and Bermuda found that 15% have increased their allocations to state and local government debt, compared with 5% that trimmed their share. The amount boosting their municipal-bond stakes was second only to the 25% of clients that increased allocations to investment grade corporate bonds. DWS and Greenwich Associates polled insurance-company clients with portfolios from $1 billion to more than $20 billion.

The increase comes as the Federal Reserve's interventions in the corporate market and a deluge of taxable sales by U.S. states and local governments is making muni debt subject to federal income taxes a better buy, said Matthew Caggiano, a municipal portfolio manager at DWS. Insurers can get bigger yields on munis even though they have higher ratings and much lower default rates.

Travelers Cos. boosted its municipal-bond portfolio by $1 billion in the second quarter to $32 billion, the insurer reported on July 23.

"Many taxable muni issuers are coming at wider spreads that similarly rated corporate bonds," Caggiano said.

Taxable muni issuance, including sales with corporate trading tickers, soared to $72.5 billion in the first half of 2020, more than triple the same period in 2019. States, cities and non-profits like hospitals and universities took advantage of tumbling rates to refinance older debt and to boost their cash reserves as the coronavirus lockdowns decimated their revenue.

The University of Maryland Medical Center sold $600 million of taxable bonds the week of July 13, in part to finance the construction on a new medical office building, parking garage and the conversion of two hospitals to freestanding medical facilities. Debt maturing in 20 years and rated A was priced to yield 1.73 percentage point more than Treasuries.

By contrast, last week candy-maker Mars Inc. priced $900 million of 20-year bonds with the same rating to yield 1.05 percentage point more than Treasuries.

The allure of the taxable municipal bonds has increased since March, when a panic in the markets led the Federal Reserve to pledge to buy investment-grade corporate bonds and even some of the highest-rated junk bonds. As a result, the extra yield that investors demand for investment-grade corporate debt has plunged to 1.3 percentage point from more than 3.7 percentage points in March, according to Bloomberg Barclays Indexes. By contrast, the spread on taxable municipal debt is 1.67 percentage point.

U.S. municipal debt is one of the safest investments. Since Arkansas failed to pay its debt almost 90 years ago, no U.S. state has defaulted. From 1970 through 2019, the average five-year annual default rate for municipal bonds rated by Moody's Investors Service was 0.08%. Corporate bonds, which have lower ratings, had a 6.7% default rate over the same period.

Bloomberg Markets

By Martin Z Braun

July 27, 2020, 10:36 AM PDT

[COVID's Impact on Opportunity Zone Funds May Surprise You.]

It seems no industry has remained unscathed or unaffected by the coronavirus pandemic up to this point. As some industries thrive others are devastated, leaving participating investors in opportunity zones wondering how their investments and funds may be impacted.

Opportunity zones (OZs) are designated census tracts that were created as a part of the Tax Cut and Jobs Act of 2017 (TCJA) and offer major tax benefits to participating investors that redirected capital into an opportunity zone fund (OZF) established for the development of new business, real estate, or expansion of established businesses in an opportunity zone.

OZs aren't hit as hard as you may have thought

Considering that opportunity zones are 8,700 of the most rural or low-income census tracts across the United States, concern over the performance of these funds as well as their ability to execute their initial projects is understandable. The Economic Innovation Group (EIG) conducted a national study in June in which 52% of the respondents stated they have been negatively impacted by the coronavirus in some way.

Continue reading.

The Motley Fool

Jul 27, 2020 by Liz Brumer

[New Jersey Could Allow Local Governments to Borrow to Avoid Budget Cuts.]

Lawmakers this week approved legislation that would allow county and municipal governments to issue "coronavirus relief bonds" they would then pay back over 10 years.

Local leaders in New Jersey could issue "coronavirus relief bonds" to help offset shrinking tax revenues under a bill passed this week by state lawmakers.

The legislation, passed 24-16 by the state Senate on Thursday, would allow counties and municipalities to borrow up to 30% of the previous year's budget with a repayment period of up to a decade, backed by local property tax revenue. Localities could also seek permission from the state to borrow higher amounts with longer repayment periods.

The Assembly approved the bill 57-20 in May.

Continue reading.

Route Fifty.

By Kate Elizabeth Queram,

JULY 31, 2020

COVID-19 and the Future of Transportation in California: Nossaman

On July 23, 2020, the California Transportation Foundation convened a panel of transportation professionals for the webinar "Transportation Outlook: Moving Beyond COVID-19." The panelists discussed the impacts of the coronavirus and what the future holds for California's transportation sector in the wake of the pandemic. Below are key takeaways from the panel:

Adjusting to a "New Normal"

- COVID-19 has significantly altered the way some Californians commute to work; remote work could become a permanent feature of the post-pandemic economy.
- Transit agencies are actively preparing for a future where telecommuting is commonplace, and transit will need to evolve to account for long-term decreases in ridership and travel patterns.
- Transit agencies are implementing thorough sanitation protocols in conjunction with face covering requirements, and are devising programs to educate the public about the effectiveness of such measures in combating the spread.

Financial Outlook

- State and local ordinances aimed at limiting transmission of the coronavirus will continue to negatively impact sales and use tax revenue, one of the primary funding sources for the state's transportation projects.
- The passage of the Road Repair and Accountability Act of 2017(SB1) came at the perfect time, providing much-needed funding for the state's transportation projects.
- With urgent need for trillions of dollars in federal unemployment relief, there is little optimism that Congress will pass additional spending measures for infrastructure stimulus before national elections in November.

COVID-19's Effects on the Construction Industry

- The industry was grateful that state leaders designated construction to be essential work, which protected construction workers' livelihoods while also ensuring progress on critical transportation projects.
- The construction industry has shown that it can build projects safely during the pandemic by coordinating closely with state and local authorities, and devising safety measures to ensure construction workers have adequate protective equipment and physical distancing while on the

job.
- The construction industry will continue to face difficulties in developing and implementing scheduling, staffing and operational guidelines to comply with different local orders that change frequently.

Silver Linings for the Future

Although the pandemic has resulted in significant adverse impacts for the transportation sector, there have been bright spots, including:

- Public agencies using the pandemic to rethink how to better serve the public's transportation needs, in particular for California's low-income and underserved communities.
- Acceleration of existing construction projects due to lighter traffic.
- Fewer cars on the road perhaps providing a preview of California's transportation future, with lower congestion and the growing prevalence of active transportation, such as walking and biking.
- Although funding sources for transportation remain unclear, public agencies could be taking advantage of lower material costs and increased competition among contractors to procure projects below budget; uncertainties remain regarding workforce impacts, supply chain impacts and related cost of materials.

An end to the coronavirus pandemic is far from certain, but these difficult times have underscored the transportation sector's resilience. By the panel's conclusion, it was clear that the collaborative spirit and problem-solving mindset of those working in the transportation industry have been essential to weathering a global crisis over the last several months, and that such qualities will continue to shape California's transportation future.

Nossaman LLP

By Brandon Nguyen on 07.30.2020

[9 Early Conclusions of Opportunity Zones for Equitable Development, with Brett Theodos.]

In its early days, how effective has the Opportunity Zone incentive been for equitable development projects? Brett Theodos is senior…

[CONTINUE READING »]

Opportunity Db

July 29, 2020

[New Municipal Bond Buying Program Comes to Aid of NJ Municipalities During COVID-19 Crisis and Beyond.]

Parsippany, N.J. — Finding ways to finance debt has become a major priority for municipalities across New Jersey as a result of the COVID-19 pandemic. The [Municipal Excess Liability Joint

Insurance Fund (MEL), which serves nearly 65% of all municipalities in the State, has established a special program to provide aid and stabilize the Municipal Bond Market.

The MEL created the Joint Cash Management and Investment Program (JCMI) to purchase short-term (1 year) Bond Anticipation Notes (BAN) at fair market prices to save towns money and enable the continuation of important local improvement projects such as roads, bridges, equipment, and construction. The MEL is the largest workers' compensation, liability, and property insurer of local governments in New Jersey.

"At the beginning of the COVID-19 pandemic municipal markets were in turmoil, no one was buying municipal debt and interest rates had risen," said Jon Rheinhardt the MEL Investment Chairman. "We had been working on getting this program operational when we received a call from the Governor's office asking what we could do to help and how fast we could do it."

With more than $500 million in funds to invest, the MEL entered the marketplace to help stabilize a tightening municipal bond market.

"Many regular investors left the market due to uncertainty and the few that still bid were at really high rates," explained Dan Mariniello a Principal with NW Financial Group, which is a financial advisor to the MEL. "By entering the market and bidding a more appropriate market interest rates they were able to stabilize the rising interest rates in the market."

MEL has already developed a significant market presence. More than $95 million in notes for 26 municipalities have been purchased, which represents approximately 9 percent of the short-term competitive notes sold in New Jersey since April.

The Borough of Ringwood was the first town to benefit from the program.

"We had a $6.5 million Bond Anticipation note coming due in early April," said Scott Heck the Manager of the Borough of Ringwood. "We were concerned whether or not we would get any bids in light of the economic uncertainty, or that the interest rate would be very high which could seriously affect the community's budget." He added, "This program saved us directly with a great rate and also took away the financial uncertainty, and I am grateful."

To date, the JCMI has focused bidding only on short-term debt from municipalities that are affiliated with MEL, which includes 388 municipalities across New Jersey. However, the success of the program has ultimately benefited all municipalities seeking to finance their short-term debt in New Jersey during this crisis.

"We are always looking for ways to assist our members, but we are also committed to developing programs that positively impact municipalities and the state," said Joseph Hrubash, Deputy Executive Director of the MEL JIF.

David Grubb, Executive Director and Co-Founder of the MEL JIF said that this is only the beginning. "We will be able to do even more if bills A-3971 and S-2475 are passed, which would authorizes towns to issue 'coronavirus relief bonds' to borrow money to cover shortfalls and unanticipated costs that are a direct result of the COVID-19 pandemic."

The Joint Cash Management and Investment Program was made possible after special rules were adopted (NJAC 5:38-1) in 2019 by the Department of Community Affairs Division of Local Government Services to allow Joint Insurance Funds to expand investments to include the purchase of short and long-term municipal debt.

###

The Municipal Excess Liability Joint Insurance Fund is the largest governmental self-insurance pool for property and casualty in the country. For more than 30 years, the MEL JIF has provided risk management, training, education, resources and guidance to municipalities, public entities and public officials across New Jersey. Since 1987 MEL JIF has saved New Jersey taxpayers over $3 billion dollars. Visit NJMEL.org for details.

July 28, 2020

California's Infrastructure Bank.

The IBank issues a number of different bonds in order to finance programs

In 1994, California created an Infrastructure Bank (IBank) in state government. It is found in the California Government Code Title 6.7, Division 1, Chapter 1. The formal name of the IBank is The Bergeson-Peace Infrastructure and Economic Development Bank (Section 63002). The IBank is the state's only general-purpose financing authority. Its purpose is to finance public infrastructure and private development that promote a healthy climate for jobs, contribute to a strong economy, and improve the quality of life in California communities.

Article 1 sets forth a number of findings and declarations. Section 63000 provides the following findings and declarations by the Legislature:

The Legislature finds and declares the following:

(a) Economic revitalization, future development, and a healthy climate for jobs in California will depend upon a well-conceived system of public improvements that are essential to the economic well-being of the citizens of the state and are necessary to maintain, as well as create, employment within the state for business.

(b) It is necessary for public policy to support the efforts of businesses attempting to expand, businesses seeking to locate in California, and local economic development organizations, public agencies, and new entrepreneurs by dedicating public fiscal resources to confront obstacles and barriers that impede economic growth.

(c) Existing mechanisms that coordinate federal, state, local, and private financial resources are inadequate to attract and sustain that level of private investment that is essential to a growth economy.

(d) In order to secure and enhance the economic well-being of Californians, promote economic development in the state, and provide a healthy climate for the creation of jobs, it is necessary for public policy to support the efforts of expanding businesses, businesses seeking to locate in California, local development organizations, public bodies, and new entrepreneurs to gain access to capital through current and potential operations of financial markets.

(e) The high cost and the lack of availability of industrial loans for small- and medium-size businesses is making it difficult for thousands of these enterprises to get established, to maintain their present employment levels, or to expand employment.

(f) The problem of access to capital is acute in the high technology industry clusters because companies must often finance large capital expenditures early in their development cycle, and cannot obtain financing sufficient to cover the cost of those expenditures. Consideration should be given to industry clusters that may include the following:

(1) Health care technology.

(2) Multimedia.

(3) Environmental technology.

(4) Information technology.

(g) The high cost and limited availability of loans and capital has led a number of states to take action to remedy these conditions through concerted public and private investment programs that include efforts to do the following:

(1) Use the state’s access to capital markets more effectively for economic development.

(2) Create financing pools to access national capital markets or help government sponsors and public-private economic development organizations obtain credit enhancement on their own.

(3) Facilitate credit enhancement for selected specific projects.

(4) Provide or arrange for loan insurance.

(5) Create and support secondary markets for loan portfolios of urban and rural economic development corporations and others.

(6) Improve access to international capital markets.

(7) Provide opportunities for public pension funds and other institutional investors to play a larger role in state economic development.

(8) Arrange for or provide subordinated debt for selected projects.

(9) Increase support for local infrastructure development.

(h) Local governments in California bear a primary responsibility for the business of promoting job creation and economic development efforts. California’s continued reliance on autonomous local entities often fails to adequately consider regional impacts of business expansion. Projects of a regional nature need the benefit of a state coordinating function to augment and enhance local economic development and environmental efforts.

(i) The State of California has not embarked on a major infrastructure financing effort since the decade of the 1960’s, despite persistent unemployment and soaring population growth.

(j) California’s ability to compete in a global economy depends upon its capacity to implement policies that take maximum advantage of public and private resources at the local, regional, state, and national levels. These policies should be coordinated with any future legislative plan involving growth management strategies designed to make economic growth compatible with environmental protections. It is the intent of the Legislature in enacting this act to create a mechanism to finance projects needed to implement economic development and job creation and growth management strategies, and to provide a secure and stable funding source for implementation of this act in order to meet critical economic, social, and environmental concerns.

(k) The State of California needs a financing entity structured with broad authority to issue bonds, provide guarantees, and leverage state and federal funds using techniques that will target public investment to facilitate economic development. The goal is to produce more private sector jobs with less public sector investment.

(l) The mechanisms for financing public improvements and private job creation strategies provided for in this act are in the public interest, serve a public purpose, and will promote the health, welfare, and safety of the citizens of the state.

(m) The public policies and responsibilities of the state, including all of the above purposes and functions, cannot be fully obtained without the use of financing assistance and can be most effectively furthered by the creation of the California Infrastructure and Economic Development Bank.

The IBank is housed in GO-Biz, which is the Governor's Office of Business and Economic Development, and is governed by a 5-member Board of Directors and has a full-time Executive Director to run the daily operations. The Board is comprised of the Director of the GO-Biz, State Treasurer, Director of Finance, Secretary of the Transportation Agency, and a gubernatorial appointee.

The IBank issues a number of different bonds in order to finance programs. According to the IBank, the following are the types of bonds issued:

Industrial Development Bonds (IDBs), which is tax-exempt conduit revenue bond financing for eligible small to mid-size manufacturing companies up to $10 million for the acquisition, construction, rehabilitation and equipping of manufacturing and processing facilities.

IRC Section 501(c)(3) Bonds, which are tax-exempt conduit revenue bonds that provide low-cost financing for capital improvement projects for nonprofit public benefit corporations.

Public Agency Revenue Bonds (PARBs), which is tax-exempt bond financing for government entities used for projects that enhance infrastructure, or the economic, social or cultural quality of life for residents in the community or State.

Exempt Facility Bonds, which is tax-exempt financing for projects that are government-owned or consist of privately used or leased facilities on public -property; such as private airline improvements at publicly owned airports, ports, water facilities and other private enterprises that serve the general-public.

There are a number of benefits to doing business with the IBank, such as its Infrastructure State Revolving Fund Program, which offers below-market interest rates, a non-competitive application process, and no matching fund requirement or federal overlays. It also has numerous bond financing programs as set forth above. These bond programs have competitive applications with technical assistance provided by IBank staff. There is also the Jump Start Loan Program, which is intended to assist low-wealth entrepreneurs in low-wealth communities start, grow, and thrive. This program offers financial literacy training and microloans. There is also the California Small Business Loan Guarantee Program that is focused on helping lenders provide loans to small businesses, farmers and exporters that may not otherwise qualify if it were not for the guarantee.

Among other services, the IBank issues loan guarantees in partnership with seven partner Financial Development Corporations (FDCs) located throughout the State of California. Potential borrowers may contact FDCs directly to apply for a loan through participating financing institutions, credit unions, or Community Development Financial Institutions (CDFIs). These programs include the Infrastructure State Revolving Fund (ISRF); the California Lending for Energy and Environmental Needs (CLEEN) Center, which includes the Statewide Energy Efficiency Program (SWEEP) and Light Emitting Diode (LED) Street Lighting Program; the Small Business Finance Center, which includes the Jump Start Loan Program, which includes the California Small Business Loan Guarantee Program (SBLGP) and Farm Loan Program; and the Bond Financing Program, which includes 501(c)(3) bonds, Industrial Development Bonds (IDBs), Exempt Facility Bonds, and Public Agency Revenue Bonds (PARBs).

According to the IBank, they have financed more than $55 billion in infrastructure and economic development projects throughout the State of California.

California Globe

by Chris Micheli

Chris Micheli is a lobbyist with Aprea & Micheli, as well as an Adjunct Professor of Law at the University of the Pacific McGeorge School of Law.

July 30, 2020 6:23 am

- GASB Requests Input on Proposals to Improve Key Components of Government Financial Reports.
- GASB Adds Resources to Emergency Toolbox Addressing Issues Arising from COVID-19 Pandemic.
- NFMA Cybersecurity White Paper.
- NABL Submits Letter to IRS and Treasury.
- LIBOR Summer Update: Regulatory Scrutiny Heats Up on Transition Preparedness – Sherman & Sterling
- SEC Identifies LIBOR Preparedness as an Examination Priority – Sherman & Sterling
- NABL: SEC, MSRB, FINRA to Hold Virtual Program for Municipal Advisors
- GFOA 25th Annual Governmental GAAP Update: Webinar
- *Weiss v. People ex rel. Department of Transportation* – Supreme Court of California holds that Eminent Domain Law motion for requesting a ruling on evidentiary or other legal issue affecting determination of compensation would not be imported into inverse condemnation proceedings, disapproving *Dina v. People ex rel. Dept. of Transportation*.
- And finally, Capture the Tort Claim is brought to us this week by *Erickson v. Canyons School District*, in which high-school student Juel [sic] Erickson was attending an assembly in the high-school gym. "Before the assembly, a supervisor confiscated a home-made flag, fastened to a pole, from junior class officers and placed it on the east side of the gym. When a student retrieved the flagpole, the supervisor instructed another student to reconfiscate it. That student placed the confiscated flagpole underneath the bleachers, from where yet another student retrieved it. Student then climbed to the top of the bleachers and threw the flagpole into the crowd of students below, striking Erickson in the head and knocking her unconscious. No high school employee called an ambulance or provided Erickson with any medical care. Erickson thereafter 'suffer[ed] from neck injuries and post-concussive symptoms.'" Among the many questions raised by this incident, one stands out: WHAT IN THE NAME OF ALL THAT IS HOLY WAS ON THAT FLAG?!

LABOR & EMPLOYMENT - ARIZON

Piccioli v. City of Phoenix

Supreme Court of Arizona - July 10, 2020 - P.3d - 2020 WL 3885699

Members of city employees' retirement plan and unions representing members sued city, the retirement plan, and city retirement plan board seeking declaratory, injunctive, and mandamus relief based on allegations that amendment to administrative regulation eliminating practice of including one-time payouts for accrued sick leave made upon retirement in the calculation of final average compensation used to determine pension amount unlawfully diminished and impaired members' vested rights to pension benefits.

Following bench trial, the Superior Court, found in favor of members and union. Defendants appealed. The Court of Appeals reversed. Members and union petitioned for review, which was accepted.

The Supreme Court held that:

- One-time payouts upon retirement for accrued sick leave did not constitute salary or wages used to calculate pension benefits under plan;
- Members did not have contractual rights independent of plan to include sick leave payouts in plan's benefit calculation formula; and
- Award of attorney fees in favor of city, as successful party, was warranted.

One-time payouts upon retirement for accrued sick leave did not constitute "salary or wages" used to calculate pension benefits under city employees' retirement plan; sick leave payouts were not paid regularly or annually, treating payouts used for sick leave as salary or wages would violate plan by adding days, weeks, or months to the pension-calculation period, and there was no indication that voters who adopted plan intended to give members who banked sick leave more lucrative pension benefits than members who used that time when too ill to work.

City's prior promise to members of city employees' pension plan that it would treat one-time sick leave payouts upon retirement as compensation used when determining pension benefits, together with the historical fulfillment of that promise, did not form a pension benefit contract independent of plan, and thus city did not violate any vested rights by prospectively eliminating payments for leave accrued after specified date from the calculation of pension benefits.

Grant of attorney fees in favor of city, as successful party, was warranted on appeal from decision in favor of members of city employees' pension plan and unions representing members in action seeking declaratory, injunctive, and mandamus relief from changes to administrative regulation governing the way the city calculated retirement benefits, where members and unions challenged regulation as parties to a contract, rather than as aggrieved citizens.

EMINENT DOMAIN - CALIFORNIA

Weiss v. People ex rel. Department of Transportation

Supreme Court of California - July 16, 2020 - P.3d - 2020 WL 4012230 - 20 Cal. Daily Op. Serv. 7056

Property owners brought action against Department of Transportation and county transportation authority, claiming inverse condemnation, trespass, and nuisance, based on the construction of sound barriers.

After sustaining a demurrer to the trespass claim, the Superior Court granted Department's and authority's motion for legal determination of liability, which was based on a procedure for eminent domain cases, and entered judgment for Department and authority. Owners appealed. The Fourth District Court of Appeal reversed. Department's and authority's petition for review was granted.

The Supreme Court held that:

- Eminent Domain Law motion would not be judicially imported to inverse condemnation proceedings, disapproving *Dina v. People ex rel. Dept. of Transportation*, 151 Cal.App.4th 1029, 60 Cal.Rptr.3d 559, and
- Entry of judgment based on motion from Eminent Domain Law improperly supplanted motion for summary adjudication or possibly bench trial.

Eminent Domain Law motion for requesting a ruling on evidentiary or other legal issue affecting determination of compensation would not be imported into inverse condemnation proceedings; nothing indicated Legislature intended motion procedure to be used in inverse condemnation actions, inverse condemnation actions did not have same need for speedy resolution as eminent domain actions, and there was little risk that motion would replace dispositive motion or bench trial in eminent domain actions, but motion would often be dispositive in inverse condemnation cases; disapproving *Dina v. People ex rel. Dept. of Transportation*, 151 Cal.App.4th 1029, 60 Cal.Rptr.3d 559.

Trial court's entry of judgment in inverse condemnation action against Department of Transportation and county transportation authority, based on motion for legal determination of liability from Eminent Domain Law, improperly supplanted motion for summary adjudication or possibly bench trial; motion presented mixed question of law and fact concerning whether damage was peculiar to property owners' properties, and, had Department and authority filed a motion for summary adjudication, parties would have been required to submit separate statements clarifying which facts were disputed and trial court's order would have employed familiar summary judgment standard, specifying reasons for its decision with reference to evidence showing whether a triable issue of fact existed.

ZONING & PLANNING - MINNESOTA

AIM Development (USA), LLC v. City of Sartell

Supreme Court of Minnesota - July 15, 2020 - N.W.2d - 2020 WL 3980703

Landowner brought action against city, seeking a declaratory judgment that landowner was entitled to deposit waste generated from operations other than its paper mill into its landfill.

The District Court granted in part and denied in part parties' cross-motions for summary judgment, and entered final judgment at parties' request. Landowner appealed. The Court of Appeals affirmed. Landowner requested further review.

The Supreme Court held that:

- Scope of landowner's nonconforming-use rights was defined by uses lawfully existing at time of adverse zoning change, not at time it purchased the property;

- Landowner’s proposal to accept nonhazardous, non-toxic industrial waste from source other than paper mill satisfied continuation requirement for nonconforming uses; and
- Landowner’s proposed replacement of single source of waste from paper mill with additional sources was not impermissible expansion of nonconforming use.

LABOR & EMPLOYMENT - NEW HAMPSHIRE

Monadnock Regional School District v. Monadnock District Education Association, NEA-NH

Supreme Court of New Hampshire - July 8, 2020 - A.3d - 2020 WL 3815884

Public school district brought action against labor union, seeking declaratory judgment that arbitration award, transferring pool of excess funds set aside by district for employees’ healthcare coverage to union, was unlawful.

The Superior Court granted district’s motion for summary judgment, and denied union’s motion for partial summary judgment. Union appealed.

The Supreme Court held that:

- Unspent funds in pool set aside by district to cover costs of employees’ healthcare coverage were encumbered by legally enforceable obligation pursuant to collective bargaining agreement (CBA);
- Since arbitration between district and union was not binding, de novo standard of review applied to arbitrator’s decision;
- Obligation under CBA attached to funds in fiscal year in which they were appropriated, and thus funds did not lapse under statute governing lapse of municipal appropriations; and
- Provision in CBA allowing union to distribute unspent pool funds did not require explicit approval by district’s legislative body.

Unspent funds in pool set aside by public school district for costs of health care coverage for employees that were members of labor union were encumbered by legally enforceable obligation for their expenditure, based on terms of collective bargaining agreement (CBA), and statute governing lapse of municipal appropriations, for purposes of determining whether funds had lapsed under statute; CBA section describing pool funds used mandatory language and created obligation to distribute funds in pool to union members, but gave union some discretion in implementing those distributions.

De novo, rather than deferential, standard of review applied to review of arbitrator’s decision when challenged by public school district, on district’s claim for declaratory judgment that arbitrator’s decision, holding that unspent funds set aside by district for employees’ healthcare had not lapsed, so labor union was entitled to distribute funds to employees pursuant to terms of collective bargaining agreement (CBA), was incorrect; general rule of deference to arbitral interpretations of CBAs did not apply, since terms of CBA explicitly indicated that the decision of the arbitrator would not have been binding on either party, and would have been advisory unless parties had mutually agreed otherwise.

Obligation under collective bargaining agreement (CBA), requiring distribution of pool of unspent funds set aside by public school district for payment of union members health care coverage costs to union member employees, attached to funds in pool before end of fiscal year in which they were appropriated, and thus funds did not lapse under statute governing lapse of municipal appropriations; unexpended funds were to have been placed in pool once district satisfied yearly contribution to premiums and buyout payments, as required by CBA, and thus district's required obligation arose each year no later than moment it satisfied yearly contributions.

That funds in pool set aside by public school district to pay costs of employees' healthcare coverage pursuant to collective bargaining agreement (CBA) were not expended within fiscal year in which they were set aside did not cause such funds to lapse under statute governing lapse of municipal appropriations; while statute required that obligations for expenditures have arisen before end of fiscal year in which funds were appropriated, statute placed no requirements on time at which required expenditure must have occurred.

PUBLIC PENSIONS - RHODE ISLAND

Andrews v. Lombardi

Supreme Court of Rhode Island - June 30, 2020 - A.3d - 2020 WL 3527913 - 2020 Employee Benefits Cas. 241,187

Beneficiaries of city pension plans brought action against city, challenging passage of city ordinance suspending annual cost-of-living adjustments (COLAs) until pension fund achieved 70% funding level, and alleging claims including promissory estoppel and violation of the Contract Clauses and Takings Clauses of the state and federal constitutions.

The Superior Court granted partial summary judgment for city, then entered judgment for city following bench trial. Beneficiaries appealed.

The Supreme Court held that:

- Ordinance did not apply to those beneficiaries that were parties to prior actions against city that were resolved when settlement agreements were reached and consent judgments were entered;
- City failed to demonstrate that ordinance's provision, suspending COLAs until plan was 70% funded, was reasonable and necessary, as required under Contracts Clauses of federal and state constitutions;
- Loss of expectancy by beneficiaries that arose when city passed ordinance constituted a regulatory, rather than physical, taking; and
- Existence of contract between city and beneficiaries precluded beneficiaries' promissory estoppel claims.

IMMUNITY - UTAH

Erickson v. Canyons School District

Court of Appeals of Utah - June 11, 2020 - P.3d - 2020 WL 3089279 - 2020 UT App 91

High school student injured during a school assembly when fellow student threw a flagpole and it struck her filed an action alleging negligence, gross negligence, and vicarious liability against school district, high school, and other defendants, for failing to secure the flagpole, failing to adequately supervise students, and failing to provide medical assistance upon injury.

The Third District Court denied defendants' motion to dismiss. School district petitioned for interlocutory appeal.

The Court of Appeal held that:

- Genuine issue of material fact concerning whether one student intended to harm another student precluded dismissal of claim under Governmental Immunity Act, and
- As matter of first impression, to establish “substantial certainty” for intent element of battery, actor must have believed contact was essentially unavoidable.

For purposes of proving the intentional tort of battery, “intent” denotes that the actor desires to cause the consequences of his act, or that he believes that the consequences are substantially certain to result from it; whether the actor intended the contact to be harmful or offend is immaterial, rather, the focus is on whether the actor intended to make a contact that is harmful or offensive at law.

A showing of “substantial certainty” for purposes of a civil battery claim requires more than a showing that the actor knew there was a high degree of risk, or strong probability that harmful or offensive contact would result from a contemplated action; instead, a party must show that the actor believed that the legally harmful or offensive contact was essentially unavoidable.

Competitive Bidding for Primary Offerings of Municipal Securities: More Bids, Better Pricing for Issuers?

Abstract

This paper examines the competitive bidding activity in municipal securities during the primary offering process. The prevalent view among industry participants is that when an issuer chooses the competitive offering method over the negotiated offering method or the private placement method, it is in the interest of the issuer to solicit as many bids as possible from competing underwriters or underwriter syndicates. Presumably, when underwriters compete to win the offering at a cost of sacrificing the profit margin, the issuer would benefit from the competition by selling the securities at the most advantageous price, or the lowest yield. There has been, however, scant research literature in recent years empirically investigating the relationship between competitive bidding activities and the resulting primary offering profit margin earned by the winning bidder from reselling.

This paper analyzes two aspects of the competitive offering process in recent years:

1. the average number of competitive bids received by an issuer; and
2. the impact of the bidding competition on winning underwriters’ profit margins.

We found that the average number of competitive bids received gradually increased over the past 10 years, from an average of 4.4 competitive bids per issuance in 2009 to an average of 5.7 competitive bids per issuance in the first half of 2019. This conclusion holds regardless of the size of an issuance, the population of the state where the issuance originated (referred to in this paper as “issuance origination state”) or the per capita income level of an issuance origination state. In addition, we found that the winning bidder’s primary offering spread was negatively correlated with the number of competitive bids received after controlling for characteristics of each offering, such as offering size, time to maturity and yield, etc. Therefore, all things being equal, soliciting more competitive bids does indeed improve an issuer’s selling price and reduce the yield cost for the issuer.

We caution that the conclusion from this paper is preliminary and may warrant further investigation,

such as further exploring immediate trading in the secondary market during the first 30 days subsequent to the initial offerings.

Continue reading.

Municipal Securities Rulemaking Board

by Simon Wu, Ph.D.
Chief Economist at Municipal Securities Rulemaking Board

Published on July 14, 2020

Pre-Trade Market Activity: What Has Changed Since 2015?

Abstract

Since releasing a research report on pre-trade market activity in October 2018 (based on data from 2015), the Municipal Securities Rulemaking Board (MSRB) has obtained more recent quote data from the same two alternative trading systems (ATSs) with a significant presence in the municipal securities market and conducted an in-depth analysis for the period from June 1, 2018 through November 30, 2018. The analysis indicates that there was a significant increase in the amount of responses to Request for Quotes (RFQs, also known as "bid-wanteds") and live quotes in the three-and-a-half-year timespan between 2015 and 2018. For RFQs, the preliminary analysis confirms the results from the prior analysis that the execution rate on an ATS platform was higher when more responses were received. For live offer quotes, the analysis indicates that live quotes increasingly provided a valuable pricing indicator to the market, even though a majority of live quotes only represented one (offer) side of the market and 22% of all trades (and 58% of inter-dealer trades) were executed on an ATS platform. Quoted offer prices may have become more visible to market participants, and more informative to execution prices for inter-dealer, customer buy and customer sell trades, as a result of increased quote provision and offer price competition.

The authors welcome feedback and suggestions on this report as well as recommendations on additional data and analysis that could be helpful to municipal market stakeholders. Please contact Simon Wu, MSRB Chief Economist, at swu@msrb.org or 202-838-1500.

Continue reading.

Municipal Securities Rulemaking Board

by Simon Wu, Ph.D.
Chief Economist at Municipal Securities Rulemaking Board

Published on July 22, 2020

Fitch Ratings Updates U.S. Public Finance Prepaid Energy Transaction Rating Criteria.

Related Fitch Ratings Content: U.S. Public Finance Prepaid Energy Transaction Rating Criteria

Fitch Ratings-New York-14 July 2020: Fitch Ratings has published the following report: "U.S. Public Finance Prepaid Energy Transaction Rating Criteria." This report updates and replaces the prior report published on July 25, 2019.

Primary revisions to the criteria include an explanation of Fitch's treatment and assessment of funding agreements when rating prepaid energy transactions and inclusion of a more detailed description of the scope of surveillance reviews.

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

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INSIGHT: Bankruptcy for States? Yes, But Don't Forget the Constitution.

With Covid-19 causing states to face rising expenditures and growing shortfalls in tax revenues, some policymakers and pundits have suggested making federal bankruptcy laws available to state governments. Susheel Kirpalani, partner at Quinn Emanuel, says Congress should act with precision and not haste, or it will increase the cost of borrowing in all 50 states and destabilize the multitrillion-dollar municipal bond market.

The U.S. bankruptcy laws are a foundational pillar of the world's most envied capital markets for one reason: they provide a reliable set of rules that lead to predictable outcomes. When states seek to access the $3.9 trillion municipal finance market, investors take comfort in the fact that the Constitution makes it very hard for a state to break its contractual commitments based on changed circumstances—even if doing so would free up money for good uses.

Now that Covid-19 is causing states to face rising expenditures and growing shortfalls in tax revenues, some policymakers and pundits have suggested it's time to consider making federal bankruptcy laws available to state governments. These voices are quick to note that municipalities and state-level instrumentalities can already file under Chapter 9 of the Bankruptcy Code.

While opponents ponder whether subjecting states to federal court orders represents an affront to the 10th Amendment, any such law would be optional for states to use. The U.S. Supreme Court already cleared the way for this framework in 1938. The bigger constitutional concern is the continuing role of the Contracts Clause, which is the part of the Constitution that prevents states from reneging on their contracts at will.

How It Could Work

Any constitutional bankruptcy law for the states should reserve power to the courts to permit states to impair obligations to the extent justified, but only to that extent. Otherwise, the law would subvert the Constitution, confound judges, and lead to unpredictable and politicized outcomes for markets.

Prospective bill sponsors and relevant committees of jurisdiction would be well served to assess the checks and balances provided by the courts in Chapter 11 before simply incorporating a subset of bankruptcy provisions for states as it did with Chapter 9. In the corporate context, courts can remedy abuses of creditor rights by authorizing a creditor-sponsored plan, the appointment of a trustee, or even liquidation. None of these features is available in Chapter 9 due to state sovereignty, but that should not be the end of the analysis.

Lawmakers should consider that when a state seeks to break its own contractual commitment today, it must demonstrate in a court of law that the impairment is both reasonable and necessary—terms that have an established body of jurisprudence. Even if an impairment is necessary, its reasonableness may depend on the specific commitment made and the context in which it was made.

For example, a public employee union that already provided concessions due to a state’s recent financial distress should continue to be protected from a second bite at the apple in bankruptcy unless there is truly no other viable alternative. Similarly, a non-impairment commitment expressly provided by statute to induce lending, or the state’s vesting of property interests in future benefits or revenues, should be considered superior on a relative basis to other claims in bankruptcy that enjoy no such protection.

As such, to the extent Congress considers a state-level bankruptcy law, lawmakers should be careful to ensure that a court retains the power to evaluate the policy decisions underlying a proposed bankruptcy plan in a manner consistent with the Contracts Clause. Furthermore, respecting state-law commitments and priorities given to creditors on a relative basis would be the best way to respect state sovereignty.

In this way, Congress can afford states bankruptcy relief to promote collective action to bind hold-outs while still safeguarding settled constitutional expectations. This can be done without offending state sovereignty because the state is already constrained by the Constitution in the absence of a new bankruptcy law.

If a state could demonstrate an impairment were reasonable and necessary, and the requisite creditor votes for the plan were obtained, the court would grant the federal discharge. But if it could not make the showing, the court would deny confirmation of that particular plan and the state would need to either formulate a better one or dismiss its bankruptcy case and revert to the status quo—no sovereign-bad feelings.

But if state-level bankruptcy law is drawn up in a way that gives states the unchecked right to impair their debt obligations, it will turn the Constitution on its head. And while creditors could try and invoke the protection of the Contracts Clause even if it were not codified in the new statute, this approach would create much greater uncertainty than if the law spelled out the constitutional obligations in the first place.

This is why Congress must act with precision rather than haste. Lawmakers must not be hypnotized by the mantra of state sovereignty without pausing to consider what constitutional protections constrain the states when they transact with private parties.

Should Congress opt for a quick fix, it will increase the cost of borrowing in all 50 states and destabilize the multi-trillion-dollar municipal bond market. There is a way to aid states, but it's not by passing legislation that inadvertently writes the Contracts Clause out of the Constitution entirely.

Bloomberg Law

by Susheel Kirpalani

July 17, 2020, 1:01 AM

This column does not necessarily reflect the opinion of The Bureau of National Affairs, Inc. or its owners.

Susheel Kirpalani, chair of the Bankruptcy and Restructuring Group at Quinn Emanuel, has served as legal counsel to stakeholders in major municipal restructurings involving the Commonwealth of Puerto Rico, Jefferson Country, Ala., and Detroit. He testified before Congress on the fairness of Puerto Rico's bankruptcy law.

Muni Market Niche Faces Biggest Test With Sales Taxes Crumbling.

- **Governments' sales-tax backed bonds were seen as less risky**
- **With local collections down sharply, some now have doubts**

The shutdown of businesses across the country is casting a pall over a segment of the $3.9 trillion municipal-bond market that had been seen as more insulated from risk: debt backed by sales-tax collections.

Illinois, Chicago, Puerto Rico and the state of New York are among governments that have issued such bonds. That allowed them to borrow at a lower cost than by selling debt backed only by the promise to repay, given that the dedicated revenue stream provided investors an extra bit of protection.

But the business closures that have raced through the American economy along with the coronavirus since March are promising to mark the biggest test yet of that premise. In May alone, the sales tax collections of states tumbled by $6 billion, or 21%, from a year earlier, according to an analysis by the Urban-Brookings Tax Policy Center.

Matt Fabian, an analyst for Municipal Market Analytics, said the sales-tax bonds were designed to be insulated from the state and city budgets, with the revenue behind them typically well above what's needed to cover the debt payments.

"But sales tax bonds weren't built with the pandemic in mind," Fabian said. "You can't have sales transactions go down 80% for months without problems."

The risk hasn't yet had a big effect on the price of the securities, which have rebounded along with the broader market from the March crash triggered by the first wave of shutdowns.

Bonds sold by Chicago's Sales Tax Securitization Corp. that mature in 2040 are trading for yields around 3.6%, down from as much as 4.24% early last month, according to data compiled by Bloomberg. The prices of those sold by still-bankrupt Puerto Rico have also rallied sharply back since March.

Fabian said the unprecedented declines in sales taxes makes it "very likely" that some governments will need to draw on reserves or see the ratings of the securities cut.

Dora Lee, director of research at Belle Haven Investments, which manages $12.4 billion in muni bond assets, said the economic rout has cast some doubts on how the securities will fare.

"Now that there's a potential for large revenue declines, I think investors are looking for credits that have more financial flexibility than a rigid pledged revenue stream," she said. "We have been extremely cautious when looking at special tax bonds because it's hard to know where the declines will bottom out and I suspect that other investors are in the same boat."

Bloomberg Law

Shruti Date Singh

July 15, 2020, 11:23 AM

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William Selway, Amanda Albright

Fitch: Not-for-Profit Hospital Medians Improved Prior to Coronavirus

Fitch Ratings-New York/Austin-16 July 2020: Fitch Ratings is currently compiling the latest median financial ratios for its not-for-profit (NFP) hospital and health system portfolio, and early indications show across the board improvement among Fitch's key rating metrics. The medians that will be profiled in our 2020 median ratio report are based on 2019 audited data and therefore do not reflect the impact of the coronavirus pandemic on hospital operating performance in 2020. The 2019 metrics highlight the stronger position in which NFP hospitals found themselves at the onset of the outbreak, providing some financial cushion to withstand pressures. We expect the 2020 medians will represent peak performance levels until the sector is able to recover from the effects of the pandemic on operations.

Audited data show that the sector had stabilized after a period of prior operational softness, with improvements first seen in our 2019 medians (2018 audited data). The 2020 medians are expected to show operating margin expansion driven by higher revenues and targeted cost reductions along with improvement in liquidity and debt service ratios due in part to a favorable investment market in 2019 and increased cash flow. This is despite robust capital spending that normally limits yoy improvement in the sector's unrestricted liquidity levels and industry challenges such as a competitive labor market, high cost of speciality pharmaceuticals, modest yoy increases in contractual amounts, and the ongoing shift to value-based payments from fee-for-service.

Continue reading.

S&P U.S. Higher Education Rating Actions, Second Quarter 2020.

View the Rating Actions.

S&P U.S. Charter Schools Rating Actions, Second-Quarter 2020.

View the Rating Actions.

S&P Credit FAQ: Pension And OPEB Guidance In U.S. Public Finance Credit Analysis

On Oct. 7, 2019, S&P Global Ratings published "Guidance: Assessing U.S. Public Finance Pension And Other Postemployment Benefit Obligations For GO Debt, Local Government GO Ratings, And State Ratings." Here, we answer the most frequently asked questions from investors and other market participants.

Elsewhere, we have also provided an overview on our approach to U.S. state and local government pensions within the context of our three government criteria (see "Credit FAQ: Quick Start Guide To S&P Global Ratings' Approach To U.S. State And Local Government Pensions," published May 13, 2019).

Frequently Asked Questions

Will the guidance change over time?

Yes, guidance may change over time. Specifically, the market periodically changes and the discount rate and long-term medical trend guidelines may be adjusted to align with updated capital market assumptions and medical trend models. It is important to note that, while we expect this discount rate guideline may continue to be updated periodically, it represents a long-term view of underlying risk.

Why did the discount rate guideline change?

The discount rate, generally equivalent to the assumed return on assets in the U.S. public sector, is equal to inflation plus the real return on accepted market risk for an individual pension plan. The guideline is updated for two primary reasons: the underlying long-term inflation assumption decreased to 2.4% from 2.6%; and updated market conditions reflect generally lower returns for a given level of risk.

Will ratings change as a result of the published guidance, including periodic updates?

We expect no rating changes due to the publication, or periodic update, of guidance, as the purpose of this guidance is to provide clarity on important pension and OPEB factors, including actuarial inputs, that we consider in applying our existing criteria. Our analysts consider the guidelines for assumptions and methods within the context of an obligor's overall unique credit profile, including its ability to afford rising costs and proactive management measures to address them. Because guidance articulates and provides transparency about application of existing criteria, it does not necessitate a review of existing ratings covered by these criteria.

Continue reading.

Public Pensions Face a COVID-19 Conundrum.

Scholars disagree over how to deal with the threat of exhausting a plan's assets.

Faced with depleting assets, and with state and local governments under fiscal pressure from the COVID-19 recession, public pension plan sponsors have some tough choices ahead of them in order to remain sustainable during economic uncertainty.

However, there are widely differing views among economic scholars as to what the most prudent strategy is for state and local governments dealing with low returns on pension investments, aging workforces, and pressure to build portfolios to cover promised future benefits—as well as other budgetary responsibilities.

Those conflicting views were on display at the 2020 Municipal Finance Conference, which was organized by thinkthank the Brookings Institution and held virtually earlier this week.

Louise Sheiner and Finn Schuele of the Brookings Institution's Hutchins Center on Fiscal and Monetary Policy and Jamie Lenney of the Bank of England expanded on their presentations from last year's conference, which argued that state and local government pension liabilities can be stabilized as a share of the economy with relatively modest fiscal adjustments.

They examined how the change in the economic landscape, such as lower interest rates, has affected pension sustainability. And, considering the fiscal distress most state and local governments are currently dealing with, they also looked into how reducing or putting a moratorium on pension contributions in the near-term to avoid bigger cuts to core services would affect that sustainability.

The three noted that pension contributions in 2019 for the US as a whole represented 4.7% of revenues raised from taxes and fees, which is a significant source of funds considering gross domestic product (GDP) is expected to be down approximately 6% in 2020, with state and local revenue down even more than that.

They argued that cutting back on pension contributions could "go a long way" toward mitigating spending cuts and considered the sustainability implications of putting a moratorium on pension contributions for three years.

Sheiner said that if plans are allowed to be less funded, but stable after a moratorium, it actually lowers the required contributions that must be made or, at worst, would only raise them a little. She said that this was because when rates of return are below economic growth, rates assets are expensive to maintain, and the moratorium reduces assets but makes everyone better off.

“This is probably not going to be the right thing to do for every plan,” she said at the conference. “But I think it’s likely that is the right thing to do for many plans and it should at least be on the table.”

However, Robert Costrell and Josh McGee from the University of Arkansas disagreed with Sheiner, Schuele, and Lenney, arguing that perpetually rolling over pension debt puts a plan in a “precarious financial position” and significantly increases the chance it will run out of assets.

They said that if a plan runs out of assets, it would have to enter pay-as-you-go status, which means benefit payments would have to be made from the state or local government’s annual budget.

“Pay-go is a huge risk,” McGee said during his presentation. “The benefit payments rate is a natural contribution threshold, but most governments are contributing far less than the pay-go rate. So if plans exhaust their assets, contributions would have to increase from around 25% of payroll to around 40% of payroll.”

To put this in context, McGee said that for teachers in Illinois, this would translate to an approximate $1.3 billion increase, or a 25% increase in dollar terms. And for Pennsylvania teachers, that would be approximately a $1.5 billion increase or a 30% rise in dollar terms.

“So this is a big increase that would be incurred if plans exhaust their assets completely,” he said.

Chief Investment Officer

July 16, 2020

Toll Roads With Fewer Cars an Unlikely Haven for Bond Buyers.

- **Agencies were prepared with large cash balances on hand**
- **Americans buying goods online has helped boost trucking tolls**

Municipal-bond investors are scouring for pockets of the $3.9 trillion market that are a haven from the coronavirus and its recession. Turns out toll roads may be a safe bet.

The nearly $140 billion of debt sold for U.S. toll roads would seem like an unlikely place to shelter from the crippling economic side effects of the pandemic. Cars have disappeared from roads and highways across the country as tens of millions of Americans work from home, have lost their jobs or are bunkered down to avoid infection.

But operators of toll roads were prepared by keeping large cash balances to help them withstand shocks like the pandemic. The Oklahoma Turnpike Authority, one of the largest toll operators by mileage, had more than 590 days of cash on hand at the end of 2019, a figure it had gradually increased following the Great Recession a decade ago, according to data compiled by Bloomberg.

That’s good news for bond buyers. GW&K Investment Management, which oversees more than $30 billion in municipal bond investments, sees such debt as being well positioned even as toll operators report declines in business, said Sheila May, director of municipal bond research.

“This is a sector that traditionally has held a lot of cash,” May said, adding that her firm favors large toll operators serving metro areas.

Moody’s Investors Service found that most of the publicly-owned toll roads it rates should be able to absorb a 30% revenue decline before debt service coverage ratios reach 1-times or below. Even then, the agencies’ existing cash would help them avoid tapping debt service reserve funds right away, the rating company said in April.

Commercial trucks have also helped blunt the impact of the pandemic on toll agencies’ finances as Americans turned more and more to online shopping to avoid potential infection from the coronavirus. The American Trucking Associations’ index of truck tonnage jumped 8.7% in June, the most for a month since 2013, according to a July 21 report. The trade group said the increase wasn’t enough to put trucking tonnage to pre-pandemic levels.

Wendy Smith, director of finance and revenue at the Oklahoma Turnpike Authority, said trucking activity has helped prop up the agency. Revenue from trucking customers dropped 11% in April but was down less than 1% for June.

“It really did start to come back,” Smith said.

Using a seven-day rolling average, the authority’s overall revenue is down between 5% and 8%, a level of decline that Smith said could last for the rest of the year. She said she expects the authority will be able to avoid fare hikes.

Additionally, this summer, as the economy reopens in some parts of the country, people using their cars to go on day trips or stay-cations rather than fly may also support the sector.

GW&K’s May said the firm has been looking for “greenshoots” during the downturn. They’re taking into consideration potential changes in people’s habits. “We have to look under the hood a bit more,” she said.

Bloomberg Markets

By Amanda Albright

July 23, 2020, 10:30 AM PDT

— With assistance by Sophia Sung, and Matthew Begley

Investors Have More Faith in Bonds Issued by Airports Than Might be Expected.

KEY POINTS

- Airports offer essential services, but in a time when travel is down, some investors worry they may be highly risky investments.
- But municipal bond experts and traders say the bonds of airports are trading well, in fact outperforming the broader muni market in June and July.
- Airports typically have high levels of cash on hand, and that has helped insulate them from the loss of revenues.

With airlines suffering from low traffic and billions in losses, investing in airports right now may seem unwise.

But, in fact, airport bonds have been outperforming the broader municipal bond market. Strategists say it's because airports went into the Covid crisis with a lot of cash on hand and that should help them weather the storm.

According to Moody's, airports had an average more than 659 days worth of cash.

"I would describe that as a very good cushion of liquidity," said Tom Kozlik, head of municipal strategy and credit at Hilltop Securities. He said that data on cash holdings was from fiscal year 2018, and the airports were able to build up their hordes even more in 2019.

"They've had several years since the end of the last recession, where enplanements were relatively higher. But plenty of them also had infrastructure upgrades they wanted to do," said Kozlik. "It seems they took advantage of a situation where activity was higher-than-expected, but they also socked some money away."

Airport bonds were among the hardest hit when the credit markets seized up in February and March, as investors feared the worst for air travel. While air traffic is still weak and enplanement, or passenger boardings, are low, the airport bonds have been able to recover.

"Right now, investors are leaning toward the larger airports," said Kozlik. "I think the reason is because the market opinion is such they feel there's less risk in a situation where enplanements might continue to be lower than what we've seen pre-Covid. I think folks believe those large airports aren't going anywhere. There's just more positive sentiment for those larger airports as a result."

A $460 billion offering Thursday for Dallas-Fort Worth International Airport, for instance, was met with strong demand. The cities of Dallas and Fort Worth issued the of Series 2020B joint revenue refunding bonds for the airport. According to Bond Buyer, they were repriced to yield from 0.27% with a 5% coupon in 2021 to 1.97% with a 4% coupon in 2040. The 2045 maturity was repriced to yield 2.12%, with a 4% coupon.

There were also bonds issued for the airport last week. The spread on the 10-year revenue bond issued l was just 63 basis points above the AAA rated muni benchmark, according to Kozlik. The bonds were rated A1 by Moody's and A by Standard and Poor's. Another $1.14 billion offering is expected for the airport next week.

"Along with the boarder market, the airport sector has tightened up quite a bit," said Jeffrey Lipton, head of municipal research and strategy at Oppenheimer. "We are seeing evidence that a number of airport bonds are being priced tighter than some other higher end credits."

While airlines were given relief under the CARES Act, Congress also gave funds to airports. Kozlik said the funds amounted to 22% of revenues for a list of airports he follows.

Rating agencies have a negative outlook on the sector, and strategists warn there could be downgrades. Not all airports are attractive, and investors should pick among the better rated, bigger airports.

"Heading into Covid-19, I was a fan of the airport sector, and I'm still a fan of the airport sector," said Lipton. "But we have to be more selective now. If you look at gateway airports, those aren't going anywhere." Gateways would be Los Angeles or San Francisco or New York.

Moody's warns that airports could be at risk if they have a high concentration of service by one airline, since an airline can cancel where it travels to and from. They also are at risk if an airline undergoes massive layoffs.

"Though large airports can bear the risk of high airport concentration, they also benefit from being essential to the airline's network and are typically highly profitable for airlines," Moody's wrote. "However, small airports with high airline concentration do not share this benefit. We expect the hubs that are the most profitable for airlines to see quicker recovery from the effects of the coronavirus because of their outsized contribution to the airlines' route networks and profitability."

In a note from earlier this month, Moody's said Charlotte, N.C. Airport Enterprise, which it rates Aa3 stable, and Dallas-Fort Worth are among the airports with the best recovery in enplanements so far.

"Small airports in highly competitive markets are likely to face some service consolidations by the airlines into larger airports, as demonstrated by JetBlue's decision to consolidate its West Coast operations in Los Angeles Departments of Airports- Los Angeles International Airport Enterprise (Aa2 stable) and moving away from LGB (Long Beach Airport)," Moody's wrote.

Hawaiian airports, which posted the sharpest overall drop in passenger volume in April and May, are likely to see the slowest recovery in passenger volume as long as the state's stringent travel restrictions remain in place," noted Moody's. Hawaii requires that travelers to the state be quarantined for two weeks.

Lipton said airports are difficult to analyze because they have very different revenue streams that go into their debt service.

"Revenues come from parking, revenues can come from hot dogs being sold, alcohol and various products you see in the airports. Often times, they have minimum guarantee revenue agreements" with concessions, he said. They also collect landing fees, and can pass along some of their costs by raising fees.

Lipton said there could be downgrade activity affecting airport bonds. "I think it's going to be confined to a single notch. We're not ruling out downgrades, but those downgrades would probably be confined to a single notch as opposed to multiple notch downgrades. I think the sector overall will display relative resiliency throughout this cycle," Lipton said.

Kozlik said it helps airports to have strong carriers. In the years before Covid, airports were breaking financial records as enplanements grew. Kozlik said the airports that will be better positioned to take advantage of the recovery will be those that stress sound finances and are located in regions and cities with industries and demographic bases that are growing.

In addition to different revenue sources, airports also had widely different amounts of cash. For fiscal year 2018, Miami International, for instance, had 318 days worth of cash, while Boston's Logan Airport had 628 days, according to Moody's data. Hartsfield-Jackson in Atlanta had more than 1,000 days worth of cash. This is based on fiscal year 2018 data.

Kozlik said some investors are avoiding airports because of the hit to travel. "That may not be the way to look at it. Look at the underlying credit fundamentals," he said. Airports, like water and sewer or toll roads issue revenue bonds.

"Typically, a revenue bond, all things being equal … you're going to get a little more spread compared to the general obligation bonds, and then when you go out the risk spectrum, that's going to increase the amount of spread you're going to get," said Kozlik.

Lipper said munis overall so far are returning 1.21% month to date, based on Bloomberg Barclays data. The transportation sector, including airports, has returned 1.29% in the same period , through July 22. Health care, which outperformed in June at 2%, is returning 1.60% in July so far.

Revenue bonds typically lag general obligation bonds, but because of the outsized hit to revenue bonds earlier in the year, their comeback has helped them outperform GO debt.

cnbc.com

by Patti Domm

JUL 24 2020

SIFMA: Joint Support of LOCAL Infrastructure Act

SUMMARY

SIFMA as part of a joint industry letter provides comments to the Honorable Mitch McConnell and the the Honorable Charles Schumer in strong support of S. 4129, the Lifting Our Communities through the Advance Liquidity for Infrastructure Act (LOCAL), as well as in support of S. 4203, the American Infrastructure Bonds Act.

Read Letter.

States, Cities Shelve Public Works as Recession Hammers Revenue.

- **Without aid, austerity promises to exert a drag on recovery**
- **Most cities reported rolling back infrastructure spending**

America’s states and cities are putting infrastructure projects on hold as tax revenue tumbles, threatening to deal another setback to an already sputtering economy.

New York’s Metropolitan Transportation Authority, the operator of the nation’s largest public transit system, is putting its $51.5 billion, five-year capital program on hold as the pandemic decimates subway ridership. The Port Authority of New York and New Jersey said in securities filing that its plans may also need to be delayed. In Massachusetts, the agency that runs Boston’s Logan Airport said it’s cutting $100 million in spending and shelving $1 billion of projects.

Across the country, about two-thirds of cities reported delaying or canceling infrastructure and capital spending since the coronavirus drove the nation into a recession, according to a survey by the National League of Cities. At least $9 billion of construction work on transportation projects has been shelved so far, according to the American Road & Transportation Builders Association.

David Berger, mayor of Lima, Ohio, with 36,000 residents, said the city doesn’t have the money for large-scale infrastructure projects without federal help and needs to reduce its payroll by 10% to make up for lost revenue.

“Our budget has been severely impacted,” he said.

The cutbacks illustrate how local budget deficits will weigh on the recovery, just as they did in the wake of the last recession, if aid isn't forthcoming from Washington. While the U.S. House approved a $3.5 trillion stimulus measure that provides about $1 trillion to states and cities, Senate Republicans intend to scale the spending back and are balancing the aid against other priorities, including calls to extend federal unemployment benefits that are set to lapse.

The cutbacks also threaten to worsen the state of America's infrastructure, which the American Society of Civil Engineers already said needed $2 trillion of additional investment over 10 years. While President Donald Trump promised to deliver a major infrastructure program when he ran for office, none has been enacted.

With interest rates holding at the lowest in decades, governments have been aggressively refinancing their debts to save money. But even during the economic expansion they were loathe to take on new obligations, which has kept the amount of state and local government debt outstanding roughly steady for the past decade.

Randy Gerardes, head of municipal strategy at Wells Fargo Securities, said the outlook for borrowings to fund new projects looks grim.

"Generally, they're trying to deal with the virus and what's right in front of them," he said.

Bloomberg Markets

By Emmy Lucas and Amanda Albright

July 20, 2020, 7:35 AM PDT

Transportation Agencies Are Bracing For The Worst.

Widespread public fear of traveling and especially using public transportation paired with the shelter-in-place mandate in most metropolitan cities are two key detriments for transportation agencies around the United States.

In the first stimulus round of funding, the federal government allocated around $25 billion for transit agencies in the United States, which kept them afloat for the time being. However, with a prolonged shutdown and no clear solution in sight, many agencies are contemplating different ways to cut costs, including service cuts. Furthermore, transportation agencies are also requesting additional federal help to sustain their operations until their ridership levels start rising to normal levels.

In this article, we will take a closer look at the impact of COVID-19 on various transportation agencies and what to expect in the near future.

Continue reading.

municipalbonds.com

by Jayden Sangha

Jul 22, 2020

FY21 Appropriations Bill Calls for Billions in Transportation Funding - Nossaman

The full House will consider the FY21 Transportation, Housing and Urban Development (THUD) bill that the House Appropriations Committee approved with a final vote of 30-22 on July 14, 2020. For FY2021, the THUD bill provides a total of $107.2 billion in total budgetary resources for the U.S. Department of Transportation, including:

- $1 billion for National Infrastructure Investments (TIGER/BUILD);
- $3 million to support the Highly Automated Systems Safety Center for Excellence;
- $10 million for competitive Transportation Planning Grants to assist areas of persistent poverty;
- $18.1 billion for the FAA, including $1.5 billion for Aviation Safety and $500 million for discretionary Airport Improvement Grants;
- $62.9 billion for FHWA, including $61.9 billion, consistent with the INVEST in America Act, for programs funded from the Highway Trust Fund, and $1 billion for discretionary Highway Infrastructure Programs, a decrease of $1.2 billion below the FY 2020 enacted level, but $1 billion above the President's budget request;
- $881 million for the Federal Motor Carrier Safety Administration;
- $3 billion for the FRA, including $500 million for Consolidated Rail Infrastructure and Safety Improvements, $200 million for Federal-State Partnership for State of Good Repair, $2.05 for Amtrak, consisting of $750 million for Northeastern Corridor Grants, and $1.3 billion for National Network Grants;
- $18.9 billion for FTA, including $15.9 billion for Transit Formula Grants consistent with the INVEST in America Act, $2.2 billion for Capital Investment Grants, and $510 million for Transit Infrastructure Grants;
- $40 million for Saint Lawrence Seaway Development Corporation; and
- $1.2 billion for Maritime Administration, including $314 million for Maritime Security Program, $300 million for Port Infrastructure Development Program, and $389 for schoolship construction.

The legislation also provides $26 billion of emergency funding to support economic recovery from the coronavirus pandemic by investing in transportation infrastructure, including:

- $3 billion for National Infrastructure Investments (TIGER/BUILD);
- $10.5 million for DOT Cyber Security Initiatives;
- $500 million for FAA Facilities and Equipment;
- $2.5 billion for FAA Grants-in-Aid for Airports;
- $5 billion for Consolidated Rail Infrastructure and Safety Improvements;
- $100 million for Magnetic Levitation Technology Deployment Program;
- $5 billion for Northeast Corridor Grants to Amtrak;
- $3 billion for National Network Grants to Amtrak;
- $5 billion for the Capital Investment Grants;
- $125 million for Maritime Administration Operations and Training;
- $345.5 million for State Maritime Academy Operations;
- $100 million for Assistance to Small Shipyards;
- $1 billion for Port Infrastructure Development Program; and
- $7.5 million for the DOT Office of Inspector General.

Additionally, the bill adopted by the full Committee includes amendments requiring the use of masks and enhanced sanitation measures on airlines, Amtrak, and in large transit agencies.

The same day the THUD bill passed out of committee, the American Public Transit Association (APTA) sent a letter to congressional leadership requesting $32-36 billion in additional transit funding. Estimates of the pandemic's devastating financial impact on transit include: $700-800 million/month loss by New York MTA, $1.8 billion loss over two years for Los Angeles County MTA, $500-$800 million loss through 2023 for Southeastern Pennsylvania Transportation Authority, $100-150 million deficit in 2021 for Regional Transportation District of Denver, and $975 million deficit over a three year period for Bay Area Rapid Transit.

Nossaman LLP

By Donna Brady on 07.22.2020

[What Investors Want to Know: U.S. Transportation and the Coronavirus Crisis (Questions from Investor Discussions)]

[Read the Fitch Q&A.]

Tue 14 Jul, 2020 – 8:45 PM ET

[Fitch: Coronavirus-Induced Travel Stoppage Clouds U.S. Transportation]

Related Fitch Ratings Content: [What Investors Want to Know: U.S. Transportation and the Coronavirus Crisis (Questions from Investor Discussions)]

Fitch Ratings-Austin-14 July 2020: With non-essential travel largely ground to a halt due to the coronavirus, the ability of transportation segments to maintain revenues and passenger traffic will be an increasing challenge according to a new report that addresses questions Fitch Ratings has received from investors over the health of transportation infrastructure as fallout from the pandemic continues.

The investor questions include a query about U.S. airports' ability to fund capital projects, which will face a stiff test in the near term because pay-go funding liquidity is under strain against the volatile capital markets. 'Federal monies that airports can use for any lawful purpose and existing funds held in unrestricted reserves and construction accounts will soften the blow somewhat,' said Senior Director Seth Lehman. 'That said, obtaining broad airline support will be more difficult until the aviation environment recovers.'

As a result, airports are likely to either defer expansionary projects or scale back less essential projects altogether to offset cash flow weakness. Examples include capital projects at LAX (Midfield Concourse), New York's LaGuardia Airport (Central Terminal) and Kansas City, all of which are likely to continue given the funding was covered from previous bond issues, which is leading investors to inquire as to what happens to completion prospects once the funding well runs dry for these projects.

The CDC's current "no sail order" has put a lid on cruise travel through at least Sept. 15 and will put substantial pressure on cruise operator passenger levels through at least the end of the third quarter. As a result, investors are asking how this will affect cruise ports over time. 'Ports are shielded to some extent thanks to minimum annual guarantees with cruise operators, though most cruise ports were operating well above their minimum annual guarantees level in recent years,' said Lehman. 'Cruise lines at some ports invoked force majeure clauses under their contracts due to the coronavirus, which may provide cruise lines relief from meeting their minimum annual guarantee levels during their contract year if cruise operations are suspended for a long period.'

This also brings into question how traffic for nearby toll roads will be affected if cruise demand continues to hover at around 50%. 'Lower cruise demand will undoubtedly have an effect, but it is doubtful it would be sufficient in isolation to lead to negative rating actions for toll roads,' said Lehman. 'Regions that serve large numbers of cruise passengers like Miami and Fort Lauderdale have a significant tourism component to their economies, but tend to be midsize to large and growing with increasingly diverse economic activity.'

Fitch will continue to maintain an active dialogue with investors as the fallout of the pandemic plays out for transportation infrastructure over time. 'What Investors Want to Know: U.S. Transportation and the Coronavirus Crisis' is available at 'www.fitchratings.com'.

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Congress Considers Additional Support for Tax-Exempt Issuers and State and Local Infrastructure Projects during COVID-19 Recovery.

Two bills from the House of Representatives (H.R.2, the Moving Forward Act, and H.R.3967, the Municipal Bond Market Support Act) and two from the Senate (S.4203, the American Infrastructure Bonds Act, and S.4129, the Lifting Our Communities through Advance Liquidity ("LOCAL") for Infrastructure Act) could have significant effects on state and local government bond issuers and developers of infrastructure, if enacted, as lawmakers continue to address financial hurdles facing issuers related to the COVID-19 pandemic. This alert will discuss some of the significant provisions of each bill and how each could affect state and local government issuers, as well as certain 501(c)(3) conduit borrowers.

H.R.2, the Moving Forward Act
On June 30, 2020 the House of Representatives voted to pass H.R.2 the Moving Forward Act. The 2,300 page bill dedicates $1.5 trillion over the next five years to dramatically improve and develop

American infrastructure.

The Moving Forward Act introduces taxable “qualified infrastructure bonds,” under which the Treasury Department would make direct payments to issuers to offset a portion of the interest paid by issuers on such bonds. Under the Moving Forward Act, a qualified infrastructure bond is a bond (1) that would otherwise be exempt from taxation under existing IRS rules and (2) which 100% of the net proceeds are to be used for capital expenditures or operations and maintenance expenditures in connection with capital expenditures. This program is similar to the Build America Bonds program that expired in 2010. The direct payments would begin at 42% of the interest on the bonds, decreasing over seven years to 30%.

The Moving Forward Act proposes the reinstatement of tax-exempt advance refundings, which were eliminated after the passage of the Tax Cuts and Jobs Act of 2017. In addition, the Moving Forward Act would also nearly double the annual volume cap on Private Activity Bonds allotted to the states. Finally, the legislation would greatly expand the New Markets Tax Credit and the Historic Tax Credit programs.

S.4129, the LOCAL Infrastructure Act

On July 1, 2020, Mississippi Senator Roger Wicker introduced S. 4129, the LOCAL Infrastructure Act. The LOCAL Infrastructure Act, like the Moving Forward Act, proposes the elimination of the Tax Cuts and Jobs Act 2017’s repeal of tax-exempt advance refundings. It would permit issuers to refinance certain outstanding obligations while maintaining their tax-exempt status. These actions could, potentially provide significant cost savings that issuers could use to fund additional infrastructure, education, healthcare, or other capital improvements.

S.4203, the American Infrastructure Bonds Act

On July 8, 2020, Senator Wicker and Colorado Senator Michael Bennet introduced S.4203, the American Infrastructure Bonds (“AIB”) Act, a bipartisan bill which substantially expands upon the “qualified infrastructure bonds” provision of Moving Forward Act.

Under the AIB Act, state and local governments would be permitted to issue taxable American Infrastructure Bonds (“AIBs”) for any public expenditure that is eligible to be financed with tax-exempt bonds. This program is also modeled after the Build America Bonds program. However, unlike the Moving Forward Act, proceeds of AIBs are not limited to expenses related to capital expenditures, permitting issuers to use bond proceeds on a wide array of public projects. However, the direct payments under the AIB Act are slightly less than under the Moving Forward Act, beginning at 35% of the interest on the bonds, decreasing over six years to a revenue neutral 28%.

H.R.3967, the Municipal Bond Market Support Act

A fourth bill introduced in the House last year also could provide additional support for certain non-profit and small issuers in their COVID-19 recovery. H.R.3967, the Municipal Bond Market Support Act, introduced by Alabama Representative Terri Sewell and New York Representative Tom Reed in July 2019, would increase the annual limit for certain bank qualified borrowing for small issuers and increase the availability of tax-exempt debt for 501(c)(3) organizations.

Section 265 of the Internal Revenue Code currently permits issuers that issue less than $10 million in tax-exempt obligations annually to designate certain bonds as “qualified tax-exempt obligations.” This designation provides an incentive for banks to purchase debt of these “qualified small issuers” by permitting the banks to deduct 80% of the carrying costs of these obligations. These bonds typically bear interest at lower rates due to their attractive tax-exempt status.

Two large hurdles make taking advantage of qualified tax-exempt obligations particularly difficult for many small issuers. First, the $10 million dollar limit has not been indexed for inflation since its enactment in 1986, meaning that over time, many issuers have become too large to qualify as a qualified small issuer. The bipartisan Municipal Bond Market Support Act proposes to adjust the limit up to $30 million in annual tax-exempt debt and index the limit to inflation to prevent small issuers from losing their qualified status over time.

Second, 501(c)(3) borrowers of tax-exempt conduit issues are pooled together in determining if the conduit issuer may designate the issue as a qualified small issue. The act proposes to count each 501(c)(3) conduit borrower as a separate issuer for purposes of determining whether conduit debt may be designated as qualified tax-exempt obligations. This change would substantially increase the number of nonprofit organizations able to take advantage of the program.

Conclusion
Each of these legislative items could prove helpful for issuers that have been forced to put critical infrastructure projects on hold due to capital markets drying up in the wake of COVID-19 by increasing the number of prospective investors in their obligations. Ultimately, these bills reflect Congress's continued efforts to stimulate state and local economies throughout the country. The bipartisan support of these bills strongly suggests that some form of additional support is likely forthcoming, and issuers should maintain contact with their bond counsel and advisors in order to stay prepared for any enacted legislation.

Frost Brown Todd LLC

Authors: Denise Y. Barkdull David A. Rogers Michael D. Elliott Michael A. Brockman Emmett M. Kelly

Jul 16, 2020

For updates on the status of the proposed legislation or other information on tools available to government issuers to address financing and cash flow issues related to COVID-19, contact Denise Barkdull, David Rogers, Emmett Kelly, Michael Elliott, Michael Brockman, or any attorney in Frost Brown Todd's Public Finance industry team, Government Services practice group or the Public-Private Partnerships (P3) industry team.

How Covid-19 Could Revive PPPs in the US Infrastructure Market.

US infrastructure has been badly hit by the Covid-19 outbreak, but there are hopes that the post-pandemic environment will see a refreshed approach to public-private partnership (PPP) projects, as Viola Caon reports.

As has been the case in many countries around the world, the US transport sector has taken a strong hit from the Covid-19 outbreak.

The American Road and Transportation Builders Association reported in July that 14 states and 19 localities cancelled or delayed more than $8.5bn-worth of work planned in the sector due to the outbreak.

While new airport projects are expected to take the biggest hit, works in other sub-sectors were mostly only delayed, and in some cases the quietness brought on by the lockdown meant that some projects were completed ahead of schedule.

The infrastructure investment community does not see this as the end of greenfield public-private partnerships (PPPs) in the country, but warns that federal government support is strongly needed.

However, some point out that an opportunity may be arising from the crisis for the public and private sectors to work more efficiently together.

Availability payment versus traffic risk
Before Covid-19 struck, the US was experiencing what looked like the start of a promising season for much-needed airport renovation and expansion projects. Some of these activities, including capital projects at Los Angeles airport – LAX (Midfield Concourse), New York's LaGuardia Airport (Central Terminal) and JFK International, and Kansas City International Airport are likely to continue given that the funding was covered from previous bond issues.

Across the sector, availability payment projects – where the private sector is reimbursed by the public sector through a predetermined performance-based payment plan – are likely to be favoured in the medium term over traffic and demand risk projects, where revenues depend on traffic and user demand.

"Investors, whether foreign or domestic, will likely prefer availability payment projects over traffic risk ones," says Paul Epstein, a partner at law firm Shearman & Sterling's project development and finance practice. "It should be noted, however, that certain investors in the PPP space have always been more comfortable with the former rather than the latter, and Covid-19 has just emphasised this preference.

"It will be interesting to see if hybridised projects gain pace in the future as a result of the virus outbreak," he adds.

Managing partner at fund manager Upper Bay Infrastructure Partners Mario Maselli says that in terms of live projects, even the ones that have just an availability payment component are going ahead.

"We are involved in a rail project in North America, which is going ahead according to schedule as the final product is on an availability payment basis," he adds. "Another tunnel project that we were looking at was heavily competed for and while it is not an availability payment situation, it guarantees a payment stream over the next ten years, which is pretty rare in transport these days."

Other transport projects at procurement stage include the Capital Beltway and I-270 Corridor in Maryland – a traffic and revenue risk project – which sources say has attracted less interest and is likely to proceed more slowly than the SR 400 Express Lanes in Georgia (an availability payment project).

While the first one has only attracted the interest of four consortia at the first round, the Georgia Department of Transportation Road P3 on 26 June shortlisted Metro-Atlanta Express Solutions (led by Spain's ACS Infrastructure and Itinera Infrastructure); MW 400 Partners (led by France's Meridiam); and North Link Partners (led by the UK's John Laing Investments) for the second project's final round.

Pipeline issues: An opportunity for renaissance?
While projects that had already launched before the virus outbreak were able to proceed with varying degrees of difficulty, the biggest unknown is the extent to which new projects are going to come to market in the medium term.

David Baxter, sustainable PPP and development consultant and committee member of the World

Association of PPP Units & Professionals, recently conducted a survey of 157 PPP practitioners across 69 countries on the status of the industry amid the pandemic.

Of transport, he says responses identified it as one of the most concerning but potentially one of the most promising sectors in the post-Covid world.

In advance of the launch of our FDI-focused site, please complete the following survey aimed at investigating how investment plans are changing in the wake of Covid-19.

Your participation is confidential and the survey will take no longer than 5-10 minutes to complete. As a thank you we will share a copy of the survey write up with you.

“Overall, PPPs are not going to die as a result of Covid-19,” says Baxter. “If anything, I believe we are going to see a renaissance in the approach to PPP. This crisis might lead to the improvement in the interaction between the public and private sectors that the industry so desperately needs. Both sides have resources, but they are limited unless they join forces.

“Another theme to emerge strongly from the crisis is going to be innovation,” he adds. “The infrastructure sector, especially in the US and especially in transport, needs a lot of improvement and renovation. Sustainable and resilient transport PPPs are going to be a big trend, and it is likely to bring about more brownfield project consideration alongside greenfield projects.”

However, this is not the end for greenfield infrastructure either, Baxter argues.

“Mega, multi-billion-dollar projects are unlikely to come to market over the next four to five years during the resetting of post-pandemic priorities,” he says. “There is not going to be the money nor the appetite to finance those for a while, but there will likely be a focus on smaller projects on the greenfield side.”

Government support needed

Whether big or small, infrastructure projects are likely to require support from the federal government if they are to carry on. An already well-trodden debate in the US, Covid-19 has further exposed the need for the central government to support the states and municipalities that are struggling to shoulder the economic burden of delivering the infrastructure programme that the country needs alone.

Achieving this is, however, easier said than done, according to many.

“Federal government intervention is what the industry should be focusing on right now,” says Kent Rowey, a partner at law firm Allen & Overy’s projects, energy and infrastructure practice. “The federal gas tax trust fund outlived its usefulness long ago. Reforms are needed, for instance, around private use limitations on tax-exempt bonds and increases in allocation for wider sector eligibility for private activity bonds where the federal government would be able to use existing funding tools and subsidies to give a much-needed shot in the arm to the sector.

“There have been discussions, for instance, about including the airport sector in the Transportation Infrastructure Finance and Innovation Act (Tifia), which provides credit assistance for surface transport projects,” he adds. “However, it is probably unrealistic to expect legislation for infrastructure spending stimulus before the elections [in November].”

Partner at consultancy firm Arup Tim Treharne explains that a proposed relaxation of the requirements for Tifia is part of the major pending federal legislation regarding infrastructure stimulus, the $494bn, five-year Invest in America Act, a reauthorisation of federal surface transportation programmes that was passed by the House Committee on Transport and Infrastructure on 18 June.

On 1 July, the House of Representatives passed the $1.5trn Moving Forward Act, which included the Invest in America Act. However, President Donald Trump announced on the same day that he would veto the measure if it reached his desk.

As often happens, the infrastructure stimulus from the federal government has become caught up in disputes between the two parties. The industry agrees, however, that the way forward is for all parties to come together and contribute on infrastructure spending.

"A combination of expansion of existing federal funding programmes, such as Tifia, private activity bonds, and private equity and debt [present] the way forward for infrastructure in the US," concludes Rowey.

20 JULY 2020

Recent Bipartisan Actions to Restore Tax-Exempt Advance Refundings and Authorize American Infrastructure Bonds: Butler Snow

The "Lifting Our Communities through Advance Liquidity for Infrastructure (LOCAL Infrastructure) Act" (the "***LOCAL Infrastructure Act***") and the "American Infrastructure Bonds Act of 2020" (the "***AIBs Act***") were recently introduced in the Senate in a bipartisan effort to assist local governments as they respond to the COVID-19 pandemic. If enacted, the LOCAL Infrastructure Act would restore tax-exempt advance refundings for municipal bonds and the AIBs Act would create a new class of "direct-pay" taxable municipal bonds. This post summarizes both items as introduced.

Advance Refunding Bonds and The LOCAL Infrastructure Act

When interest rates decrease, issuers often seek to refinance their outstanding debt. In some cases, previously-issued debt has call protections that prevent the debt from being paid off immediately until such call protections expire. Advance Refunding Bonds allow states, local governments, and other eligible issuers to refinance their existing debt at the lowest possible costs when market conditions favor refinancing. Under this structure, the proceeds of the Advance Refunding Bonds are used to purchase certain types of United States Treasury Securities that are deposited into a restricted escrow account until the prior bonds' call protections expire and the previously-issued debt is redeemed.

Prior to 2017, Advance Refunding Bonds were allowed to be issued on a tax-exempt basis under the Internal Revenue Code and saved states, local governments, and other eligible issuers billions of dollars in financing costs. The LOCAL Infrastructure Act is a two-page piece of legislation that reinstates the ability of states, local governments, and other eligible issuers to issue Advanced Refunding Bonds on a tax-exempt basis.

United States Senators Roger Wicker, R-(MS), Debbie Stabenow, D-(MI), Shelley Moore Capito, R-(WV), Michael Bennet, D-(CO), John Barrasso, R-(WY), Bob Menendez, D-(NJ), Jerry Moran, R-(KS), and Tom Carper, D-(DE) introduced the LOCAL Infrastructure Act (Senate Bill 4129) on Wednesday, July 1, 2020. To read the full text of the bill, click here.

The LOCAL Infrastructure Act has received support from several national organizations, including

The National League of Cities, United States Conference of Mayors, National Association of Counties, National Conference of State Legislatures, American Hospital Association, American Public Power Association, American Society of Civil Engineers, American Public Works Association, National School Boards Association, Government Finance Officers Association, the National Association of Bond Lawyers, the Securities Industry and Financial Markets Association (SIFMA), and the National Association of Towns and Townships.

American Infrastructure Bonds and the AIBs Act

On Wednesday, July 8, 2020, United States Senators Roger Wicker R-(MS) and Michael Bennet D-(CO) introduced the AIBs Act (Senate Bill 4203). The AIBs Act proposes the creation of a new class of "direct-pay" taxable municipal bonds known as American Infrastructure Bonds. To read the full text of the AIBs Act, click here.

As proposed, American Infrastructure Bonds would be "direct-pay" taxable bonds where the United States Treasury Department pays a percentage of the interest due directly to a state or local government issuer of American Infrastructure Bonds to offset the difference in the costs of borrowing on a taxable basis. All direct payments under the program would be exempt from sequestration. The proposed amounts of the direct payments would be as follows:

- For American Infrastructure Bonds issued ***prior to*** January 1, 2026, the United States Treasury Department would make direct payments to the issuer at 35% of interest payable on the bonds
- For American Infrastructure Bonds issued ***after*** December 31, 2025, the United States Treasury Department would make direct payments to the issuer at 28% of interest payable on the Bonds (estimated to be a revenue-neutral rate).

American Infrastructure Bonds would allow states and local governments to access a much larger universe of taxable bond investors that want to invest in infrastructure (including pension funds) that are not eligible to receive the tax advantages associated with traditional tax-exempt municipal debt. Further, American Infrastructure Bonds would be available to ***all*** state and local government issuers that want to issue American Infrastructure Bonds and that can find a bond buyer in the taxable bond market. There would be no allocation among the states and no application to a federal agency would need to be made.

As proposed, American Infrastructure Bonds could be issued for any public expenditures that would otherwise be eligible for financing on a tax-exempt basis, including roads, bridges, tunnels, canals, ports, water systems, sewage treatment facilities, storm water management systems, pipelines, utility system expansions and environmental and safety upgrades, long-term natural gas supplies for municipal utility gas distribution systems and electric generation facilities, long-term supplies of electricity for municipal electric utility systems including renewable energy projects, broadband and other telecommunications systems, rail facilities, subways, and other purposes.

The AIBs Act has also received support from several groups, including the National League of Cities, the National Association of Counties, the Government Finance Officers Association, the American Public Gas Association, the National Association of Bond Lawyers, the Bond Dealers of America, the American Society of Civil Engineers, the American Council on Education, the Securities Industry and Financial Markets Association, and the American Planning Association.

Butler Snow LLP

July 24, 2020

[Three Measures in the House’s Infrastructure Package Most Fiscally Important to Cities and Towns.]

Through NLC’s Rebuild With Us campaign, local leaders are asking Congress to pass a comprehensive infrastructure package that steps up federal support for transportation, water, broadband, workforce, and more. On July 1, the U.S. House of Representatives passed the Moving Forward Act (H.R.2), which makes significant investments to support cities’ infrastructure requests, but Senate action will be needed. This is the fourth in a series examining infrastructure components of the Moving Forward Act focused on finance priorities.

On July 1, 2020, the House passed The Moving Forward Act (H.R. 2), a $1.5 trillion infrastructure package now awaiting action in the Senate. As Chair of the NLC Finance Administration and Intergovernmental Relations (FAIR) Committee, I was pleased to see several legislative priorities we’ve advocated for prior to the passage of the Tax Cuts and Jobs Act (TCJA) in 2017 included in the bill. Relaunching the Build America Bonds program, restoring the tax-exempt status for Advance Refunding Bonds, and extending the New Market Tax Credit are all priorities that will improve the fiscal health of localities across the nation. As city leaders, and as we grapple with the costs associated with COVID-19, we must champion H.R. 2. Our constituents are counting on us.

A critical priority of the infrastructure package is relaunching the **Build American Bonds** (BABs) Program. Favorable especially to local and state government issuers, BABs are taxable municipal bonds that previously included federal tax credits or subsidies for either the bondholder or the issuer. Seen widely as an alternative to traditional tax-exempt financing, BABs allow for decreased borrowing costs with increased savings for the locality.

The program expired in 2010, but as of 2019, nine Texas cities had BABs outstanding, with a total principal exceeding just over $2.1 billion with total payments peaking at $4.01 billion. Among these nine Texas cities, three are in the top ten most populous cities in the United States (Houston, San Antonio, and Dallas). Also included is San Marcos, frequently named among the nation’s fastest growing localities. These cities and their respective regions are experiencing tremendous population growth – and that’s just in Texas.

It’s critical that we as city leaders continue to make infrastructure development a policy priority interconnected with broader issues such as quality of life and equity. With an increasing demand, the fiscal bill for much of our current infrastructure came due years – and in some cases, decades – ago.

For small and large issuers alike, BABs offset many of the fiscal challenges communities across the nation saw as a result of the Great Recession. Citizens, weary of traditional markets, turned to the municipal bond market, and local governments turned to BABs to attract investment to offset costs associated with large-scale investments in our infrastructure. BABs are a fiscally responsible tool we must bring back.

Advance Refunding Bonds have been a longstanding tool in local governments’ tool chests as well, allowing issuers to take advantage of lower interest rates while minimizing borrowing costs. Here in Houston, the city has realized more than $900 million in present value savings in the last decade alone due to advance refundings. With the restoration of the tax-exempt status for advance refundings, those savings could be even higher.

In 2017, the Tax Cuts and Jobs Act (TCJA) removed the tax exemption for savings generated as a result of advance refundings. Similar to how a homeowner would refinance their home with better interest rates, localities should be able to take advantage of the same benefit. Especially at a time when local governments are staring down rising costs associated with COVID-relief, among other large costs, restoring the tax-exempt status of Advance Refunding Bonds is a critical step in improving the fiscal health of our communities big and small.

Created in 2000 to attract private capital to economically distressed communities, the **New Markets Tax Credit** (NMTC) provides investors with a Federal tax credit that finance businesses such as manufacturing, food, retail, housing, health, technology and many others in low-income communities.

Since 2003, more than $27 billion in investments have been deployed to communities and neighborhoods most in need. The Community Development Financial Institutions Fund (CDFI Fund) estimates that for every dollar invested by the federal government, more than $8 in private investment is realized. With roughly $1.9 billion in annual federal spending dedicated to NMTC, the multiplier effect of this investment easily offsets the benefits realized by the community as a result of tax obligations forgiven for the new investor. This too is a positive cost-benefit tool intended to incentivize private investment and should be extended permanently.

As the Senate deliberates on the House-passed infrastructure package, many local leaders are still responding to everyday challenges in their communities. From addressing annual budget shortfalls, to funding retirement benefits and rising service demand, our cities and towns are facing a new reality: the pandemic caused by COVID-19. Many of our localities are facing fiscal hardship, and it is our Senators' obligation to our shared constituencies to pass this tangibly beneficial legislation.

National League of Cities

July 13, 2020

About the Author: Chris Brown is the Controller for the City of Houston and Chair of NLC's Finance, Administration and Intergovernmental Relations (FAIR) Committee.

To Survive Financial Storm of Virus, States Turn to Congress.

State governments trying to weather the financial storm brought on by the coronavirus are borrowing billions of dollars and desperately trying to slash costs by furloughing workers, delaying construction projects, cutting aid to schools and even closing highway rest areas.

For many states, as well as local governments, the main hope for avoiding even deeper cuts is to get help from Congress, which returns from vacation this week.

In Nevada, lawmakers contending with a $1.2 billion budget gap made deep cuts in a spending plan that was approved over the weekend after painful deliberations. They passed a resolution last week urging Congress to step in.

"We are forced to make impossible decisions regarding funding critical public health, education and more," Democratic Gov. Steve Sisolak said in a statement. "Congressional leadership must act to help us restore devastating reductions being made to fill this historic shortfall."

Before the pandemic, states generally were meeting revenue goals for their budget years. Now

Congress has already allocated more than $3 trillion in coronavirus aid to individuals, businesses and governments that went into financial shock last spring as much of the nation's economy shut down.

Unlike most states, the federal government is not required to have a balanced budget. The deficit this year is already a record $2.7 trillion.

The House passed a bill in May to provide another $3 trillion, with about a third of it going to state and local governments. Senate Majority Leader Mitch McConnell, a Kentucky Republican, is calling for a more modest package worth around $1 trillion total. He has not announced details, but he has said that school funding is a priority.

Bipartisan groups including the National Governors Association and the National League of Cities, along with a long list of businesses, want a major aid proposal. If it does not come through, they foresee harsh consequences.

States face a cumulative budget gap of $312 billion over the next two years, and local governments would need nearly $200 billion to meet their expenses, Moody's Analytics said in a report last month.

Without quick aid, the U.S. economic crisis could deepen, costing 4 million jobs in government and the private sector, according to the economic research arm of the credit rating agency.

Some other estimates, including one from the Center for Budget and Policy Priorities, put the state budget gap even higher — about $555 billion for states alone over the next two fiscal years.

Governments with higher debt and smaller reserves have the greatest needs. Many conservatives are in no hurry to help them.

A group of more than 200 current and former state lawmakers joined with tea party leaders in signing a letter circulated by the American Legislative Exchange Council warning that "a federal bailout would only encourage this cycle of debt and spending to continue."

Meanwhile, state lawmakers, city councils and school boards are trying to balance their budgets with tax revenue dropping and expenses rising as the nation keeps fighting the virus.

In many cases, the answer has been furloughing or laying off employees.

By last month, there were about 1.5 million fewer people working for governments in the U.S. compared with February, according to seasonally adjusted data from the federal government. More than half the layoffs were in education.

Governments have also adopted budgets with an eye toward what may come out of Washington.

California, for instance, is requiring state government employees to take off two unpaid days each month, but those furloughs could be reduced or eliminated if federal help arrives.

New Jersey is one of a handful of states to authorize debt to keep basic services running, allowing borrowing of nearly $10 billion over the next year, over the objections of some GOP lawmakers. The governor's office said that figure might be reduced if aid arrives.

Similarly, New York, which also is borrowing, and Missouri have budgets that call for cuts if not enough federal aid shows up.

Wyoming has closed highway rest areas at least through September, while Florida has halted work on a new courthouse in St. Petersburg, one of many construction projects put on hold around the country.

In Lexington, South Carolina, a community of more than 18,000, a park renovation has been put on hold, as have plans to buy new police cars as the town contends with lower local revenue and no word yet on how much it will get from the state government.

"Our municipal employees, who are awesome, will not be getting a raise this year, and that just breaks my heart," said Kathy Maness, a member of the town council and vice president of the National League of Cities, which is calling for $500 billion in federal help just for cities and counties.

School districts across the country are wrestling with whether to hold classes remotely this fall or bring students back to campus. They are weighing health concerns as well as the cost of reopening. Teachers unions and the National School Boards Association have pegged reopening costs at more than $100 billion.

Other public agencies are struggling too.

Transit systems have seen fare collections evaporate amid stay-at-home orders. Officials at Caltrain, a San Francisco Bay Area commuter rail line, said this week that they may have to end service after San Francisco supervisors blocked a tax increase to boost the agency's subsidy.

Maryland Gov. Larry Hogan, a Republican who serves as chairman of the National Governors Association, has been making weekly appeals for federal help on teleconferences between governors and the White House.

Last week, Hogan told Vice President Mike Pence it was "the number one issue for all of us."

By The Associated Press

July 20, 2020

Local, State Aid In Question As GOP Loiters On Stimulus (Radio)

MUNIS in FOCUS: Eric Kazatsky, Senior U.S. Municipals Strategist for Bloomberg Intelligence, discusses the lack of progress on Federal stimulus. Hosted by Paul Sweeney and Vonnie Quinn.

Play Episode

Bloomberg Radio

July 24, 2020 — 10:14 AM PDT

American Cities See Economic Hit in Grim Mayors' Report.

- **Report projecting high unemployment assumes tapering outbreak**
- **Municipal market is picking winners and losers, favoring AAA**

The coronavirus pandemic may lead to an 8.1% decline in the U.S. gross domestic product in 2020 and persistently elevated unemployment in cities, according to an analysis commissioned by the U.S. Conference of Mayors, underscoring the challenge facing investors and borrowers in the municipal-bond market.

The report lays out daunting scenarios for America's communities that may prove not dire enough, given that it assumes the outbreak will taper this year. Metropolitan areas will suffer a $1.45 trillion drop in economic output in 2020, with the financial effects of the pandemic on par with the Great Recession a decade ago.

"The surge in Covid-19 infections and increases in hospitalizations and mortality threaten the nascent recovery in economic activity that began in May, underscoring the existence of extraordinary uncertainty about the course of the pandemic and the economic outlook," according to the report, which IHS Markit also prepared for the Council on Metro Economies and the New American City. "The forecast presented here assumes that the pandemic is gradually brought under control in the second half of the year, an outcome that remains in doubt."

The mayors' report adds to a series of pessimistic surveys from local governments grappling with the unprecedented health crisis. Counties face an estimated $202 billion budget hit from the pandemic through fiscal 2021 due to lost revenue, extra costs and state funding cuts, according to a report released Tuesday by the National Association of Counties, a lobbying group.

As a result, buyers in the $3.9 trillion municipal-bond market, which has rallied sharply from March, are favoring issuers more likely to prove resilient in the pandemic, said Parker Colvin, a managing director and underwriter at Raymond James Financial Inc., who said "demand is strongest for AA and AAA" general-obligation debt and essential service revenue bonds.

AAA bonds have gained 4.38% year to date while Baa securities are basically flat at 0.03%, according to Bloomberg Barclays indexes.

"Contrasting essential entities with those not considered so, municipals may soon experience 'a tale of two markets' moving forward," wrote Matthew Gastall and Daryl Helsing, investment strategists at Morgan Stanley Wealth Management, in a note Wednesday.

Some cities, for instance, will be more hard hit than others because of factors such as reliance on sales taxes or economically sensitive industries and lack of reserves coming into the pandemic. According to the mayors' report, the average unemployment rate this year will be above 10% in 161 metros, 42% of all. It will be above 8% in 75% of metros and above 6% for most areas.

Even if infections taper, metro job levels by the first quarter next year will remain 5.2% below that of the year earlier, about the same as was seen in the Great Recession, the report said. Chicago, Detroit and New York are among cities whose employment will remain more than 10% below the figure before the pandemic.

In a call to reporters Wednesday organized by the mayors' group, city leaders stressed the need for additional federal aid.

"What all mayors are worried about is jobs, food, housing security," said Greg Fischer, president of the group and mayor of Louisville, Kentucky. "We are talking about basics here in just maintaining a life, all of those are in danger without more direct federal assistance."

Bloomberg Business

By Romy Varghese and Danielle Moran

July 22, 2020, 10:18 AM PDT Updated on July 22, 2020, 11:30 AM PDT

— With assistance by Emmy Lucas, and Amanda Albright

Wave of Deficit Borrowing Coming From States Hit by Downturn.

- **New Jersey, New York, Illinois selling debt to plug shortfalls**
- **'It's pretty simple math,' Citigroup muni executive says**

A wave of deficit borrowing is headed for the municipal-bond market to close gaping budget holes caused by the coronavirus shutdowns.

New Jersey lawmakers agreed last week to borrow $10 billion to finance half of the state's estimated budget gap. Illinois plans to sell as much as $5 billion in notes to a municipal facility set up by the Federal Reserve. New York state authorized $11 billion in short-term borrowing that may be refinanced on a long-term basis, if necessary, and New York City is seeking the legislature's approval to borrow $5 billion.

"It's pretty simple math," said Patrick Brett, the head of Citigroup Inc.'s municipal debt capital markets business. "Hundreds of billions of dollars of deficits opened up really quickly. They're all not going to get plugged with cuts, they're all not going to get plugged with tax increases."

Unlike the federal Government, U.S. states are required to balance their budgets, though they frequently rely on short-term loans to cover temporary shortfalls.

Those deficits are poised to swell. With the coronavirus lock-downs decimating sales- and income-tax revenue and costs rising for healthcare, unemployment assistance and social services, municipalities will need at least $500 billion in additional federal aid over the next two years to avoid inflicting a major blow to the economy, according to Moody's Analytics.

When the economy slows, states typically terminate or furlough employees, put off public-works projects or borrow before raising taxes. Since the coronavirus pandemic hit the U.S., states and local governments have cut nearly 1.5 million jobs, far more than were eliminated after the last recession.

The size of the borrowing wave will depend on how much aid comes from Washington. Republicans and Democrats are negotiating to pass another round of economic relief during the last week of July.

Democrats in the House approved a $3 trillion measure that included about $1 trillion for state and local governments. Republicans have set a $1 trillion ceiling on another stimulus. Barclays Plc municipal strategists estimate states and local governments will get $200 billion to $500 billion.

While most states began the fiscal year on July 1 with full-year budgets in place, coronavirus infections have accelerated in Florida, Texas, California and Arizona since mid-June, prompting renewed lockdowns and weighing on an economic recovery. Uncertainty over tax collections and spending on government services means states will likely need to meet in special sessions to revise their budgets, according to Municipal Market Analytics.

"The interesting stuff and the non-recurring stuff tends to happen in the mid-year sessions," said Matt Fabian, a managing director at Municipal Market Analytics on a Thursday webinar.

While borrowing to fund operations is a negative sign to bond-rating analysts and investors, they may be more forgiving with states and local governments facing the biggest fiscal crisis since the Great Depression.

“People are viewing this as a one-in-a-century kind of event,” Citigroup’s Brett said. “Even many of those who would generally oppose deficit borrowing are saying this is an act of God, and we should borrow.”

Bloomberg Markets

By Martin Z Braun

July 17, 2020, 10:30 AM PDT

Two Fed Programs Have Bought Only One Loan Each, Watchdog Says.

- **Fed has made one Main Street loan, one state government loan**
- **Oversight panel questions whether standards need to be looser**

The Federal Reserve isn’t moving quickly enough to get loans to cash-strapped small businesses and only one state government struggling to cope with the coronavirus crisis has been able to tap central bank funds, according to a panel created to monitor billions of dollars in aid approved in response to the pandemic.

Two of the Fed’s programs have both purchased a single loan each — one to the state of Illinois through its municipal lending facility and a $12 million package through its Main Street lending program, which only became operational on July 6, the Congressional Oversight Commission said in a report released Monday.

“Our initial reaction is that a purchase of one $12 million loan over a week and one half seems like a small amount, given the economic challenges facing some small and medium sized businesses,” the panel said in its third monthly report.

The group questioned whether standards for some businesses should be loosened, noting in the report that that some businesses too big to qualify for Paycheck Protection Program loans under current requirements — such as real estate firms, retailers with large amounts of inventory or new and growing businesses — would be good candidates.

Bond Market

New Jersey, hard hit by an virus outbreak earlier this year, and Hawaii, which has struggled after effectively turning away tourists, have publicly expressed a desire to obtain funding through the Fed’s municipal lending facility, but have yet to do so.

Fed Chairman Jerome Powell and Treasury Secretary Steven Mnuchin told the commission that the relatively low utilization could be because many jurisdictions have been able to obtain financing through the bond market, where interest rates have tended to be lower than through the Fed program, according to the report.

In previous reports, the panel has said that Fed and Treasury Department relief efforts might be falling short in helping small business and found that only a small fraction of the money allocated for loans has been spent. In the new report, it said the Fed has lent $13.6 billion of the $454 billion allocated for its programs.

The panel also criticized a requirement that it says doesn't do enough to require that firms taking the money to keep workers employed. Companies must make "commercially reasonable" efforts to maintain their payrolls, which Powell said was "hortatory," or essentially voluntary, the report said.

"It is clear to the Commission they are not going to impose mandatory payroll requirements on businesses" that used the Main Street lending program unless Congress mandates it, according to the report.

Another Round

The commission was created at the insistence of congressional Democrats during negotiations that led to approval of the $2.2 trillion CARES Act stimulus package earlier this year. The new report comes as Congress begins negotiations over another round of stimulus, which Democrats say must include more money for states and local governments. President Donald Trump met with top Republican lawmakers on Monday to iron out differences over a GOP-only proposal.

Members have said the lack of a chairman has hampered the panel's ability to establish a strategy for policing the $500 billion in bailout money. Joseph Dunford, a former chairman of the Joint Chiefs of Staff, withdrew from consideration for the post earlier this month.

The oversight panel has four members: Democratic Representative Donna Shalala of Florida; GOP Senator Pat Toomey of Pennsylvania; Bharat Ramamurti, a former aide to Senator Elizabeth Warren of Massachusetts; and GOP Representative French Hill of Arkansas.

National Security

The panel also questioned whether shipping company YRC Worldwide Inc., was a good recipient of loan money meant for companies critical to national security. The company, which ships electronics and supplies to military locations around the world, is at risk for bankruptcy because of a heavy pension burden and has been rated non-investment grade for over a decade, according to the report.

The company, which received a $700 million loan, was the first to receive funding from the $17 billion allocated for national security companies.

"This loan may indicate that the Treasury believes the national security designation permits a much higher risk tolerance to provide relief to firms that were struggling well before the Covid-19 pandemic," according to the report.

Treasury has yet to lend any of the $29 billion it has for airlines, but it has signed letters of intent from 10 airlines that would like to receive the money.

Bloomberg Politics

By Laura Davison

July 20, 2020, 10:13 AM PDT Updated on July 20, 2020, 1:00 PM PDT

[Congress Struggles With Covid Relief. How That Will Affect Some States and Their Muni Bonds.]

Six states — New Jersey, New York, Illinois, Kansas, Oklahoma, and Louisiana — have a particularly pressing need for relief from the stimulus package currently being wrangled over by Senate Republicans and due to be released for negotiation and debate with Democrats next week.

The Republicans don't appear to want to provide new money to states, but do seem willing to give them more flexibility in how they spend the aid approved under the $2.2 trillion Cares Act, passed in March. Democratic leaders in the House, however, are pushing for more aid for state and local governments.

Failure to aid state and local governments may not hurt the municipal bonds of financially troubled states, but it may damage municipalities that depend on state aid, analysts say. At the same time, investors shouldn't fight the Federal Reserve, which has been supporting states by buying bonds.

As staggering unemployment and rising Covid-19 infections continue, state and local governments are in increasingly precarious positions. The demand for public services is as high as ever, while tax revenue is falling. Unlike the federal government, most states have balanced-budget requirements that mean declines in tax revenues, if not offset by increases in federal funding, must be met by spending cuts. While states aren't able to file for bankruptcy, municipalities can resolve problems with creditors via the bankruptcy route.

"Certainly compared to 2008, we went into this situation in a much stronger position across every municipal credit," says Cynthia Clemson, co-director of municipal investments at Eaton Vance Management. "But this was a very swift and violent downturn. We'll see budget gaps average 18% of state revenue. No question, there will be a continuing need for relief."

In a statement, Gov. Larry Hogan of Maryland and Gov. Andrew Cuomo of New York urged the Senate to include a $500 billion state stabilization fund in the Covid-19 relief package, noting that the states employ more than 20 million people and that governors have already cut budgets and reduced payrolls by 1.5 million.

The Cares Act provided $150 billion for states, but the money was restricted to Covid-19 uses. Most states didn't have much in Covid-related expenses, says Dan Clifton of consultancy Strategas, and even in states with large caseloads, governors said they wouldn't use all of the money. Clifton finds that given current tax-revenue forecasts, allowing states to apply Cares Act funding for any purpose and assuming they use their rainy-day funds, six states would still be in net deficit. All face different challenges: Louisiana and Oklahoma have been hit by the oil crisis. New Jersey, New York, Illinois, and Kansas have pension challenges, with underfunded plans facing the Covid-19 double-whammy of asset-price declines and falling interest rates exacerbating funding gaps.

Each state and related municipalities have thousands of obligations, and whether investors should stay away if additional aid doesn't materialize is a complicated question. "I could find literally hundreds of credits in each of these states that we would be comfortable buying," says Lyle Fitterer, co-manager of the $1.1 billion Baird Short-Term Municipal Bond fund (ticker: BTMSX).

For example, states may have local credits that can still generate positive margins, says Fitterer.

And much depends on whether a state has the flexibility to potentially increase taxes and cut expenses, as well as the long-term economic impact of the recent shutdown. For example, while New Jersey and Illinois both have large pension issues, Illinois' state income tax is much lower than New

Jersey's. That may give Illinois a little more flexibility. Meanwhile, New York City has a large commercial real-estate tax base compared to Kansas. But will the values of those properties decline if more people work from home?

"You need to do your credit work on each one, look at valuations in the market, and determine if you are getting paid enough in additional yield to own these credits in your portfolio," Fitterer says.

Tom Kozlik, head of municipal strategy and credit at Hilltop Securities, says that any aid could also penalize states for having little in their rainy-day funds as a way "to get to a number that could potentially satisfy both sides." He expects to see $500 billion or so for state and local governments, and greater flexibility for states to use Cares Act money.

The hit for bondholders will come in the form of downgrades. Right now, all states are investment grade. Illinois has the lowest rating: Recently, Fitch downgraded it to BBB-, the lowest rating that is still considered investment grade. Thus, it has the widest yield spread, with its 10-year general obligation bond fetching 266 basis points above the benchmark Thomson Reuters Municipal Market Data (MMD) AAA index, up from 155 at the start of the year, but down from 425 in May when it began narrowing. The benchmark yield is 0.73%. That gives Illinois a yield of 3.4%, compared to 4.8% for high-yield corporate bonds.

The spread for a similar New Jersey issue is 86, up from 60 in May. For New York, it's 10 basis points, up from minus five in January. Louisiana is at 38, up from 28 in January. And Kansas has spent the year at 18, while Oklahoma started the year at 20 and is now at 19, according to Hilltop Securities.

These risk levels would have been high even before Covid-19, Kozlik says. Still, states have many levers to pull. For example, they can cut aid to municipalities, which can declare bankruptcy with a state's permission. In the past, observes Adam Stern of Breckinridge Capital Advisors, which specializes in fixed income, the governor of Illinois openly advocated for bankruptcy of Chicago public schools, and the governor of New Jersey threatened to put Atlantic City in Chapter 9 proceedings. Says Randall Gerardes, head of municipal strategy at Wells Fargo Securities: "States will take care of their house first, and are in a better position than local governments," at least from an investor point of view.

If you're worried about the outlook for bonds, don't forget that the Fed has provided support for the muni market. Illinois was able to issue short-term bonds directly to the Fed this year.

Even if more aid doesn't materialize, Clifton of Strategas tells investors to watch the election. "If the Democrats sweep, I'd expect there to be more aid."

Ultimately, much depends on the availability of a Covid vaccine: "If you get to 2022 with no vaccine, the willingness to keep the game going for a large number of issuers will start to deteriorate," says Stern of Breckinridge. Still, most people are expecting a vaccine next year. That should keep the markets liquid and reduce financial system risks, even if the economy does take a second dip.

Barron's

By Leslie P. Norton

July 27, 2020 5:00 am ET

Putting the Muni in the Fed's Munificence?

Pressure is intensifying for legislative policymakers to frame Stimulus 4.0 in a way that provides relief to state and local governments, but that pressure is more and more working its way toward the central bank as well.

The Municipal Liquidity Facility unveiled by the Fed four months ago helped the muni market on the margins. But only one borrower has directly tapped the facility, and the Fed has only extended out $1.2 billion of credit from a $500 billion facility. The rates are said to be too high. That seems — how to put it — counter-intuitive, but basically, most municipalities do not struggle for a lack of access to debt capital in the capital markets. The reason why the Fed cannot yet extend its municipal lending operation is that it is currently limited to six-month maturities for direct purchases. The legislation in the House-passed Stimulus 4.0 bill would extend this to ten years. It is not presently legal for the central bank to go longer than "short term paper." The House bill provides that the Fed can lend (even up to ten years) at the Fed's discount rate level (a less than demanding 0.25 percent).

I am quite sure the Fed does not want to be making 0.25 percent money available to governments who have displayed the kind of spending discipline we have seen in California, Illinois, and New York.

But as long as Congress gives the Fed the flexibility to buy muni bonds at maturities greater than six months (and I am increasingly convinced it will), the way rates play into it will get resolved (ask the corporate bond market). Fed interventions to lower the spread in muni borrowing (relative to Treasuries) would provide a huge boost to current muni investment returns (as yields would come down and prices up), and it would lower forward borrowing costs for municipal issuers. But it also might be the final chapter in getting an attractive yield going forward in this market (for investors). I am quite sure the capital needs of the states and cities is more on the mind of legislators than the distorted effects on savers and investors.

NATIONAL REVIEW

By DAVID L. BAHNSEN

July 15, 2020 3:28 PM

U.S. Muni Market Remains Under Watchful Eye of Fed, Official Says.

CHICAGO, July 13 (Reuters) – The U.S. Federal Reserve stands ready to consider further intervention in the municipal bond market, which is not "necessarily out of the woods" after recovering from unprecedented volatility arising from the coronavirus pandemic, a Fed official said on Monday.

A selling frenzy by virus-rattled investors in the $3.8 trillion market where states, cities, schools and other issuers sell debt sent yields skyrocketing in March. Moves by the Fed to aid short-term debt markets, as well as a loan program for states and eligible local governments facing a cash crunch, helped restore calm. "My job and our team's job is to monitor the market and if additional intervention is required, the Fed's prepared to consider it," Kent Hiteshew, a former muni banker and U.S. Treasury official who joined the Fed's financial stability division in March, said at the

Brookings Institution's municipal finance conference.

Hiteshew said the municipal liquidity facility (MLF), which the Fed authorized in April, was designed as a backstop for the market, allowing governments to access short-term, cash-flow loans from the Fed.

As of June 30, however, the MLF had only loaned $1.2 billion to Illinois, the state with the lowest credit ratings at a notch above junk, Fed data shows.

Cash-strapped New Jersey, meanwhile, is eyeing the MLF as an option for a significant portion of a $9.9 billion borrowing agreed to last week by its governor and legislative leaders.

High borrowing costs in the $500 billion program have deterred participation.

Hiteshew said that fiscal issues for states and local governments caused by sinking tax revenue "have only just begun," and that some were balancing their budgets on the hope of future federal monetary aid.

He added the Fed's job is to make sure markets function and that it cannot solve the governments' "huge lost revenue problem."

Reporting by Karen Pierog in Chicago Editing by Matthew Lewis

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2020 Muni Market Midyear Update.

Summary

- States and towns are reluctant to make any issuance until they have an understanding of just how bad their revenue losses are going to be.
- Treasury yields are near all-time lows and some foreign bond interest rates are negative, making municipal bonds an attractive alternative.
- A lot of people in the transportation space, the entertainment sector and the educational sector are going to find their jobs are generally not needed anymore because we're going to do more remote work.

Continue reading.

Seeking Alpha

by Robert W. Baird

Jul. 15, 2020

The SEC and DOJ Sign Historic Memorandum of Understanding to Enhance Competition in Securities Markets: BakerHostetler

On June 22, 2020, the Securities and Exchange Commission ("SEC") and Antitrust Division of the Department of Justice ("DOJ") Antitrust Division announced that they have signed an interagency

Memorandum of Understanding ("MOU") to "foster competition and communication between the agencies" in an effort to enhance competition in the securities industry.[1] This is the first MOU between the DOJ's Antitrust Division and the SEC.

While the two enforcement agencies have worked together in the past, Assistant Attorney General Makan Delrahim stated that the MOU "institutionalizes a strong working relationship between" the agencies, which he expects will result in "robust, comprehensive analyses" regarding competition and securities law concerns.[2] According to Delrahim, this in turn could result in "healthier markets yielding enhanced consumer benefits."[3] SEC Chairman Jay Clayton also noted the MOU's goal of "greater collaboration and cooperation" between the agencies and the desire to ensure efficiency and competitiveness in U.S. markets.[4]

Competition in the Securities Markets
The presence of competition in the securities markets benefits customers on many levels, including competition on price, quality, service, and innovation.[5] Delrahim noted that firms that fear losing their market position are more likely to engage in these activities, thereby benefitting customers.[6] For example, firms may invest more in research and development to introduce new products or services to meet customer needs, seek out ways to streamline production processes, enhance the quality of their offerings, and pursue ways to make their products and services desirable.[7]

The SEC has consequently listened to concerns from market participants on where competition may be absent or diminished and has engaged in reviews of these concerns and the underlying industries to determine whether competition is lacking. This has led to various rule-making actions by the SEC, including the Market Data Proposal,[8] which is designed to update the national market system ("NMS") for the "collection, consolidation, and dissemination of information with respect to quotations for and transactions in [NMS] stocks."[9] The proposal also seeks to introduce competitive forces NMS for the first time. According to the SEC, the introduction of competition could allow all market participants — including investors — to access and benefit from the expanded content of NMS market data.[10] The Antitrust Division lauded the Market Data Proposal in its public comments, noting that it seeks to lower barriers to market entry, which improves quality of and access to inputs, such as information — a classic way to enhance competition.[11] This is a signal that the SEC is seeking to revisit and revise older regulations in an effort to enhance competition in the U.S. markets.

The Antitrust Division also commented on the procompetitive effects of the SEC's Proxy Rules Proposal,[12] which, according to the SEC, is designed to "help ensure that proxy voting advice used by investors and others who vote on investors' behalf is accurate, transparent, and materially complete."[13] Delrahim noted that the proposed rule is also designed to update regulations to better fit the current landscape and lead to healthier competition.[14] In other words, while certain of the details of the markets have changed, competition remains wholly relevant.[15]

Increased Coordination Could Lead to Increased Investigations
Adopting the approach of continuously reviewing rules and regulations for their applicability and relevance in today's markets, the SEC and the Antitrust Division entered into the MOU — the first of its kind — to establish regular communication between the agencies to allow for information sharing. Specifically, the MOU is targeted at facilitating communication and cooperation between the agencies, by establishing a framework for the SEC and the Antitrust Division to continue discussions and review regulatory matters that affect competition in the securities industry.[16] This includes provisions to establish periodic meetings among the agencies' officials.[17] Additionally, the MOU provides for the exchange of information and expertise the agencies may believe relevant to their oversight and enforcement responsibilities, as consistent with legal and confidentiality restrictions.

Delrahim noted that the Division has taken on several complex criminal investigations in the financial services industry, including recent investigations into foreign currency exchange, interest rate benchmarks, and municipal bonds. For example, the agencies worked closely on an investigation of anticompetitive activity in the municipal bond investments market, which resulted in the conviction of one financial services firm and 17 individuals, and in restitution, penalties, and disgorgement related to four other financial institutions under non-prosecution agreements.[18] With help from the SEC, among others, the financial services firm agreed to pay restitution to victims of the anticompetitive conduct and to cooperate with the Antitrust Division regarding ongoing investigations into anticompetitive conduct in the municipal bonds industry. This could mean that the MOU serves as further justification for referrals between agencies that may result in criminal prosecution.

Is noteworthy that shortly after Delrahim's remarks, The Wall Street Journal suggested that the MOU may lead to antitrust scrutiny of fees charged by exchanges for information, including market data.[19] Chairman Clayton has previously noted that the SEC has an obligation under the Securities Exchange Act of 1934 "to suspend exchanges' fee filings unless it is established that the fee is reasonable on another basis, such as a reasonable cost basis,"[20] although, Section 11A of the 34 Act never uses the term "cost basis." Rather the law states that market data must be disseminated by securities information processors and securities exchanges on "fair and reasonable terms" and make that data available on terms that are not "unreasonably discriminatory." The government takes the position that the burden is on the exchange to demonstrate competitive forces or an alternative basis for finding the fee reasonable, while exchanges may well disagree. Exchanges argue that markets functioned well through the highest periods of volatility during the pandemic crisis and continue to do so. Further, they argue that significant changes to well-functioning market infrastructure, particularly during a pandemic, could introduce untold operational and technical risks, confusion and the likelihood for an unfriendly investor experience. Market structure reform raises highly complex, competitive and regulatory issues. This MOU could potentially result in litigation by and against the SEC or enforcement actions. In recent testimony before the Subcommittee on Investor Protection. Entrepreneurship and Capital Markets, SEC Chairman Clayton noted that the signing of the MOU with the Justice Department does not "imply that we are investigating anybody together."[21] When asked about potential anticompetitive behavior that may have been contemplated, Chairman Clayton informed the Subcommittee that they do not comment on investigations but rather the MOU "formalizes that powerful relationship that we have across our respective agencies."[22]

Conclusion

Although specific detail has not yet been provided on how the MOU will be put into effect, a number of circumstances now seem more likely:

- **Rule Changes:** The Antitrust Division and the SEC will likely continue to evaluate rules and regulations they deem outdated due to technological advances in the marketplace. There are, however, challenges in achieving this goal. Specifically, markets and data move quickly, which means that the agencies will need to move quickly to monitor industry developments and their effects, particularly in an effort to understand when intervention is appropriate and required.[23]
- **Parallel Investigations:** The agencies will share information on a more frequent basis, which may in turn lead to a greater number of investigations that could very well be done in parallel by both agencies. However, given confidentiality considerations as laid out in the MOU, it will be interesting to see how, if at all, the cooperation contemplated in the MOU will successfully interact with the Antitrust Division's Leniency Program and/or the SEC's whistleblower and cooperation program.

[1] U.S. Sec. & Exch. Comm'n., Press Release, Rel. No. 2020-140, "Securities and Exchange Commission and Justice Department's Antitrust Division Sign Historic Memorandum of Understanding" (June 22, 2020), available at https://www.sec.gov/news/press-release/2020-140; U.S. Dep't. of Justice, Justice News, "Justice Department's Antitrust Division And The Securities And Exchange Commission Sign Historic Memorandum of Understanding" (June 22, 2020), available at https://www.justice.gov/opa/pr/justice-department-s-antitrust-division-and-securities-and--xchange-commission-sign-historic. The MOU is available at https://www.sec.gov/files/ATR-SEC%20MOU-06-22-2020.pdf.
[2] Id.
[3] Id.
[4] Id.
[5] U.S. Dep't. of Justice, Justice News, "Changes in Latitudes, Changes in Attitudes: Enforcement Cooperation in Financial Markets (June 22, 2020), available at https://www.justice.gov/opa/speech/changes-latitudes-chang-s-attitudes-enforcement-cooperation-financial-markets ("Delrahim Speech").
[6] Id.
[7] Id.
[8] 17 CFR Parts 240, 242, and 249; Rel. No. 34-88216.
[9] Id. at p. 1.
[10] U.S. Sec. & Exch. Comm'n., Press Release, Rel. No 2020-34, "SEC Proposes to Modernize Key Market Infrastructure Responsible for Collecting, Consolidating, and Disseminating Securities Market Data" (Feb. 14, 2020), available at https://www.sec.gov/news/press-release/2020-34.
[11] Supra note 5.
[12] 17 CFR Part 240, Rel. No. 34-87457.
[13] U.S. Sec. & Exch. Comm'n., Press Release, Rel. No. 2019-231, "SEC Proposes Rule Amendments to Improve Accuracy and Transparency of Proxy Voting Advice" (Nov. 5, 2019), available at https://www.sec.gov/news/press-release/2019-231.
[14] Delrahim Speech.
[15] Id.
[16] Id.
[17] Id.
[18] Delrahim Speech; see also U.S. Dep't. of Justice, Justice News, "GE Funding Capital Market Services Inc. Admits to Anticompetitive Conduct by Former Traders in the Municipal Bond Investments Market and Agrees to Pay $70 Million to Federal and State Agencies" (Dec. 23, 2011), available at https://www.justice.gov/opa/pr/ge-funding-capital-market-services-inc--dmits-anticompetitive-conduct-former-traders.
[19] Dave Michaels and Alexander Osipovich, The Wall Street Journal, "SEC, Justice Department to Scrutinize Exchanges' Market-Data Business" (June 22, 2020), available at https://www.wsj.com/articles/sec-justice-department-to-scrutinize-exch-nges-market-data-business-11592864481.
[20] U.S. Sec. & Exch. Comm'n., Speech, "Modernizing U.S. Equity Market Structure" (June 22, 2020), available at https://www.sec.gov/news/speech/clayton-redfearn-modernizing-us-eq-ity-market-structure-2020-06-22.
[21] See "Hybrid Hearing – Capital Markets and Emergency Lending in the COVID-19 Era," June 25, 2020, before the Subcommittee on Investor Protection. Entrepreneurship and Capital Markets, Committee on Financial Services, U.S. House of Representatives, available at: http://archives-financialservices.house.gov/media/pdf/072601rb.pdf.
[22] Id.
[23] Delrahim Speech.

BakerHostetler

July 15, 2020

IRS Provides Additional Relief for Tax-Exempt Hospitals.

Deadline for completing certain needs assessment requirements moved to Dec. 31

WASHINGTON — Because of the burdens the COVID-19 pandemic has placed on hospitals, the Internal Revenue Service today provided additional relief to hospital organizations that must meet the Community Health Needs Assessments (CHNA) requirements.

Notice 2020-56 extends the deadline for conducting a CHNA and adopting an implementation strategy to meet the community health needs identified through the CHNA to Dec. 31, 2020.

Tax-exempt hospital organizations filing Forms 990 must indicate on Schedule H if they have conducted a CHNA in the current taxable year or in either of the two immediately preceding taxable years and if they have adopted an implementation strategy to meet the significant health needs identified through the most recently completed CHNA. Since these requirements may affect the hospital's tax-exempt status and because the law imposes a $50,000 tax on a hospital organization for each hospital facility that fails to meet either or both of these requirements, the extension provided in the notice provides significant relief.

Under Notice 2020-56, the time for hospitals to comply with any CHNA requirements due to be performed on or after April 1, 2020, and before Dec. 31, 2020, is extended to Dec. 31, 2020.

Previously, the IRS issued guidance extending the due date to July 15, 2020; today's guidance further extends that due date.

Hospitals using the relief in today's notice that file Form 990 prior to Dec. 31, 2020, should state in the narrative of Part V.C. of Schedule H (Form 990) that they are eligible for and are relying on the relief provided in the notice, and should not be treated as failing to meet the requirements of section 501(r)(3) prior to Dec. 31, 2020.

Additional tax relief related to the COVID-19 pandemic can be found on IRS.gov.

Tax Analysts

July 14, 2020

NABL: SEC, MSRB, FINRA to Hold Virtual Program for Municipal Advisors

The Securities and Exchange Commission (SEC), Municipal Securities Rulemaking Board (MSRB), and Financial Industry Regulatory Authority (FINRA) announced the opening of registration for a virtual Compliance Outreach Program for Municipal Advisors. The webcast program will be held **Thursday, August 13, 2020, from 1 p.m. to 3 p.m. ET**. Additional information, including the agenda, is available here.

The program will provide municipal market participants an opportunity to hear from SEC, MSRB, and FINRA staff on timely regulatory and compliance matters for municipal advisors.

Topics of discussion include, among other things, the duties and standards of conduct for municipal advisors under MSRB Rules G-42 and G-17 and the fiduciary duty under the Securities Exchange Act of 1934; the SEC's temporary conditional exemption from broker registration for certain direct placement activities; operational considerations for registered municipal advisors; and OCIE and FINRA examination processes and common observations, as well as relevant SEC and FINRA enforcement actions.

Registration is free and available here.

Participants are also encouraged to submit questions in advance of the event by emailing MSRBEvents@msrb.org. Continuing professional education credit is available.

A press release with additional information can be found here.

NABL Submits Letter to IRS and Treasury.

On July 22, 2020, NABL submitted a letter to the Treasury and IRS to inform the development of their 2020-2021 Priority Guidance Plan.

Topics include: recommendations to provide cash flow relief to issuers and borrowers from economic difficulties caused by COVID-19, recommendations to provide better access to capital markets for issuers and borrowers to deal with the economic difficulties caused by COVID-19, and additional requests for further guidance.

Find the full letter here.

MSRB Compliance Corner Newsletter.

Read about the MSRB's resources on 529 plans, recent enforcement actions and more in the latest Compliance Corner newsletter.

The Budget Document and Beyond: GFOA Webinar

September 17, 2020 | 1 p.m.-3:45 p.m. ET

Details:

Government Finance Officers Association (GFOA) will offer The Budget Document and Beyond using GFOA's new online learning management system. This event will focus on the changes to the Distinguished Budget Presentation Awards program criteria and emphasize improvements in all areas of budget communication and presentation. The course will combine lecture, panel discussion, and examples to communicate the changes in the program. Participants and reviewers from GFOA's Distinguished Budget Presentation Awards program, participants in GFOA's School Awards Program, and any finance professional desiring to improve the communication and presentation of their entity's budget are encouraged to participate.

Click here to learn more and to register.

GFOA 25th Annual Governmental GAAP Update: Webinar

November 5, 2020 | 1 p.m.-5 p.m. ET

Program Description:

Government Finance Officers Association (GFOA) will offer its 25th Annual Governmental GAAP Update on November 5, 2020, and again on December 3, 2020, using the latest video and audio streaming technology. The seminar offers an incomparable opportunity to learn everything you need to know about the most recent developments in accounting and financial reporting for state and local governments from the convenience of your own computer! Enjoy all the benefits of the highest quality continuing professional education without the time and expense of travel!

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 staff.

Click here to learn more and to register.

NFMA Cybersecurity White Paper.

The National Federation of Municipal Analysts released a draft White Paper on Best Practices in Cybersecurity Risk Disclosure for State & Local Governments in Municipal Offerings. The paper is in the comment period until September 20, 2020.

To read the paper, click here.

GASB Adds Resources to Emergency Toolbox Addressing Issues Arising from COVID-19 Pandemic.

Norwalk, CT, July 20, 2020 — During the development of the recently issued Technical Bulletin 2020-1, *Accounting and Financial Reporting Issues Related to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and Coronavirus Diseases*, several issues were raised that were not specifically addressed in the Technical Bulletin, but for which current authoritative standards provide guidance.

To assist stakeholders with those issues, the GASB has updated its Emergency Toolbox, which addresses accounting and financial reporting issues that may arise during the ongoing COVID-19 pandemic.

The following issues have been added:

- Disclosures related to outflows of resources incurred in response to COVID-19
- Donated inventory

- Nonexchange financial guarantee disclosures
- Subsequent contravention of eligibility requirements
- Classification of transactions not specifically addressed in Category A or Category B authoritative literature as either operating or nonoperating revenues and expenses
- Extension of property tax due dates
- Subsequent events disclosures for legislation enacted after the end of the reporting period.

The GASB provides a number of additional stakeholder resources that may be useful during this period on its website at www.gasb.org/COVID19.

GASB Requests Input on Proposals to Improve Key Components of Government Financial Reports.

Norwalk, CT, July 24, 2020 — The Governmental Accounting Standards Board (GASB) today issued for public feedback a proposed Statement that is designed to improve to key components of the blueprint for state and local government annual financial reports.

- The Exposure Draft, *Financial Reporting Model Improvements*, proposes improvements that are designed to:Enhance the effectiveness of financial reports in providing information essential for making decisions and assessing a government's accountability, and
- Address certain application issues.

The Exposure Draft includes proposals that would establish or modify existing accounting and financial reporting requirements related to:

- Application of the short-term financial resources measurement focus and accrual basis of accounting in governmental funds (replacing the existing current financial resources measurement focus and modified accrual basis of accounting)
- Management's discussion and analysis
- Presentation of governmental fund financial statements
- Presentation of the proprietary fund statement of revenues, expenses, and changes in fund net position
- Unusual or infrequent items
- Budgetary comparison information.

The changes in the proposed Statement would improve financial reporting in a variety of ways. For example, the proposed short-term financial resources measurement focus and accrual basis of accounting would improve the consistency of the information in governmental fund financial statements. The proposed changes to the presentation of governmental fund financial statements would (1) make the short-term nature of their information more evident and understandable and (2) more clearly differentiate them from the long-term perspective of the government-wide financial statements.

Stakeholders are asked to review the proposals and provide input on the document by February 26, 2021. A series of public hearings and user forums on the Exposure Draft tentatively have been scheduled for March and April 2021 to further enable stakeholders to share their views with the Board. More information about commenting on the Exposure Draft and participating in the public hearings and users forums can be found in the document.

BDA Sends Comments to SEC on Proposed Changes to MSRB Rules A-3 and A-6 on Board Composition and Governance.

BDA this morning filed a comment letter with the SEC on proposed changes to MSRB Rules A-3 and A-6 on board composition and governance. The proposal before the SEC is available here.

BDA's comment letter is available here.

Senator Kennedy's MSRB reform bill is available here.

The proposed changes will, when approved by the SEC, impose these changes:

- Reduce the size of the MSRB board from 21 to 15, with a transitional 17-member board in 2021, with the new board being comprised of eight independent members and seven industry representatives
- Specify that at least two of the seven industry representatives must be from non-dealer Municipal Advisor firms; and
- Specify that independent board members, if they previously worked for regulated companies, must be away from the industry for five years to qualify for a board position as opposed to the current two, among other changes.

In our letter to the SEC, we state that BDA opposes "the MSRB's Proposal and we urge the Commission to reject the initiative." On the issue of independent directors, we state that "five years away from the industry and the market is too long for a Board member to be effective." On the issue of a minimum of two directors being MAs, we state "we call on the MSRB to set the ratio of board seats between dealers and MAs based on each constituency's relative financial contribution to the organization, subject to statutory requirements."

It is likely that the SEC will approve the MSRB's proposal without amendment. It is also likely that the MSRB's motivation for this change is to forestall action by Senator John Kennedy (R-LA) on his broader MSRB reform legislation.

Please call or write if you have any questions.

Bond Dealers of America

July 15, 2020

Lincoln Center to Pay Wall Street Banks $73 Million to End Swaps.

- **Derivative deal left arts center paying above-market rates**
- **Center dismissed or furloughed 200 staff because of pandemic**

Lincoln Center for the Performing Arts, which dismissed or furloughed 200 employees after canceling performances because of the pandemic, is borrowing $73 million to end derivative trades with Morgan Stanley and Bank of New York Mellon Corp.

The home of the New York Philharmonic, the Metropolitan Opera and the New York City Ballet entered into interest-rate swaps in 2006 and 2008 to lock in fixed rates on $150 million of floating rate bonds. However, the value of the contracts to Lincoln Center plummeted as interest-rates fell to historic lows and it had to draw $30 million on a line of credit to post collateral.

In mid-August, Lincoln Center plans to issue about $140 million fixed-rate tax-exempt debt at a premium to refinance the bonds and about $73 million taxable bonds to pay off the swaps, according to Leah Johnson, the center's chief communications and marketing officer. Lincoln Center is taking advantage of low interest rates to cut exposure to variable-rate debt, free up its $100 million credit line, and potentially reduce interest costs compared to alternatives, she said.

"At the time, given the historical interest rate trend line, it seemed like the appropriate course," to execute the swaps, said Johnson. "We're not going to second guess."

Lincoln Center was among scores of U.S. states, cities and non-profits that sought to save money by borrowing with floating-rate bonds paired with interest-rate swaps instead of selling traditional fixed-rate debt. Under the swaps, municipalities received a variable-rate payment from banks, meant to cover those on the bonds, and paid a fixed rate in return.

The deals unraveled during the financial crisis when the housing bust hammered insurers that guaranteed the bonds, causing the interest rates to soar. While many governments paid billions to back out of the deals after the crisis, others, including Lincoln Center, opted to replace insurance on the bonds with bank letters of credit that would guarantee the bonds from default and help lower rates.

Under the swaps, Lincoln Center paid Morgan Stanley a fixed rate of 3.7% on $95 million of variable-rate debt and paid Bank of New York 4% on $50 million of bonds. The banks paid Lincoln Center 69% of 3-month London Interbank Offered Rate, Johnson said.

As long-term rates declined in the last decade — because of Federal Reserve bond purchases, sluggish economic growth and more recently, a coronavirus induced flight to U.S. Treasuries — the value of the swaps to Lincoln Center plummeted from a gain of $2.7 million in 2006, to a $73 million loss. Since 2006, yields on top rated 30-year tax exempt bonds have declined to 1.5% from 4.4%.

Unwinding the swaps will eliminate further losses if interest rates continue to fall and avert the need to transition to a new benchmark when Libor is phased out at the end of 2021, Johnson said.

The pandemic has put even more pressure on Lincoln Center's finances. It has dismissed 55 staffers permanently and furloughed about 150, Johnson said. Lincoln Center is projecting a $10 million operating loss and $3 million in restructuring expenses, according to an S&P Global Ratings report this week.

Bloomberg Markets

By Martin Z Braun

July 23, 2020, 11:34 AM PDT

IRS Asks Puerto Rico Power Utility to Return BAB Payments.

- **Prepa must return subsidy payments on BABs in bankruptcy**
- **Island power authority issued $676 million of BABs in 2010**

The U.S. Internal Revenue Service told Puerto Rico's electric company that it has to repay the federal subsidies it received for bonds sold a decade ago as part of the government's stimulus program in the last recession.

The IRS in a July 10 letter asked the Puerto Rico Electric Power Authority to return Build America Bond subsidy payments made since July 1, 2017, the day before the utility's bankruptcy, according to a filing to bondholders on the Municipal Securities Rulemaking Board's website.

Prepa, as the utility is known, sold a combined $676 million of taxable Series YY and EE Build America Bonds in 2010. The federal government covers 35% of interest costs on BABs. The IRS began examining Prepa's subsidy payments in 2019.

The IRS also won't make subsidy payments for credits that Prepa has requested since July 2017, according to the bondholder filing.

"Prepa intends to respond to the IRS and is currently considering its options," according to the filing.

Bloomberg Markets

By Michelle Kaske

July 21, 2020, 8:34 AM PDT

Libor Showed its Weakness in Coronavirus Market Crisis.

The deadline for the phaseout of Libor at the end of 2021 will not be delayed and despite the effects of the COVID-19 pandemic, progress is being made on the switch to alternative reference rates.

That was the message of New York Federal Reserve officials in two webcast presentations Monday and Wednesday.

New York Federal Reserve President John Williams said Monday in a joint presentation with Bank of England Governor Andrew Bailey that the transition away from Libor "continues to be of paramount importance."

"The clock is still ticking," Williams said. "It's critical that regulators and institutions continue to work together to ensure they're all ready for January 1, 2022."

The No. 1 priority, according to Williams, "is to stop writing Libor contracts."

The London Interbank Offered Rate is a widely used benchmark for short-term interest rates based on data contributed by participating banks. It was tarnished by rate-rigging scandals.

Market participants who continue to use Libor are driven by nostalgia because it's not a robust reference rate, Williams said.

Bailey highlighted that weakness by discussing the recent market crisis that occurred as worldwide awareness grew of the impact of the pandemic.

The week of March 16 when central bank rates were at historically low levels, "over half of the 35 published Libor rates across all currencies contain no transaction-based submissions at all," said Bailey. Simultaneously, Bailey said, "Libor rates, and therefore costs with borrowers, spiked upwards."

In contrast, the Secured Overnight Financing Rate (SOFR), which is being promoted as an alternative to Libor in the United States, held its volumes and weathered the crisis.

David Bowman, senior associate director of the Federal Reserve, said during Wednesday's presentations that the SOFR market now accounts for over $1 trillion of transactions daily.

"It is produced in a transparent and direct manner," said Bowman. "It is based on observable transactions, not dependent on estimates like Libor or derived from some model."

CORONAVIRUS IMPACT: ADDITIONAL COVERAGE Economic indicators Beige Book: Outlook 'highly uncertain' with no timeline or gauge of effects By Aaron Weitzman 14m ago Fintech Banks and fintechs need each other more than ever By Paul Schaus 16m ago Primary bond market Powering ahead at Academy By Chip Barnett 30m ago
The SOFR, which the Federal Reserve Bank of New York publishes on its website each weekday, represents the rate in the repo market the previous day. It is published in the morning and finalized at 2:30 p.m. Eastern time.

The New York Fed also publishes 30-day, 90-day and 100-day compound averages of SOFR.

The SOFR index, also published by the New York Fed, can be used to calculate a customized compound average over any period the user chooses.

"People forget that the reason that we have to go through this transition is because of the way the financial system structured itself," said Bowman. "It put far too much weight on a rate that was far too weak. And now we're dealing with the consequences."

John Gerli, chief capital markets officer of the Federal Home Loan Bank's Office of Finance, said his experience with SOFR so far has provided him encouragement that the investor base may be broader than it was with Libor.

"Some of them have said that it's a good substitute for repo, and it's a cash and highly liquid marketplace," Gerli said. "So I think from our perspective, at least in two years out [from the phaseout] the investor base here, may be broader."

By Brian Tumulty

BY SOURCEMEDIA | ECONOMIC | 07/15/20 03:35 PM EDT

TAX - CALIFORNIA

[City and County of San Francisco v. All Persons Interested in Matter of Proposition C]()

Court of Appeal, First District, Division 4, California - June 30, 2020 - Cal.Rptr.3d - 2020 WL 3529750 - 20 Cal. Daily Op. Serv. 6497 - 2020 Daily Journal D.A.R. 6829

City brought action to establish that voter initiative to adopt special tax was validly enacted.

The Superior Court granted city judgment on pleadings, and initiative's opponents appealed.

The Court of Appeal held that:

- Constitutional provision requiring two-thirds vote of qualified electors to approve special taxes adopted by "Cities, Counties and special districts" did not apply to limit citizens' initiative power to raise special tax by majority vote;
- Constitutional provision requiring two-thirds vote of qualified electors to approve special taxes adopted by "local government" did not apply to limit citizens' initiative power to raise special tax by majority vote; and
- City charter did not require that voter initiative to impose special tax obtain concurrence of two-thirds of voters.

TAX - NEW JERSEY

[Gourmet Dining, LLC v. Union Township]()

Supreme Court of New Jersey - June 30, 2020 - A.3d - 2020 WL 3525557

Operator of fine dining restaurant located on university campus sought judicial review of county tax board's dismissal of operator's challenges to property tax assessments.

The Tax Court denied operator's motion for summary judgment and granted township's motion for summary judgment. Operator appealed, and the Superior Court reversed and remanded. The Supreme Court granted petition for certification.

The Supreme Court held that:

- Commercial success, rather than public purpose, was paramount factor, and
- Restaurant was not a use of the building for the university.

Commercial success, rather than public purpose, was paramount factor in arrangement between university and operator of competitive high-end restaurant located on university's campus, and thus restaurant operator was not entitled to public property tax exemption; providing food services for students, or even faculty or administrators, was not the key purpose of the restaurant, which was not even promoted as a form of convenience for students and researchers at the building, or the university generally, benefits such as employment opportunities for students were incidental, and while portion of restaurant's revenue went to scholarships, that could not transform otherwise nonexempt purpose a public purpose.

High-end restaurant located in building on university campus was not a use of the building for the university but rather for the restaurant operator, and thus restaurant was not exempt from taxation on grounds it was used for college; profit, after all expenses were paid, went to restaurant.

LIBOR Summer Update: Regulatory Scrutiny Heats Up on Transition Preparedness - Sherman & Sterling

With fewer than 18 months until the expected cessation of the London Interbank Offered Rate (LIBOR), regulators have developed a keen interest on how financial institutions are preparing to transition from what has been called the "world's most important number." In recent weeks, a number of U.S. and global regulators have issued statements on the need for financial institutions to make actionable progress. On July 13, 2020, John C. Williams, President of the Federal Reserve Bank of New York, said "the importance of transitioning from LIBOR is so great that despite the effects of the COVID-19 pandemic, the overall timeline remains the same."[1] Notably, the transition was the focus of his first speech since the advent of the pandemic on a topic other than economic and monetary policy. Emphasizing the need for the market to "work together to ensure we are all ready for January 1, 2022," Mr. Williams stressed that "[i]t doesn't matter whether you're a large global bank or a local company with a handful of employees, you need to be prepared to manage your institution's transition away from LIBOR."

In this memorandum, we summarize some of the more recent statements by regulatory authorities on the LIBOR transition.

Global Regulatory Bodies Urge Action

The LIBOR transition has been called an "essential task" by the Financial Stability Board (FSB), and one that is directly related to global financial stability.[2] With the transition having been identified as a G20 priority, the FSB has joined the Basel Committee on Banking Supervision in issuing a report that identifies several remaining supervisory and other challenges to the transition, based on surveys taken by the FSB, the Basel Committee and the International Association of Insurance Supervisors.[3]

Among other findings, the report noted:

- Authorities are expecting financial institutions to make "significant progress" in 2020.
- From a microprudential perspective, the key concerns related to the LIBOR transition are in terms of operational risks; legal risks; prudential risks; conduct, litigation and reputational risks; hedging risks; and accounting risks.
- From a system-wide perspective, the uncertainty about the future of LIBOR as we get closer to the end of 2021 could increase macroprudential risks from heightened volatility or disorderly markets, as users are unable, unaware or unwilling to move to the new benchmarks.
- Challenges relating to contract amendments and the lack of term rates for risk-free rates (RFRs) are widely cited as the main obstacles to a successful transition for financial institutions.
- Lack of liquidity in new RFR products and the uncertainty of when sufficient liquidity will be achieved make it difficult to motivate market participants to shift to RFRs.
- For derivative contracts, financial institutions are awaiting the finalization of the ISDA fallback language and largely plan to adopt the ISDA protocol for the alternative reference rates. For cash products, authorities in many jurisdictions have raised concerns about the complexity of incorporating robust/standardized fallbacks into legacy contracts that do not have them, and the required operational readiness to facilitate their use.
- Authorities are concerned about the differing supervisory expectations for transition across jurisdictions, especially on legal and conduct risks. The varying transition timelines for different products is complicating the monitoring. There is a lack of clarity regarding the readiness of external systems used by financial institutions and others. Supervisors also have limited insight into, and communication with, the non-regulated clients of regulated financial institutions.
- Authorities have identified number of available tools of increasing supervisory intensity to speed up transition in case the increased monitoring and scrutiny do not prove sufficient. In the first stage these would include meetings with banks' senior management, board of directors and the issuance of non-binding best practices. More intensive measures may include on-site inspections and requests to improve operational capabilities (e.g., risk-mitigation plans, requirements to increase resources aimed at supporting transition). In exceptional circumstances, some

jurisdictions pointed to the use of capital charges and restrictions on specific product offerings, and finally administrative sanctions or other legal actions.

US Banking and Consumer Regulators Ramping Up LIBOR Transition Focus

On July 1, 2020, the Federal Financial Institutions Examination Council (FFIEC) issued a statement highlighting the financial, legal, operational and consumer protection risks that financial institutions will need to address as they prepare to transition away from LIBOR.[4] The discontinuation of LIBOR will affect nearly every financial institution, though larger institutions and those engaged materially in capital markets activities will face a more substantial impact.

The FFIEC's statement does not constitute new guidance, nor it is a regulation, but it suggests an increasing emphasis within the bank examiner community that the LIBOR transition needs to be properly planned for and prioritized.

According to the FFIEC's statement, institutions should first identify risks in their own on- and off-balance sheet assets and contracts that reference LIBOR, including derivatives, commercial and retail loans, investment securities and securitizations. Potential risks include:

- operational difficulty quantifying the exposure;
- financial, valuation and model risk related to reference rate transition;
- inadequate risk-management processes and controls to support the transition;
- consumer protection-related risks;
- limited ability of third-party service providers to support operation changes; and
- potential litigation and reputational risk arising from reference rate transition.

Following an identification of key risks and dependencies, institutions should quantify their LIBOR exposure. Generally, exposure is measured as the size of any activity and the number of counterparties or consumers with financial contracts that reference LIBOR across all products. This quantification should also include an assessment of the viability of existing contract fallback language. For contracts with inadequate fallback language, institutions need to develop a remediation strategy. To limit additional exposure, institutions should also discontinue the origination or purchase of LIBOR-indexed instruments.[5] For derivatives exposures, the FFIEC recommends that financial institutions and their clients eventually adhere to the International Swaps and Derivatives Association's protocol upon its release.

In planning for the transition, institutions should consider the various legal, operational and other risks associated with various consumer financial products that reference LIBOR. Any replacement rate not already included in fallback language may impact consumers, increase reputation risk and result in legal exposure to institutions and the financial industry. Transition plans should, among other things, identify affected consumer loan contracts, highlight necessary risk mitigation efforts and address development of clear and timely consumer disclosures regarding changes in terms.

Relationships with third-party service providers is another key aspect of sound transition planning. When addressing third-party service providers that use LIBOR to provide valuation/pricing, modeling, accounting or other services, institutions should evaluate the preparedness and transition planning of those providers and consider whether they will be able to accommodate an alternative reference rate.

Significantly, the FFIEC has indicated that "the supervisory focus on evaluating institutions' preparedness for LIBOR's discontinuation will increase during 2020 and 2021, particularly for institutions with significant LIBOR exposure or less-developed transition processes." Looking ahead, supervisory staff will ask institutions about their exposures to LIBOR-indexed instruments and details on their specific plans to transition away from LIBOR during regularly scheduled examinations and monitoring activities. In particular, the FFIEC identified the following areas as points for discussion with supervisory staff:

- identification and quantification of LIBOR exposure across product categories and lines of business;
- risk assessment of LIBOR exposures, which may include scenario testing, legal review and other analysis;
- transition plans with milestones and key completion dates addressing areas such as:- strategies to inventory, analyze and assess risk posed by existing contracts;
  – strategies to identify replacement rates, modify spreads and revise existing contracts, as necessary;
  – strategies to address third-party risk management;
  – potential impact to the institution's customers;
  – communication plans for engaging with customers and other stakeholders; and
  – plans to identify, monitor and resolve system and other operational constraints;
- management's assessment of revisions that may be necessary to update the institution's policies, processes and internal control systems;
- responsibility for LIBOR transition oversight (to a committee, team or officer); and
- progress reporting to a supervised institution's board of directors and senior management on the LIBOR transition plan.

While there is a recognition that the supervisory focus itself will depend on the size and complexity of each institution's LIBOR exposures, examiners expect "[a]ll institutions" to have transition plans and risk management processes in place.

SEC Eyes LIBOR Preparedness of Registrants

On June 18, 2020, the Securities Exchange Commission's (SEC) Office of Compliance Inspections and Examinations announced the details of an examination initiative specifically focused on the LIBOR preparedness of firms on the "buyside" of LIBOR-based products: SEC-registered investment advisers, broker-dealers, investment companies, municipal advisors, transfer agents and clearing agencies.[6] The announcement was accompanied by a sample document request that included items ranging from the assessments and plans undertaken to date, the identity of third parties that have been engaged to assist with the transition and materials referencing the LIBOR transition that have been provided to a registrant's board of directors. We have summarized the SEC's release in our memorandum of July 20, 2020.

Next Steps

Financial institutions of all kinds need to take recent statements by regulators seriously. Indeed, many financial institutions have already designed transition-related infrastructure and formulated plans. But having plans is not the same as actually executing them. There needs to be a full understanding of how to properly mitigate the various legal and other risks that arise from such tasks as executing contract amendments, communicating with customers and counterparties and responding to inquiries from regulators.

Shearman & Sterling LLP – Mark Chorazak, Patrick Clancy , Reena Agrawal Sahni, Lona Nallengara, Donna Parisi and Geoffrey B. Goldman

July 23 2020

SEC Identifies LIBOR Preparedness as an Examination Priority - Sherman & Sterling

On June 18, 2020, the Securities Exchange Commission's (SEC) Office of Compliance Inspections and Examinations (OCIE) announced the details of an examination initiative specifically focused on LIBOR preparedness.[1] OCIE has previously identified LIBOR preparedness of registrants (e.g., SEC-registered investment advisers, broker-dealers, investment companies, municipal advisors, transfer agents and clearing agencies) as a key examination priority for 2020, but the latest announcement offers specific insights into what information examiners will be seeking from registrants.[2]

Background

The expected cessation of LIBOR after 2021 is expected to significantly impact financial markets and present a multitude of financial, legal, operational, conduct and reputation risks for certain market participants. Preparing for the transition away from LIBOR to alternative rates is viewed as essential by a number of regulators, including the SEC. OCIE will be conducting examinations to facilitate an orderly transition.

Examination Process

According to OCIE's release, examiners will review whether and how a registrant has evaluated the potential impact of the LIBOR transition on the organization's: (i) business activities; (ii) operations; (iii) services; and (iv) customers, clients and/or investors (collectively, investors). Examiners will review the plans that registrants have developed and steps they have taken to prepare for the LIBOR discontinuation, including with respect to operational readiness and disclosures. OCIE also identified the types of information and documents that may be sought in these examinations, including:

- Information regarding any individuals or groups (e.g., internal committees, working groups or transition teams) assigned responsibility to oversee or manage the effects of the LIBOR transition on the registrant, including information regarding the frequency of any meetings on this topic and whether minutes are kept.
- The identity of any third parties the registrant has used or plans to use to assess the impact of the LIBOR transition on the firm or its investors.
- Documentation or descriptions of any analysis performed to identify contracts or obligations held and/or issued by the registrant or its investors that may be affected by the LIBOR transition and any remediation plans thereof.
- Information regarding any investors whose fee structure (e.g., performance-based fees) or performance reporting (e.g., use of LIBOR-linked benchmark) could potentially be affected by the LIBOR transition.
- Any written assessments, strategic plans (including remediation plans, as applicable), roadmaps or timelines prepared by or for the registrant regarding preparation for the LIBOR transition, including the consideration of alternative reference rates.
- Materials referencing the LIBOR transition provided to the registrant's board of directors, any committee thereof, any board member, the board or board member(s) of any investors, or the board, legislative body or member(s) thereof of any municipal entity or obligated person client, if applicable, or equivalent governing bodies or offices, if the registrant is not organized as a corporation.
- Information regarding any third-party vendors the registrant uses that may be impacted by the LIBOR transition, including the services provided (e.g., back office) and how the vendor may be

impacted.

- Any implemented or planned changes to compliance procedures, controls or surveillance systems designed to monitor for LIBOR-linked instruments or contracts recommended or sold to clients.

What Registrants Should Be Doing Now

The foregoing list of information that will be sought by SEC examiners is not exclusive and should underscore the urgency of having both experienced counsel on LIBOR matters and a well-designed transition roadmap. Ideally, firms should not wait until an exam is scheduled or a request for information is received to start preparing. And, as a matter of best practice, firms should begin collecting information that would be responsive to the areas identified by OCIE.

Footnotes

[1] See SEC, "Examination Initiative: LIBOR Transition Preparedness" (June 18, 2020).
[2] See SEC, "Examination Priorities for Fiscal Year 2020" (Jan. 7, 2020).

Shearman & Sterling LLP – Donna Parisi, Geoffrey B. Goldman, Azam H. Aziz , Mark Chorazak, Lona Nallengara and Jennifer Oosterbaan

July 20 2020

U.S. Department of Labor Proposes New (Simpler) Fiduciary Rule Exemption.

On June 29, the U.S. Department of Labor (DOL) again waded into the financial services standard of care waters, only this time, it is staying in the shallow end. The DOL's proposed prohibited transaction exemption (Proposed Exemption), if finalized, offers financial advisors, subject to the Employee Retirement Income Security Act of 1974, as amended (ERISA), an opportunity to provide services to employee benefit plans (ERISA Plans), and individual retirement accounts (IRAs) that might otherwise be prohibited under the current regulatory scheme.

Introduction

Absent an exemption, a fiduciary may not deal with the income or assets of an ERISA Plan or IRA in his or her own interest or for his or her own account, and may not receive payments from any party dealing with an ERISA Plan or IRA in connection with a transaction involving assets of the ERISA Plan or IRA. Although existing DOL exemptions permit some related-party transactions, those exemptions are restrictive and have not kept up to date with current fee structures.

The Proposed Exemption would permit financial institutions, including broker-dealers and investment advisers, to receive a wide variety of fees that would otherwise violate existing prohibited transaction rules when providing investment advice to or facilitating securities transactions for fiduciaries, participants, and beneficiaries of ERISA Plans, and to owners and fiduciaries of IRAs. These fees include, but are not limited to, commissions, 12b-1 fees, trailing commissions, sales loads, mark-ups and mark-downs, and revenue-sharing payments from investment providers or third parties. The Proposed Exemption will permit a financial institution fiduciary to receive fees resulting from investment advice to ERISA Plan participants in connection with a rollover from an ERISA Plan to an IRA and allow financial institutions to engage in principal transactions with ERISA Plans and IRAs in which the financial institution purchases or sells certain investments from its own account.

To qualify for the Proposed Exemption, a financial institution must be an “investment advice fiduciary.” In general, an investment advice fiduciary is subject to the duties and liabilities under ERISA that require it to act prudently and with undivided loyalty to ERISA Plans, participants, and beneficiaries. The Proposed Exemption embraces the long-standing five-part test used by the DOL to determine whether an investment adviser is an investment advice fiduciary for purposes of ERISA and the Code. The reaffirmation of the five-part test is important because the now-vacated fiduciary rule (temporarily) discarded the test in favor of a much more expansive definition of who is a fiduciary.

Under the five-part test, a financial institution is considered an investment advice fiduciary if it: (i) renders advice as to the value of securities or other property, or makes recommendations as to the advisability of investing in, purchasing, or selling securities or other property, (ii) on a regular basis, (iii) pursuant to a mutual agreement, arrangement, or understanding with the ERISA Plan fiduciary or IRA owner that (iv) the advice will serve as a primary basis for investment decisions with respect to the ERISA Plan or IRA, and (v) the advice is individualized based on the particular needs of the ERISA Plan or IRA.

Proposed Exemption Requirements

To qualify for the Proposed Exemption, an investment advice fiduciary must:

1. Adhere to Impartial Conduct Standards (as described below).
2. Provide the retirement investor with a written description of the services to be provided and an acknowledgment that it and its investment professionals are acting as a fiduciary under ERISA and the Code, as applicable.
3. Establish, maintain, and enforce written supervisory procedures (WSPs) to comply with the exemption.
4. Create and maintain certain records.
5. Conduct an annual retrospective review of compliance with the exemption.

The Proposed Exemption is an attractive alternative to existing prohibited transaction exemptions, which are narrower and more restrictive. Also, investment advice fiduciaries are likely to find that the Proposed Exemption’s litany of necessary qualifications is already met through existing regulatory obligations. The Proposed Exemption specifically excludes robo-advisers.

Impartial Conduct Standards Requirement

The Impartial Conduct Standards include: (i) a best interest standard, (ii) a reasonable compensation standard, and (iii) a no misleading statements standard. These standards largely replicate existing securities regulations and anti-fraud provisions.

1. *Best Interest Standard.* Financial services provided by investment advice fiduciaries are required to be in the best interest of retirement investors. To meet this standard, an investment advice fiduciary must (i) provide advice that reflects care, skill, and prudence based on the investment objectives, risk tolerance, and financial circumstances of the retirement investor, and (ii) put the interests of its retirement investors ahead of its own interests. For instance, an investment advice fiduciary must determine, and document (as discussed further below), that rolling over employee benefit assets to an IRA is in the best interest of the retirement investor.
2. *Reasonable Compensation Standard.* Investment advice fiduciaries are prohibited from receiving excessive compensation for providing financial services. No single factor is dispositive in determining the reasonableness of compensation received, and both direct and indirect compensation should be taken into account when making an assessment. The proposal specifies

that, as required by federal securities laws, investment advice fiduciaries must seek to obtain the best execution of the investment transaction reasonably available under the circumstances, analyzing best execution and third-party compensation arrangements.
3. *No Misleading Statements Standard.* Statements made by investment advice fiduciaries to a retirement investor about a recommended transaction and other relevant matters must not, at the time statements are made, be materially misleading.

Written Disclosure

An investment advice fiduciary must provide a retirement investor, prior toproviding any financial services, with a written document: (i) explicitly stating that the firm is operating as a fiduciary, (ii) describing the services to be provided, and (iii) disclosing any conflicts of interest.

Written Supervisory Procedures

An investment advice fiduciary's WSPs must be prudently designed to comply with the Impartial Conduct Standards. The WSPs must be designed to mitigate conflicts of interest and to avoid misalignment of the interests of the financial institution and its investment professionals and the interests of retirement investors, such as through incentive arrangements based on sales.

Documentation and Recordkeeping Requirements

Financial institution fiduciaries must create and maintain a record of their reasoning when recommending that a retirement investor rollover ERISA Plan or IRA assets. These records must be kept for six years.

Annual Retrospective Review

A financial institution fiduciary that is relying on the Proposed Exemption to provide financial services for retirement investors must review and test its compliance annually. This process is designed to detect and prevent violations of the Impartial Conduct Standards and to ensure the financial institution fiduciary complies with its policies and procedures. This review must be memorialized within six months of the review period's completion and provided to the chief executive officer (CEO) and chief compliance officer (or equivalent officers) at the investment advice fiduciary. The CEO must certify: (i) that they reviewed the report, (ii) that the WSPs are prudently designed to achieve compliance with the exemption, and (iii) that the financial institution fiduciary has a prudent process in place to accommodate any business or regulatory changes that may arise during the following year.

Principal Transactions

The Proposed Exemption would permit certain transactions between an investment advice fiduciary and an ERISA Plan or IRA that could otherwise be prohibited, such as engaging in a purchase or sale of an investment with a retirement investor and receiving a mark-up or a mark-down or similar payment on the transaction. The Proposed Exemption would extend to both riskless principal transactions and covered principal transactions. A riskless principal transaction is a transaction in which a financial institution, after having received an order from a retirement investor to buy or sell an investment product, purchases or sells the same investment product for the financial institution's own account to offset the contemporaneous transaction with the retirement investor.

Covered principal transactions are defined in the Proposed Exemption as:

1. For a sale to an ERISA Plan or IRA, a transaction that involves publicly traded equity or debt,

Treasury bills, municipal securities, and certificates of deposit, and if the recommended investment is a debt security, the security is recommended pursuant to written policies and procedures adopted by the financial institution that are reasonably designed to ensure that the security, at the time of the recommendation, has no greater than moderate credit risk and has sufficient liquidity that it could be sold at or near carrying value within a reasonably short period of time;
2. For purchases from an ERISA Plan or IRA, a transaction that involves any securities or investment property.

Principal transactions that are not riskless and that do not fall within the definition of a covered principal transaction would not be covered by the Proposed Exemption.

Conclusion

The DOL stated in the Proposed Exemption that once the final form of the exemption is published in the Federal Register, following a comment period that ends on August 6, the exemption will be effective 60 days thereafter.

Overall, the Proposed Exemption seems a welcome modernization of the existing, narrow exemptions from the prohibited transaction rules available to financial institutions, ERISA Plans, and IRAs. Importantly, the proposal reaffirms the five-part test for determining fiduciary status, which many advisors will welcome. Private equity and hedge funds should also be relieved to see that the proposal does not resuscitate terms of the vacated fiduciary rule that purported to make fund managers ERISA fiduciaries with respect to many of their ERISA Plan and IRA investors.

Lowenstein Sandler LLP – Andrew E. Graw, Megan Monson and Alexander D. Zozos

July 16 2020

MSRB Announces Topics for Virtual Quarterly Board Meeting.

The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) will meet virtually on July 29-30, 2020 to discuss the Fiscal Year 2021 budget, market transparency and other items. A detailed summary of Board decisions will be published on MSRB.org following the meeting to ensure all stakeholders are informed of the Board’s priorities and decisions.

Find the meeting’s discussion items here.

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A customized issuer homepage on EMMA® is a free, easy and quick way for issuers to enhance their investor relations.

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[MSRB Weekly COVID-19-Related Event-Based Continuing Disclosures.]

Weekly COVID-19-related event-based continuing disclosures submitted to the EMMA® website continue their downward trajectory.

Read this week's disclosure summary report.

UBS to Pay $10 Million to Resolve SEC Charges Related to Protecting Small Investors.

Cities and school districts issuing municipal debt for building projects can choose to give first priority to mom-and-pop investors

UBS Financial Services will pay more than $10 million to resolve charges that the firm broke rules aimed at giving mom-and-pop investors priority access in buying fresh municipal bonds, the Securities and Exchange Commission said Monday.

Cities and school districts issuing municipal debt for building projects can choose to give first priority to small investors. Governments sometimes want to help local residents, and retail-held bonds tend to change hands less frequently, often keeping prices stable. The Municipal Securities Rulemaking Board mandates that brokers the governments hire to sell the bonds follow issuers' wishes regarding priority.

The SEC found that between 2012 and 2016, when UBS distributed newly issued bonds for such brokers and was required to follow the priority rules, it instead placed bonds intended for non-professional investors with other firms, often referred to as flippers, who quickly resold the bonds for a profit.

Investigators also found that UBS got improper access to other newly issued bonds by buying them through flippers, which gave UBS a better spot in line for those bonds than the broker would have had if it had bought them directly. Nearly $7 million of UBS's fine was aimed at forcing the firm to give up "ill-gotten gains," the SEC said.

"Retail order periods are intended to prioritize retail investors' access to municipal bonds and we will continue to pursue violations that undermine this priority," said LeeAnn Gaunt, chief of the Public Finance Abuse Unit for the SEC Division of Enforcement.

UBS said it had adopted "enhanced systems and procedures" since the four-year period in question. It didn't admit to or deny the findings.

"After fully cooperating with the SEC, UBS is pleased to have resolved this matter," the firm said.

A Wall Street Journal investigation last year found that the brokers cities and school districts hire to sell bonds routinely award them to flippers—and then sometimes buy back the bonds themselves. About $60 billion in newly issued municipal bonds sold between 2013 and 2017 were sold to customers who turned around and sold them to dealers within a single day, usually for a profit, the Journal found.

The Wall Street Journal

By Heather Gillers

July 20, 2020 7:10 pm ET

Vegas Train Approved for Record $4.2 Billion of Unrated Debt.

The sale of a record $4.2 billion in unrated municipal bonds to finance a passenger train to Las Vegas moved closer to happening with a key vote in Nevada, promising to test investor appetite for risk amid a coronavirus pandemic.

Nevada's state board of finance Friday cleared the way for Virgin Trains USA to sell $950 million in tax-exempt private activity bonds for a high-speed rail to the gambling hub from a southern California desert town. The company, backed by Fortress Investment Group private equity funds, had already won the ability to sell $3.25 billion in such debt through a California state agency.

Virgin Trains plans to sell both issues together by September 30, according to spokesman Ben Porritt. That would surpass the biggest unrated tax-exempt deal on record, $1.75 billion the company sold last year for its inaugural rail system in Florida. That line hasn't run since March because of the outbreak.

The 170-mile (274-kilometer) California to Nevada project is expected to break ground by the end of this year. The company says that its electric trains to a Las Vegas station three miles from the Strip will reach 200 mph and take 85 minutes from the California terminus in Apple Valley.

The cost of the project, about $5 billion, will be covered primarily through the debt, while the company will contribute $583 million, according to a report reviewed by the Nevada board.

"I'm very thankful and appreciative of the jobs that this is going to create as we move out of this Covid recession that we're dealing with right now and try to get our people back to work," said Nevada Governor Steve Sisolak, chair of the state's finance board, before the unanimous vote.

Bloomberg Markets

By Romy Varghese

July 24, 2020, 10:31 AM PDT

New York MTA Looks to Spending Cuts While Congress Debates Aid.

- **Transit agency to mull $350 million of spending cuts in 2021**
- **Congress has a few weeks to hammer out additional aid**

New York's Metropolitan Transportation Authority is seeking another $350 million of spending cuts in its 2021 budget as the transit agency grapples with billions in lost revenue and Congress negotiates another coronavirus relief bill.

The MTA, the largest U.S. public transportation system, plans to discuss the spending reductions with its board on Wednesday, MTA Chairman Pat Foye said Tuesday in an interview with video site Cheddar. The MTA is reworking its budget as it seeks about $10.4 billion of federal aid for the rest of 2020 and next year. Without additional federal help, the MTA may consider service cuts, employee layoffs and deficit borrowing.

“Those are things unattractive, unpalatable and unacceptable to New Yorkers,” Foye said during Tuesday’s interview. “But obviously we’ve got to balance our books.”

States, cities and mass-transit agencies throughout the U.S. are looking to the federal government for additional help. Public transportation systems are seeking $36 billion to cover lost revenue as riders have avoided subways, buses and commuter rail lines.

Even as ridership declines and increased disinfecting and cleaning costs have rocked MTA’s finances, some municipal-bond investors see the transit agency’s $45.4 billion of outstanding debt as a buying opportunity. Yields on MTA bonds increased this year and the debt offers relative value, according to Citigroup Inc.

Citi’s long-term view on the credit follows S&P Global Ratings’ downgrade of the MTA to BBB+ from A- on July 8, and Moody’s Investors Service in April cut its rating to A2 with a negative outlook, meaning it could be dropped further.

The potential $350 million reduction along with earlier budget cuts and savings from MTA’s plan to reduce headcount could help the agency slash its 2021 budget by $1.1 billion, Foye said. The $350 million spending cut would come from reducing overtime and cutting or ending consulting contracts.

The MTA may not receive the full $3.9 billion it’s requesting from the federal government to help the agency through 2020, S&P analysts said in the July 8 report.

Still, states and cities may get around $500 billion of federal funds, which may be tied to covering coronavirus-related costs, Bloomberg Intelligence analysts Nathan Dean and Eric Kazatsky wrote in a report Tuesday.

Federal lawmakers have only a few weeks to pass another stimulus bill before Congress takes a scheduled August break.

Bloomberg Politics

By Michelle Kaske

July 21, 2020, 11:39 AM PDT

S&P Bulletin: New Jersey’s $9.9 Bil. Borrowing Plan Could Pressure Its Credit

NEW YORK (S&P Global Ratings) July 16, 2020–S&P Global Ratings said today that the credit impact of the recent agreement between the governor and legislative leaders of New Jersey (A-/Negative) to borrow up to $9.9 billion for budgetary relief will depend upon the amount of actual borrowing and its long-term implication for the state’s ongoing structural deficit. The agreement would allow for general obligation (GO) borrowing through fiscal 2021. The state has not yet directed any new borrowing to take place, and the current three-month budget ending Sept. 30 does not call for new cash flow or deficit borrowing, although it defers a substantial amount of expenses that would normally be paid in September 2020 into October 2020. The amount of borrowing in fiscal 2021 will depend on what is included in the state's fiscal 2021 budget, expected to be enacted in September. However, by authorizing up to $2.7 billion of GO budgetary relief borrowing between now and Sept. 30, the new agreement makes it increasingly likely, in our view, that new legislative action will lead to a borrowing of near that amount, either to avoid budget cuts, or to eliminate the need for the September cash deferrals–particularly cash deferrals to schools. The currently enacted three-month budget anticipates $2.2 billion of cash deferrals from September into October, close to the amount of borrowing that would be authorized. An additional $7.2 billion of borrowing for budgetary relief would be authorized for the state's nine-month fiscal year ending June 30, 2021. A borrowing of that size would amount to about 27% of the state's earlier projection of $26.2 billion of budgetary operating revenue for the 12 months ending June 30, 2021, which we would view as a large structural deficit, if it were fully issued long-term for budgetary relief. Over the last several years, the state has typically arranged for up to $2 billion of cash flow notes due within its fiscal year. The governor is expected to release his fiscal 2021 budget proposal in August, which will outline specific borrowing proposals. We believe that until July revenue returns are known, it may be difficult to assess the amount of borrowing needed. The budget relief borrowings are expected to have maturities of three to 10 years, although they could be longer. It is unclear whether the proposed borrowings can pass legal muster, since the state's constitution requires GO bonds to be approved by popular vote except in the event of "emergency." The state Office of Legislative Services has raised questions as to what might be permissible. However, we believe that even if courts disallow a GO bond, the state would still have the ability to issue short-term, within-the-fiscal-year cash flow notes, or refund long-term annual appropriation secured debt under a "scoop and toss" structure for near-term budget relief without a popular vote, although perhaps at less favorable interest rates. The state could also defer cash payments across fiscal years, although we would view this as a sign of significant fiscal pressure. No legislation has actually been enacted at this point authorizing the proposed GO bonds, but legal challenges are expected once the proposed bill passes. THE THREE-MONTH ENACTED BUDGET The state extended its fiscal year that normally ends June 30, to Sept. 30, 2020, to allow $1.5 billion of current cash flow borrowing to remain outstanding while it collects in July on income tax payments coming due under the extended July 15 income tax filing deadline, as well as to have more time to assess the effect of the pandemic on revenue before enacting a final fiscal 2021 budget for the nine-month period ending June 30, 2021. The current cash flow notes have a renegotiated final maturity of Sept. 25, 2020, just before the end of the state's newly extended fiscal year. In our view, the enacted extended three-month budget puts off hard decisions regarding cutting expenditures or raising revenue. The state will need to address these issues in its nine-month fiscal 2021 budget that must be adopted before the end of September. The current three-month budget solves cash shortfalls, after repayment of $1.5 billion of outstanding cash flow notes due at the end of September, by deferring substantial expenses for one month in September into October of the next fiscal year. However, this is not a long-term solution. The enacted three-month budget is similar to the governor's proposal (see "New Jersey's Revised Fiscal 2021 Budget: A Work In Progress," published June 15, 2020, on RatingsDirect), with slightly higher revenues and expenditures, reflecting slightly improved tax collections, and with a slightly higher fiscal end Sept. 30, 2020, fund balance equal to $957 million, or what we calculate as a modest 3.1% of annualized appropriations, compared to the $494 million fund balance projection in the governor's original proposal. However, without the one-month cash deferrals of expenditures, the state would have a negative ending fund balance at Sept. 30, 2020. (For more information as to the nature of what payments are temporarily deferred, please refer to our earlier report.) Our credit focus remains on the size of the state's ongoing structural budget deficit between long-term revenues and expenditures, including the significant shortfall in funding of the state's pension contribution on an actuarial basis. The state has indicated that despite projected budgetary deficits it will increase its annual pension contribution from to 80% of actuarially determined contribution from 70% for the 12 months ending June 30, 2021. In our view, however, funding an increased pension contribution by deficit borrowing for it does not change the size of the structural deficit. We expect the state's fiscal 2021 budget to provide clues as to the state's willingness to implement ongoing expenditure cuts or revenue increases. In this respect, a budget that relies primarily on large one-time deficit financing could indicate significant credit pressure.

Continue reading.

Conscious Capitalism in Opportunity Zones, with Travis Steffens.

What is conscious capitalism, and how can choosing to adhere to this concept create positive social impact in Opportunity Zones?

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Opportunity Db

July 15, 2020

Key Takeaways from the Novogradac OZ Conference, with Mike Novogradac and John Sciarretti.

What were the biggest highlights from last week's Novogradac Opportunity Zones Virtual Conference? Mike Novogradac is the managing partner of…

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Opportunity Db

July 22, 2020

Little-Noticed Change to TIF Law Allows Ohio Municipalities and Townships to Redirect up to 25 percent of their TIF Funds to Public Safety, Road and Bridge Maintenance During FY 2020 & 2021.

This month, the Ohio General Assembly fast-tracked a school construction finance measure as a mini-capital appropriations bill. Amended Senate Bill (Am. SB) 4 was signed into law by Governor DeWine on July 24, 2020, after the measure was prioritized by leaders in the Ohio House and the Senate. A provision included in Am. SB 4 deserves attention among municipal and township officials and economic developers.

Am. SB 4 became the legislative vehicle of choice for state lawmakers to insert a key change in municipal and township tax increment financing (TIF) law. With this amendment, municipalities and townships can ostensibly "borrow" from their respective TIF funds to cover certain costs unrelated to underlying TIF projects.

Contained in so-called uncodified language (i.e., a legislative directive neither published nor otherwise to appear in the Ohio Revised Code), Section 17 of Am. SB 4 states that municipalities or townships may do either or both:

- *During their fiscal year ending in 2020.* Appropriate and expend the sum of (1) up to 25 percent of the unencumbered moneys on deposit in the subdivision's TIF fund as of October 12, 2020 (Am. SB 4's effective date); plus (2) up to 25 percent of the amounts to be deposited during the remainder of the 2020 fiscal year. The legislative authority must act between Oct. 12 and the last day of its 2020 fiscal year.
- *During their fiscal year ending in 2021.* Appropriate and expend the sum of (1) up to 25 percent of the unencumbered balance of the TIF fund as of fiscal year 2021's first day; plus (2) up to 25 percent of the amounts to be deposited during fiscal year 2021. The legislative authority must act during the 2021 fiscal year.

A simple mathematical example may be helpful. A municipal TIF fund with $500,000 on-deposit as of Oct. 12, of which $200,000 is unencumbered, and that receives another $500,000 during the remainder of fiscal year 2020 would have $175,000 in TIF fund moneys that could be redirected.

If it chooses to act during these periods, a municipality or township may use such TIF fund moneys "solely to pay current public safety expenses or road and bridge maintenance expenses" of the subdivision that are not eligible to be reimbursed by its CARES Act – Coronavirus Relief Fund payment (e.g., Ohio House Bill 481).

Note, however, that moneys in the TIF fund to be redirected to public safety, road and bridge maintenance must be unencumbered. In other words, TIF fund moneys cannot be redirected if they are otherwise spoken for (i.e., encumbered) to pay debt service on TIF bonds or other contractual obligations.

A key feature of this uncodified law change is that the redirected TIF fund moneys are treated as a (forgivable) loan. That is, a municipality or township must reimburse the TIF fund, but only so long as and to the extent that federal funds are received by the subdivision "that may be used to pay for or reimburse those expenses[.]" Put another way, a municipality or township that chooses to redirect its unencumbered balance of TIF fund moneys this year and/or next may not have to replenish its TIF fund by the amount of the loan if federal funds for public safety, road and bridge maintenance are not received before the TIF exemption period expires.

Although initial reporting on this amendment to Am. SB 4 emphasized the loan nature of these redirected TIF fund moneys, payments from a TIF fund can be used for public safety, roads and bridges without need for repayment from the subdivision's local revenue sources; any such repayment would be sourced from the federal government, if future Congressional legislation were to allow. Such repayment may not be required if the federal funds never materialize.

Bricker & Eckler LLP

July 22, 2020

[Do Muni ETFs Improve Market Quality?]

EXECUTIVE SUMMARY

- **“Do Municipal Bond ETFs Improve Market Quality?” was the title of a research paper presented at the 9th Annual Brookings Municipal Finance Conference by Justin Marlowe of The University of Chicago, a er which we discussed our reaction to the assumptions and conclusions of the report.**
- **We concur with Professor Marlowe’s conclusion that muni ETFs do improve market quality and suggest some practical takeaways for municipal bond investors.**

Continue reading.

ETF Trends

By Patrick Luby, Senior Municipal Strategist, Credit Sights

JULY 20, 2020

Fitch to Assign a S-T Rating to Indiana Fin Auth (Stadium Project) Ser 2005 A-5 of 'F1+'

Fitch Ratings-New York-22 July 2020: On the effective date of July 29, 2020 Fitch Ratings will assign a ‘F1+’ short-term rating to $97,200,000 Indiana Finance Authority lease appropriation bonds (Stadium Project), Series 2005 A-5.

KEY RATING DRIVERS

The short-term ‘F1+’ rating assigned to the bonds will be based on the liquidity support provided by U.S. Bank National Association, rated ‘AA-‘/’F1+’/Negative, in the form of a Standby Bond Purchase Agreement (SBPA), The long-term ‘AA+’/Stable rating is based on the rating assigned to the bonds. For more information on the long-term rating, see Fitch’s rating report dated July 21, 2020, at www.fitchratings.com.

The SBPA will provide for the payment of the principal component of purchase price plus an amount equal to 37 days of interest calculated at a maximum rate of 12%, based on a year of 365 days for tendered bonds during the daily and weekly rate modes in the event that the proceeds of a remarketing of the bonds are insufficient to pay the purchase price following an optional or mandatory tender. The SBPA will expire on July 28, 2023, the stated expiration date, unless such date is extended; upon conversion to any interest rate mode other than daily or weekly; or upon the occurrence of certain events of default that result in a mandatory tender or other events of default related to the credit of the bonds that result in an automatic and immediate termination. The remarketing agent is U.S. Bancorp Investments, Inc. The bonds are expected to be converted to daily rate mode from the indexed rate mode on July 29, 2020.

The bonds will be issued in the daily rate mode, but may be converted to a weekly, flexible, indexed or term rate mode. While bonds bear interest in the daily and weekly rate modes, interest is paid on the first business of each month, commencing Aug. 3, 2020. Holders of bonds bearing interest in the daily and weekly rate modes may tender their bonds for purchase with the requisite prior notice. The trustee is obligated to make timely draws on the SBPA to pay the purchase price in the event of insufficient remarketing proceeds, and in connection with the expiration or termination of the SBPA, except in the case of the credit-related events permitting immediate termination or suspension of the SBPA.

Funds drawn under the SBPA are held uninvested, and are free from any lien prior to that of the bondholders. The bonds of each series are subject to mandatory tender: (1) upon conversion of the interest rate (except between daily and weekly); (2) upon expiration, substitution or termination of the SBPA; and (3) following the receipt of written notice from the bank of an event of default under the related SBPA, directing such mandatory tender. Optional and mandatory redemption provisions also apply to the bonds.

Bond proceeds were issued to (i) purchase the Stadium Notes, (ii) pay the costs of issuance of the Stadium Bonds, (iii) fund the Debt Service Reserve Account of the Debt Reserve Service Fund and (iv) pay capitalized interest on the Stadium Bonds during construction of the Stadium Project.

RATING SENSITIVITIES

Factors that could, individually or collectively, lead to positive rating action/upgrade:

–The short-term 'F1+' rating to be assigned to the Bonds is at the highest rating category level and cannot be upgraded.

Factors that could, individually or collectively lead to negative rating action/downgrade:

–The 'F1+' rating to be assigned to bonds the will be adjusted downward in conjunction with the short-term rating of U.S. Bank, National Association.

ESG Considerations

The ESG.RS conforms to that of U.S. Bank, National Association.

The highest level of ESG credit relevance, if present, is a score of 3. This means ESG issues are credit-neutral or have only a minimum credit impact on the entity(ies), either due to their nature or to the way in which they are being managed by the entity(ies). For more information on Fitch's ESG Relevance Scores, visit www.fitchratings.com/esg.

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Fitch: Supreme Court Ruling Creates Uncertainty in Oklahoma

Fitch Ratings-New York-16 July 2020: The recent U.S. Supreme Court ruling concerning Native American nations in eastern Oklahoma (Issuer Default Rating AA/Stable) presents the state with a score of jurisdictional issues that will take time to address. However, Fitch Ratings expects the generally cooperative relationship between the nations and the state will help clarify sovereignty issues raised by the ruling and provide for an agreement that limits the long-term credit implications to the state.

In McGirt v. Oklahoma, the court held that three million acres of eastern Oklahoma, which includes 24% of the state’s population and much of the greater city of Tulsa area, remain reservation land of the Muscogee (Creek) Nation. In addition to the Creek Nation, the ruling extends by interpretation to four other Native American nations in the state, as these nations’ boundaries were established through the same federal legislation. In total, these areas account for 43% of the state’s land mass.

In the short-term, the ruling primarily affects criminal prosecution under the federal Major Crimes Act (MCA). An estimated 1,700 tribal inmates tried under state law and currently serving out their sentences may choose to seek a new trial in federal court. The extent to which eligible inmates seek retrial will determine the scale of disruption to the state’s judicial and correction systems but Fitch expects the state to manage this process effectively.

While the Supreme Court majority’s opinion stated that the ruling only considered the MCA, Fitch believes the ruling creates ambiguity around the regulatory and civil powers of the state and its municipal governments, including excise, property and income taxation of up to 200,000 tribal members if they reside within the newly affirmed reservation boundaries. The Court has repeatedly ruled against state or local government taxation of income earned by tribal members on a reservation, land owned by tribal nations and the enrolled tribe members that live on such lands, absent U.S. Congressional action authorizing it.

Following the Court ruling, the state is expected to continue its negotiations with Native American nations to resolve jurisdictional uncertainties on criminal justice and other government functions. Oklahoma has a long history of navigating dual sovereignty with Native American nations and a generally cooperative relationship that will likely continue. Fitch anticipates that current tension around gaming issues in the state may hamper these discussions somewhat, but not materially so. Reflecting the cooperative relationship, following the Court’s ruling, the state, along with the five nations, released a joint statement that noted their significant progress toward an agreement to present to Congress and the U.S. Department of Justice to address any jurisdictional issues raised by the Court’s decision.

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Bond Experts Raise Caution Flags on Detroit's $250M Anti-Blight Borrowing Plan.

Experts say municipal bonds with Detroit's high interest rates could charitably be called high yield for potential investors. Others might call them junk bonds.

Five years removed from bankruptcy, the city of Detroit is on a path to borrow a quarter-billion dollars to address the city's extensive blight problem in the middle of an economy destabilized by the ongoing coronavirus pandemic.

Despite the uncertain economy, the municipal bond market is humming and several experts say the city is likely to find investors for the approximately $250 million in bonds Mayor Mike Duggan wants to issue for blight removal.

But some see a range of potentially problematic issues — the city's history of financial struggles, the scandal-tainted demolition program and the possibility that the pandemic will sharply constrain city revenues.

Detroit also will have to pay an estimated $240 million in interest on the debt in addition to the amount of the high-yield bonds, according to a spokeswoman for the city.

“This deal looks like it has a lot of hair on it,” Daniel Berger, senior market strategist for Refinitiv, a data and analytics firm that specializes in global financial markets, said, referring to risks and obstacles associated with the proposal.

Marilyn Cohen, who worked as an analyst and bond broker before founding Envision Capital Management in California more than 20 years ago, put it more bluntly.

“This to me looks like it's fraught with disaster,” Cohen said. “Just because you have access to the money because it's cheap money doesn't mean you should grab it unless you have all your ducks in a row.”

Duggan is plowing ahead, driven by the severity of the city's blight crisis and the job opportunities for Detroiters expected to be hired for demolition and rehab work. His plan — known as Proposal N, for neighborhoods — is headed for the Nov. 3 ballot for voters to decide. If approved, the city would issue up to $250 million in bonds to demolish an estimated 8,000 blighted homes and secure another 8,000 vacant houses so they can be more fully rehabbed.

The city has thoroughly considered the cost and affordability of the neighborhood improvement bonds, according to the city's finance and demolition departments. The bonds will be repaid through property taxes connected to the city's debt millage, which provides a more stable revenue stream than those more directly affected by the COVID-19 pandemic, such as taxes on casinos.

The city has projected it will lose about $194 million in general fund revenues in the current fiscal year, which began July 1. The projected losses represent about 18% of the previous year's general fund budget.

Property taxes that flow into the city's general fund are expected to drop about 6%, or $7 million, this fiscal year compared with the previous year's budgeted amount. The city is expecting income tax revenues to drop about 13%, or $150 million, from the start of the pandemic through June 2021.

Duggan acted quickly to address the pandemic-related budget crunch. He laid out a series of cuts in April to address the overall $348 million budget deficit the city projected through June 2021.

"In general, national experts are finding that the cities that rely more heavily on property taxes will not experience such an immediate collapse in their revenues from the coronavirus economic contraction," city officials wrote in response to written questions from the Free Press. Detroit's CFO"projected a recession scenario for this bond sale and found that even in the recession scenario projection, the city would be able to pay debt service without driving the debt millage rate above the current level," officials wrote.

The answers provided through the city's media relations department did not identify the specific city officials who compiled the answers.

Based on the city's financial modeling, Detroit expects to issue a blend of 64% tax-exempt bonds and 36% taxable bonds that will be repaid over 30 years. The plan is to issue $175 million in bonds next year and $50 million in 2023, leaving room to issue another $25 million in bonds if the market conditions remain favorable, according to a city memo.

The city of Detroit anticipates interest rates on its new bonds to be between 3.64% and 6.58%. That's significantly more expensive than borrowing by neighbors like Oakland County, armed with the highest possible bond rating. Long-term interest rates on AAA-rated government bonds currently are about 1.45%, according to Berger.

While elevated interest rates are not optimal for the city, they are expected to spur interest in the municipal market because higher interest rates mean higher yields for investors.

"Everybody's grabbing for yield," Cohen said.

But Cohen said she would advise her clients to put their money elsewhere.

The city's recent history of managing demolitions — federal authorities investigated contracting irregularities, among other problems — raises questions about how the bond proceeds would be spent. Cohen said she also has doubts about the city's ability to repay the debt because the rest of this year and 2021 could be a nightmare for cities' balance sheets.

"Overall, I just worry about a repeat performance in some way, shape or form," she said, referring to the city's historic bankruptcy filing.

City leaders could inspire confidence in their plan if they tapped local businessman Dan Gilbert or someone else qualified in the private sector who could be involved in the city's blight removal efforts, Cohen said.

Detroit businessman Dan Gilbert has studied Detroit blight and participated in a blight task force in 2014. One bond expert suggested city leaders tap his expertise to boost the city’s pitch to investors should voters approve Mayor Mike Duggan’s $250 million bond proposal.
Detroit businessman Dan Gilbert has studied Detroit blight and participated in a blight task force in 2014. One bond expert suggested city leaders tap his expertise to boost the city’s pitch to investors should voters approve Mayor Mike Duggan’s $250 million bond proposal. (Photo: Junfu Han, Detroit Free Press)

Gilbert has studied Detroit’s blight problem. He was involved in a blight removal task force in 2014 and testified during the city’s bankruptcy trial that year, saying, “I’d probably put myself in the top 1% in knowledge of blight in the city of Detroit.”

In response to concerns about its demolition program, city officials said that a newly established demolition department has policies and procedures in place that have improved operations.

“With the creation of the new demolition department, we assessed existing processes, policies, and failures with the goal to create a more effective and efficient demolition program that meets or exceeds industry standards,” city officials said.

Duggan needs a cash influx to continue fighting blight before more houses deteriorate past the point of saving. The federal funds that previously fueled the city’s demolition efforts are used up.

Since its exit from bankruptcy in late 2014, Detroit has received several credit upgrades from ratings services. Moody’s Investors Service in February rated a portion of the city’s debt as Ba3, which is three levels below investment grade.

Municipal bonds with such high interest rates could charitably be called high yield, Berger said, while others would call them junk bonds.

Duggan’s pitch to sell the plan to City Council and voters has focused on the need to solve Detroit’s vast blight problem so that vacant, dilapidated homes no longer are part of everyday life for children in Detroit.

It’s a compelling narrative to pitch to investors, but they will be more interested in details about the city’s revenue streams and tax base, Berger said.

“It’s quite a story and to explain it to bondholders, it’s quite a job to do,” Berger said. “Investors will get down to brass tacks and it’s either ‘Will they pay or won’t they pay?’ ”

The city’s current debt millage is 9 mills. If voters approve the bonds, the millage will remain at current levels because other debt will be paid off as the city takes on new debt. If the blight bonds are not issued, the millage will fall to 6 mills, according to an analysis of the proposal by the City Council’s Legislative Policy Division.

For the average homeowner, that would be a difference of about $57 in annual property taxes, according to the analysis.

For the most part, the city is no longer under state oversight that was in place post-bankruptcy. However, debt issuance approval is one of the few remaining responsibilities of the state’s Detroit Financial Review Commission, said state Treasury spokesman Ron Leix.

Ron Rose, a member of the commission, praised Duggan's blight removal efforts so far. Any problems that cropped up were the result of having to tear down so many homes, he said.

Rose said the city has done a spectacular job of financial planning since the bankruptcy, particularly with respect to its pension payments.

"They've put themselves in as good a position as any city could've done to meet those obligations," he said.

Detroit Free Press

by Joe Guillen

July 24, 2020

Nuveen Slapped with New Antitrust Suit by Preston Hollow.

Nuveen, a major player in the municipal-bond market, is facing an antitrust suit filed Monday by smaller competitor Preston Hollow Capital, months after the conclusion of a similar case in a Delaware court.

Nuveen and John Miller, the firm's head of municipal finance, attempted to "organize a boycott" of Dallas-based Preston Hollow through "threatening and anticompetitive" correspondence with banks and broker-dealers, according to the lawsuit filed in New York federal court.

Preston Hollow, which has $3.6 billion in investable assets, posed a "direct threat" to Nuveen — a behemoth with $1.1 trillion in assets under management — and its "ability to buy sufficient high yield municipal bonds," the lawsuit states. To push the firm out, Nuveen pressured major investment banks, including Goldman Sachs, JPMorgan and Wells Fargo, to stop working with Preston Hollow or lose business with Nuveen, the suit alleges.

The firm is now suing for damages of not less than $100 million.

A spokesperson for Nuveen declined to comment on the matter.

Preston Hollow made similar claims in another suit in the Delaware Chancery court, in which a vice chancellor in April ruled that Nuveen "used threats and lies" to successfully damage the firm. The court, however, refused to issue an injunction against Nuveen, and said Preston Hollow should have instead sought money damages.

The firm also has a pending defamation lawsuit in Delaware Superior Court, where it is seeking $100 million in damages.

Preston Hollow in April said it would "vigorously pursue" monetary damages in the defamation claim and at the time hinted it was looking into lodging the antitrust lawsuit.

"Municipal borrowers deserve a truly competitive marketplace where they are able to select the capital provider that meets their needs in funding their vital projects, not the needs of a large money manager like Nuveen," Preston Hollow CEO Jim Thompson said. "This is, in essence, the very injustice that the vice chancellor exposed."

fastinform.com

By Rachel Uda

July 21, 2020.

[UBS to Pay Over $10 million to Resolve SEC Charges on Municipal Bond Offerings.]

WASHINGTON (Reuters) – A unit of UBS has agreed to pay more than $10 million to resolve charges it circumvented the priority given to retail investors in certain municipal bond offerings, the U.S. Securities and Exchange Commission said on Monday.

Over a four-year period, UBS Financial Services Inc improperly allocated bonds intended for retail customers to parties known in the industry as "flippers," who immediately resold the bonds to other broker-dealers at a profit, the agency said in a statement.

UBS registered representatives facilitated more than 2,000 trades with such flippers, allowing the firm to obtain bonds for its own inventory and improperly obtain a higher priority in the bond allocation process, according to the SEC.

The regulator also settled proceedings with UBS registered representatives William S. Costas and John J. Marvin, finding that they had "negligently" submitted retail orders for bonds on behalf of flipper customers. Costas also helped UBS traders improperly obtain bonds for the firm's own inventory through the flippers, the SEC said.

Costas agreed to pay disgorgement and interest totaling $16,585 and a civil penalty of $25,000. Marvin agreed to pay disgorgement and interest of $27,966 and a civil penalty of $25,000, the SEC said.

"Retail order periods are intended to prioritize retail investors' access to municipal bonds and we will continue to pursue violations that undermine this priority," said LeeAnn G. Gaunt, chief of the SEC Division of Enforcement's Public Finance Abuse Unit.

UBS and the two representatives did not admit or deny the agency's findings, the SEC said. A spokeswoman for the firm said UBS had fully cooperated with the agency and was pleased to resolve the matter.

Reporting by Chris Prentice; Editing by Leslie Adler, Dan Grebler and Tom Brown

JULY 20, 2020

[UBS to Pay $10 Million for Retail Muni Bond Violations.]

UBS Financial Services agreed to pay more than $10 million to resolve charges that it circumvented procedures aimed at giving retail investors priority allocations in certain municipal bond offerings, the Securities and Exchange Commission said on Monday.

UBS improperly allocated bonds intended for retail customers to so-called “flippers,” traders who immediately resold the bonds to other broker-dealers at a profit. UBS’ retail brokers who participated in the sales “knew or should have known” that flippers were not eligible for retail priority, the regulator said in a press release

The more than 2,000 trades given to flippers over four years also allowed UBS to obtain bonds for its own inventory, circumventing the priority of orders set by the issuers and improperly obtaining a higher priority in the bond allocation process, according to the settlement order.
“Retail order periods are intended to prioritize retail investors’ access to municipal bonds and we will continue to pursue violations that undermine this priority,” said LeeAnn G. Gaunt, chief of the SEC’s Public Finance Abuse enforcement unit.

Without admitting or denying the findings, UBS consented to the penalties and a cease-and-desist agreement for violating Municipal Securities Rulemaking Board rules and of failure-to-supervise provisions of the Securities Exchange Act of 1934.

It will pay a $1.75 million penalty, disgorge $6.74 million of ill-gotten gains and pay over $1.5 million in prejudgment interest, the SEC said.

“After fully cooperating with the SEC, UBS is pleased to have resolved this matter related to conduct that occurred between 2012 and 2016 in its former distribution business of negotiated new issue municipal bonds,” a company spokeswoman said. “The conduct predates the launch of UBS’s new Public Finance business in 2017 and adoption of enhanced systems and procedures.”

The regulator also announced related settlements with UBS brokers William S. Costas in Westlake Village, Calif., and John J. Marvin in Palm Beach Gardens, Fla. They “negligently submitted retail orders for municipal bonds on behalf of their flipper customers,” the SEC said.

Costas, 55, who has spent 29 years of his 32-year career with UBS, according to BrokerCheck, also helped UBS traders improperly obtain bonds for the firm’s inventory through one of his flipper customers, the SEC said. Marvin, 58, a rep for 34 years, joined UBS in February 2007 from Morgan Stanley.

Costas and Marvin agreed to settle the SEC charges without admitting or denying the findings. Costas will pay disgorgement and prejudgment interest totaling $16,585 and Marvin will disgorge $27,966. Each also agreed to pay a $25,000 penalty and consented to a 12-month limitation on trading negotiated new issue municipal securities.

The SEC in April settled charges against former UBS Executive Director Jerry E. Orellana for submitting retail orders to an underwriting syndicate from certain UBS customers who were flippers. He agreed to pay $284,080 in disgorgement, $15,128 in prejudgment interest, and a $75,000 civil penalty, and was barred for five years.

The SEC also in 2018 reached a settlement with former UBS bond salesman Chris D. Rosenthal for allegedly helping unregistered brokers posing as retail investors flip municipal bond offerings. He accepted a five-year industry bar and an order to pay $284,080 in disgorgement, $15,128 in prejudgment interest, and a $75,000 civil penalty.

The Financial Industry Regulatory Authority last year fined UBS $2 million for inaccurately representing to customers the tax status of municipal bond interest payments, and ordered it to pay any additional taxes the customers may have accrued because of the errors.

AdvisorHub

by AdvisorHub Staff

July 20, 2020

Florida to Use Municipal Bonds to Boost Private Space-Launch Industry.

The state of Florida is getting ready to utilize the issuance of municipal bonds in order to further its agenda of boosting the private space-launch industry. This throws the spotlight on fixed income investors who haven't yet allocated their exposure to municipal bond exchange-traded funds (ETFs).

Per a Bond Buyer report, "Gov. Ron DeSantis signed legislation in late June enabling Space Florida, the state's aerospace economic development agency, to bypass approval from the governor and cabinet to issue revenue bonds for private companies pursuing capital projects. The bill's sponsor, Sen. Tom Wright, R-New Smyrna Beach, said the law provides Space Florida with the same streamlined bonding process afforded to other governmental entities and will foster a more competitive marketplace for the state's space industry."

"Space Florida has done a tremendous job in attracting companies to our state," Wright said in a statement. "From this bill's passage, they will be able to conduct business and save costs for all involved parties, while ensuring the state of Florida is not on the hook when it comes to issuing bonds."

"This legislation clarifies and simplifies the process for Space Florida to utilize its bonding authority to further grow the aerospace industrial capacity in Florida," Ketcham said. "The financing tool kit of Space Florida is akin to a commercial enterprise as it is not backed by the full faith and credit of the State of Florida. This recent legislation removed potential ambiguity on that issue."

ETF TRENDS

by BEN HERNANDEZ on JULY 16, 2020

Century Housing's $100M Bond Offering Sees Rapid Success.

Last month, the firm launched a bond offering to fund affordable housing, and has quickly seen strong investor interest.

Last month, Century Housing announced a $100 million bond offering to fund affordable housing in California, and the offering has already been an instant success. The offering is the first of its kind with a municipal bond and to be rated by Fitch and S&P. The offering was 12 times oversubscribed with more than $1 billion in investor interest.

"The response exceeded our expectations," Alan Hoffman, SVP and CFO of Century Housing, tells GlobeSt.com. "In addition to middle market investors and CRA investors, we saw strong interest from social and green/environmental investors. Affordable housing, and notably projects that will ultimately be financed with low income housing tax credits, which is the majority of the projects we finance, incorporate significant energy and water saving features as well as pollution reduction aspects. The social impact of this housing is more important than ever, targeting the economic burden faced by so many that is a major contributor to the social inequalities plaguing our society." Century offered the opportunity because its business was growing, and it had the ability to finance more affordable units. "Century's book of financing for affordable housing throughout California is increasing," said Hoffman. "Century is seeing opportunities to finance experienced quality developers across the State. In addition to funding an increase in our lending portfolio, we will use a portion of the 2020 bonds to re-finance 2019 bonds that are maturing later this year."

The offering will provide up to $100 million in ESG municipal CUSIP bonds, which will be federally taxable and state tax-exempt. The strong response shows increasing interest in affordable housing investment. Due to the market dislocation, that demand is set to increase. "We do believe we are seeing a connection between the economic and social impacts of the pandemic, and interest in our paper," says Hoffman. "Century believes that safe, quality affordable housing is at the foundation of the economic empowerment of low and moderate income communities. It is these communities that are most impacted by the economic disruption caused by the pandemic. Affordable housing is all that Century does, consequently an investment in Century is almost a pure play on affordable housing in our geography."

The offering has the potential to finance and refinancing nearly 2,000 affordable homes. "In the fourth quarter of this year Century is planning a retail note program to fund further growth in our affordable housing financing activities," says Hoffman. "Further bond offerings may be possible in 2021 and annually thereafter to finance existing bond maturities as well as further growth in our operations."

GlobeSt.com

By Kelsi Maree Borland | July 14, 2020 at 04:00 AM

- **Ed. Note:** We will be off next week, returning 7/28.
- *Franzen v. Downtown Development Authority of Atlanta* – Supreme Court of Georgia validates bonds for major downtown redevelopment project in which bonds would be issued to developer and serviced solely by infrastructure fees collected by the city. **Ed. Note II:** This issuance was easily validated despite lengthy, detailed objections, due to the fact that Issuer's Counsel carefully lined up the relevant interlocking/overlapping constitutional and statutory provisions required for this type of transaction. Thus, this ruling may serve as a useful guide to structuring similar deals.
- *Howard Jarvis Taxpayers Association v. Bay Area Toll Authority* – Court of Appeal holds that increase in region's tolls to cross state-owned bridges, which was an increase approved by simple majority of voters at election called pursuant to bill passed by the state legislature, was a charge imposed for entrance to or use of state property, and thus it was not a "tax" as defined by state constitution's provision on majorities required for tax increases.
- When More Banks Compete for Municipal Debt, States and Towns Win.
- And finally, Oh, *Expedited* You Say? In That Case… is brought to us this week by *Saylor v. State*, in which the court noted that "Saylor filed 16 separate tort claims." This led Your Editor down memory lane to the time a girlfriend – clerking for a federal judge – brought home a filing from an inmate with the immortal title, "Expedited Motion to Kiss My Ass." The source of the urgency remains unclear, but ya' gotta respect the spirit.

BOND VALIDATION - GEORGIA

[Franzen v. Downtown Development Authority of Atlanta]

Supreme Court of Georgia - June 29, 2020 - S.E.2d - 2020 WL 3580156

On July 14, 2010, the City of Atlanta designated a 150-acre parcel know as "The Gulch" as an Urban Redevelopment Area pursuant to the Urban Redevelopment Law. The City further designated The Gulch redevelopment area to be an "enterprise zone" under the Enterprise Zone Employment Act. The City intended to convert The Gulch into a live/work development.

The financing structure put in place to finance the redevelopment was summarized by the court as follows:

> "To summarize in the simplest manner: (1) the Development Authority will issue revenue bonds in incremental amounts tied to progress in redevelopment of The Gulch enterprise zone; (2) the revenue bonds will be available only to the Developer, who will earn the bonds with development and construction work completed within The Gulch using the Developer's own money; (3) the debt service for the bonds will be funded exclusively by infrastructure fees; (4) the City will collect these infrastructure fees from businesses within The Gulch and pass them along to the Development Authority for payment of the bonds; and (5) the Developer has certain strictly limited rights to enforce the transfer of collected infrastructure fees, but has no right whatsoever to any other funds of the public entities involved in The Gulch project."

A bond validation hearing was set for December 10, 2018. On the morning of the hearing, Intervenors moved to intervene and filed an answer to the Development Authority's petition for validation. The Intervenor's filing contained nine objections.

(a) Citing OCGA § 36-82-77 (a), the Intervenors contend that the trial court erred by failing to hold a wholly separate hearing for the purpose of considering their nine timely objections to the bond validation petition.

The court held that, pursuant to OCGA § 36-82-77 (a), a thorough hearing was conducted in which Intervenors participated and presented evidence. There exists no right to an separate, independent hearing.

(b) The Intervenors next argue that the trial court erred in its determination that additional objections to the bond validation filed by them after the first full day of hearings on December 10, were untimely.

The court found that, because the Intervenors were allowed to intervene at the first bond validation hearing on December 10, the Intervenors could only amend their pleadings after that date to add objections if granted leave to do so by the trial court. The trial court found that the Intervenors' amendments were untimely, and did not allow them to be filed. This was not an abuse of the trial court's broad discretion.

(c) The Intervenors next contend that the trial court failed to make legally adequate findings of fact and conclusions of law as to whether the bond proposal and its corresponding security provided by infrastructure fees are sound, feasible, and reasonable.

"To the contrary, even in the trial court's isolated conclusion cited above, the court expressly explained that it relied on "evidence adduced at the hearing, including the fact that the bonds will be issued only upon proof of work completed and expenditures made[.]" And, during the three days of hearings, extensive evidence was, in fact, presented regarding the mechanics of the bond financing structure, which is included in the record and discussed in the trial court's lengthy orders. Therefore, contrary to the Intervenors' contentions, there is a clear statement of the trial court's reasoning, and there is a sufficient basis on which this Court can assess that conclusion."

(d) Citing Article IX, Section II, Paragraph VII (c) of the Georgia Constitution of 1983,22 the Intervenors maintain that the trial court incorrectly held that the intergovernmental agreement between the City and the Development Authority is lawful. Specifically, the Intervenors contend that the City lacks the authority to perform its obligations under the IGA.

"To qualify as a valid intergovernmental contract, an agreement must: (1) be a contract between political subdivisions of the state; (2) not last for more than 50 years; (3) be "for joint services, for the provision of services, or for the joint or separate use of facilities or equipment;" and (4) "deal with activities, services, or facilities which the contracting parties are authorized by law to undertake or provide." Intervenors contend that requirement (4) has not been met, contending that the City is not authorized to assess infrastructure fees and provide them as payment for the Bonds.

The court disagreed, citing OCGA § 36-88-6 (g) (4) which explicitly provides:

"By resolution or ordinance, the local governing body designating and creating an enterprise zone under this subsection may assess and collect annual enterprise zone infrastructure fees from each retailer operating within the boundaries of the project in an amount not to exceed, in aggregate, the amount of sales and use tax on transactions of such retailer exempted under paragraph (2) of this subsection, which fees may be pledged by such local governing body, directly or indirectly, as security for revenue bonds issued for development or infrastructure within the enterprise zone."

(e) The Intervenors contend that the imposition of infrastructure fees under the Enterprise Zone Employment Act violated Article IX, Section II, Paragraph VII (c)30 of the Georgia Constitution, the "Community Redevelopment Provision." The Intervenors maintained that a municipality may be authorized to levy infrastructure fees only pursuant to that provision, which authorizes the General Assembly to enact general laws allowing the creation of enterprise zones and tax exemptions therein for certain qualifying businesses.

The trial court rejected this argument, finding that the Community Redevelopment Provision was not an exclusive grant of legislative authority. To the contrary, the trial court recognized that the General Assembly has the power to authorize municipalities to levy fees under Article III, Section VI, Paragraph I, which gives the legislature "the power to make all laws not inconsistent with this Constitution … which it shall deem necessary and proper for the welfare of the state." The trial court further held that nothing in the Community Redevelopment Provision in any way prohibits, precludes, or limits the exercise of such powers. Thus, the Intervenors failed to show a "clear and palpable" conflict between the statute and the Constitution, as would be required to overcome the presumption that there was a proper exercise of plenary legislative power

(f) The Intervenors next contended that the 2017 Enterprise Zone Amendment is unconstitutional because it allows an "area-wide tax exemption" that exceeds the authority granted in the Community Redevelopment Provision. Essentially, the Intervenors appeared to be arguing that the 2017 Amendment completely omits the requirement that exemptions be tied to qualifying businesses and service enterprises.

The court held that the Community Redevelopment Provision, Article IX, Section II, Paragraph Vll (c) of the 1983 Georgia Constitution, authorizes the General Assembly to provide for the creation of enterprise zones allowing for “exemptions, credits, or reductions of any tax or taxes levied in such zones by state, a county, or a municipality.” These exemptions may be given to “such persons, firms, or corporations which create job opportunities within the enterprise zone for unemployed, low, and moderate income persons in accordance with the standards set forth in such general law.”

(f) [sic] The Intervenors argued that the bond issuance is not sound, feasible, and reasonable because projected infrastructure fee revenues are inadequate to secure Bonds in an amount of $1.25 billion.

This argument, however, does not account for the incremental nature of the financing scheme, and therefore lacks merit. To validate the bond proposal in this case, the trial court was not required to find that $633 million of infrastructure fees over a 30-year period, as conservatively projected by the Development Authority’s experts, would service bonds in the possible principal amount of $1.25 billion. The Bonds are “draw-down” bonds that will be issued only if sufficient infrastructure fees are projected to service the bonds. So, if only $633 million of infrastructure fees are projected to be generated by The Gulch, only an amount of Bonds that may be adequately serviced by that amount of fees will be issued.

TORT CLAIMS - NEBRASKA

Saylor v. State

Supreme Court of Nebraska - June 19, 2020 - N.W.2d - 306 Neb. 147 - 2020 WL 3394726

Inmate brought tort claims against State arising out of instances included alleged aggravation of post-traumatic stress disorder and deprivation of use of pain-easing devices.

The District Court dismissed action. Inmate appealed.

The Supreme Court held that:

- As a matter of first impression, when a question is raised about whether the content of a presuit tort claim complied with the manner in which the State Claims Board prescribed such claims to be filed, the substantial compliance doctrine may be applied under the Nebraska State Tort Claims Act (STCA), and
- Inmate’s claim forms substantially complied with presuit presentment requirement of STCA even though forms did not provide amount of claim in dollar figure.

IMMUNITY - NEBRASKA

Lambert v. Lincoln Public Schools

Supreme Court of Nebraska - June 19, 2020 - N.W.2d - 306 Neb. 192 - 2020 WL 3395331

Dog bite victims, who were an elementary school student and her mother, brought tort action against public school district under Political Subdivisions Tort Claims Act (PSTCA) alleging that school was negligent in failing to enforce a policy of “no dogs” on playground and in failing to supervise playground when dog bites occurred after school.

The District Court granted summary judgment to school district. Bite victims appealed.

The Supreme Court held that school district was immune from suit under discretionary function exception of PSTCA.

Public school district had immunity from suit under discretionary function exception of Political Subdivisions Tort Claims Act (PSTCA), with respect to tort claims of dog bite victims, who were a student and her mother, alleging negligence in elementary school's failure to enforce a policy of "no dogs" on playground and in failing to supervise playground when dog bites occurred after regular school day had ended and students were dismissed for the day; school's decision to enforce its "no dogs" policy only during school hours and its decision not to supervise playground area at all after school hours involved the exercise of judgment, and it was precisely the kind of judgment the discretionary function exception was designed to shield.

MUNICIPAL ORDINANCE - OHIO

State ex rel. Magsig v. Toledo

Supreme Court of Ohio - June 24, 2020 - N.E.3d - 2020 WL 3444420 - 2020 -Ohio- 3416

Driver sought a writ of prohibition to prevent city from conducting an administrative hearing to adjudicate her liability for violating a municipal traffic ordinance.

The Supreme Court held that city lacked jurisdiction to carry out its red-light and speeding-camera civil-enforcement system.

City lacked jurisdiction to carry out its red-light and speeding-camera civil-enforcement system; statute provided that a municipal court had "jurisdiction over the violation of any ordinance of any municipal corporation within its territory, including exclusive jurisdiction over every civil action concerning a violation of a state traffic law or a municipal traffic ordinance," and city ordinance allowed an administrative hearing officer to adjudicate noncriminal traffic-law violation in contravention of statute's language.

ANNEXATION - OHIO

State ex rel. Xenia v. Greene County Board of Commissioners

Supreme Court of Ohio - June 25, 2020 - N.E.3d - 2020 WL 3456716 - 2020 -Ohio- 3423

City that sought type-2 annexation of township's land, whereby residents of the annexed land were to become residents of both city and township, brought action requesting a writ of mandamus compelling county to approve city's annexation petition.

The Second District Court of Appeals denied county's motion for summary judgment, granted city's motion for summary judgment, and issued the writ. County appealed.

The Supreme Court held that:

- Writ of mandamus was proper vehicle to compel county to approve city's petition;
- Contiguity condition set forth in type-2 annexation statute established the sole contiguity requirement;
- City's petition satisfied the contiguity requirement;
- City's petition satisfied condition that annexation not create an unincorporated area that was completely surrounded by the annexed territory; and

- City’s petition satisfied condition that city agree to correct road-maintenance problems.

Writ of mandamus was proper vehicle to compel county to grant city’s petition for type-2 annexation, whereby residents of the annexed land were to become residents of both city and township; annexation statute’s subsection setting forth the conditions for granting a such petition did not contain the sort of open-ended language that governed traditional annexation, which entailed a factual determination concerning the general good of the annexed territory, but instead the subsection afforded the county no discretion if the petition satisfied all of the subsection’s conditions, and county’s performance of its duties under the statute did not, on its own, foreclose the possibility that the county could be compelled to grant the petition in a mandamus action.

Contiguity condition set forth in type-2 annexation statute established the sole contiguity requirement for such annexation, whereby residents of the annexed land became residents of both city and township, as relevant to the statute’s condition that a petition for type-2 annexation meet all of the requirements set forth in statute governing the filing of annexation petitions, which contained its own contiguity requirement; unlike the filing statute, the type-2 annexation statute’s contiguity condition defined the minimum degree of touching necessary in a type-2 setting, and application of contiguity principles crafted outside the type-2 setting would have rendered the specific limitations embodied in the type-2 annexation statute’s contiguity condition meaningless.

City’s petition for type-2 annexation, whereby residents of the annexed land were to become residents of both city and township, satisfied the type-2 annexation statute’s condition that the territory proposed for annexation have a boundary contiguous with the municipal corporation of at least 5% of the territory’s perimeter; the city calculated a shared boundary of 5.31%, while the county, which opposed annexation, calculated a boundary of 5.03%, and the effect that city’s future plans might have had on the percentage did not impact the determination of whether the city’s petition satisfied the contiguity condition.

City’s petition for type-2 annexation, whereby residents of the annexed land were to become residents of both city and township, satisfied the type-2 annexation statute’s condition that the annexation not create an unincorporated area of a township that was completely surrounded by the territory proposed for annexation; although the proposed annexation would create two township islands, the condition did not forbid township islands created by the coupling of pre- and post-annexation boundaries, and here the territory proposed for annexation would form merely one side of a triangular-shaped island and one side of a quadrilateral-shaped island.

City’s petition for type-2 annexation, whereby residents of the annexed land were to become residents of both city and township, satisfied the type-2 annexation statute’s condition that the city agree to assume maintenance of a street or highway that would be divided or segmented by a boundary line between the city and township; city stated in its petition that it would correct road maintenance problems, city was not required to present to the township an agreement concerning road-maintenance issues, and contention that city would fail to correct problems in light of its alleged past failures to do so was speculative and did not create a fact issue as to whether city in fact agreed in its petition to correct road-maintenance problems.

PUBLIC PENSIONS - RHODE ISLAND

Andrews v. Lombardi

Supreme Court of Rhode Island - June 30, 2020 - A.3d - 2020 WL 3527917

Retirees from city's police and fire departments brought action seeking declaratory judgment that state statute and city ordinance terminating their health care benefits and requiring them to enroll in Medicare upon attaining eligibility constituted breach of contract, and violated Contracts Clause, Due Process Clause, and Takings Clause of United States and Rhode Island Constitutions.

Following bench trial, the Superior Court entered judgment in city's favor, and retirees appealed.

The Supreme Court held that city impaired its contractual obligation to retirees.

City impaired its contractual obligation to retired police officers and firefighters, in violation of Contracts Clause, when it adopted ordinance terminating their health care benefits and requiring them to enroll in Medicare upon attaining eligibility, where collective bargaining agreements required city to pay for "equivalent coverage" if retirees obtained other coverage, equivalent coverage would require city to pay for excess or gap coverage, and city was not paying for such excess or gap coverage for retirees who did not opt into settlement agreement with city.

ZONING & PLANNING - VERMONT

[In re Hopkins Certificate of Compliance]

Supreme Court of Vermont - June 19, 2020 - A.3d - 2020 WL 3396443 - 2020 VT 47

Applicant sought change-of-use permit allowing him to use his residential property as a law office. Town's Development Review Board approved site plan, making specific note of applicant's agreement that line of evergreens planted to screen parking area would "consist of arborvitae" as requested by owner of abutting residential property, and issued change-of-use permit.

After Zoning Administrator (ZA) granted applicant a temporary certificate of compliance, and then a second after the first expired, Board determined that requirements for temporary certificate had not been met, except that arborvitae screen was in compliance, and ordered applicant to come into full compliance with permit and approved site plan.

Owner, proceeding pro se, appealed to the environmental division, and while appeal was pending, ZA issued applicant a final certificate of compliance. On the parties' cross-motions for summary judgment, the Superior Court, Environmental Division, dismissed action for lack of jurisdiction. Owner appealed.

The Supreme Court held that:

- There is no cause to engage in statutory construction with respect to the exclusivity-of-remedy and finality provisions of the Vermont Planning and Development Act;
- Owner's appeal from the second temporary certificate was appropriately characterized as a collateral attack on the final order and, thus, was barred by the Act;
- Exhaustion of owner's remedies was required, notwithstanding his futility argument;
- Owner's notice of appeal was insufficient to preserve the issue of the validity of the final certificate of compliance; and
- Those issues raised by owner in connection with the second certificate were moot.

ZONING & PLANNING - CALIFORNIA

[Aids Healthcare Foundation v. City of Los Angeles]

Court of Appeal, Second District, Division 3, California - June 15, 2020 - Cal.Rptr.3d - 2020 WL 3168551 - 20 Cal. Daily Op. Serv. 5710 - 2020 Daily Journal D.A.R. 5823

Affordable housing organization brought action against city for violations of federal Fair Housing Act (FHA) and state Fair Employment and Housing Act (FEHA), alleging four multi-use development projects approved by city had disparate impact on Black and Latino residents.

The Superior Court sustained demurrers by city and real parties in interest, which were projects' owners and developers, without leave to amend. Organization appealed.

The Court of Appeal held that:

- City's approval of development projects to revitalize area constituted policy or practice sufficient to support disparate-impact claims;
- City's policy was not artificial, arbitrary, or unnecessary barrier to fair housing;
- Halting development until city initiated measures to mitigate gentrification was not appropriate remedy for any violations of FHA and FEHA; and
- Organization failed to establish reasonable possibility defects in complaint could be amended.

City's approval of development projects to revitalize area constituted a policy or practice, as necessary to support disparate-impact discrimination claims under Fair Housing Act (FHA) and Fair Employment and Housing Act (FEHA), where city approved projects as part of its implementation of its existing land use policies, and approval process included debate in public hearings and written communications about what community benefits should be included as part of development agreements.

City's land use policies and their implementation, including through approval of development projects to revitalize area, did not affirmatively remove or prevent creation of fair housing in and of themselves, and, thus, city's policies were not artificial, arbitrary, and unnecessary barrier to fair housing, as necessary to support claims that policies had disparate racial impact in violation of Fair Housing Act (FHA) and Fair Employment and Housing Act (FEHA); any increase in rent prices resulting from projects would be caused by private landlords, not by city itself, and projects did not cause net loss of existing affordable housing units, but, rather, would either exist on currently-unoccupied sites or would increase number of affordable housing units on sites.

Halting development of housing projects until city's initiation of measures to mitigate effects of gentrification was not appropriate remedy for any disparate-impact violation of Fair Housing Act (FHA) or Fair Employment and Housing Act (FEHA) resulting from city's approval of housing projects; voiding city's approval of projects would not make affordable housing more available to racial minorities, and FHA and FEHA were not intended to impose new development policies on housing authorities, but, rather, to eliminate policies forming impermissible barriers to fair housing.

Affordable housing organization that brought action against city for violations of Fair Housing Act (FHA) and Fair Employment and Housing Act (FEHA) failed to satisfy its burden, on appeal from decision sustaining demurrer without leave to appeal, that there was a reasonable possibility it could amend defects in complaint, where organization did not set forth specific factual allegations it would plead if amendment were allowed or legal authority showing viability of new or amended causes of action, but, rather, asked Court of Appeal to provide guidance as to what additional evidence might be required to support its disparate-impact claims, which constituted improper request for court to rewrite organization's complaint.

When More Banks Compete for Municipal Debt, States and Towns Win.

- **Number of banks bidding on new deals rose in last decade: MSRB**
- **Soliciting more bids lowers interest cost for issuers**

Municipal-bond auctions are getting more competitive, shrinking underwriters' profits and lowering borrowing costs for taxpayers.

The average number of bids state and local governments receive when putting bonds up for auction has increased over the past decade to 5.7 per issuance in the first half of 2019, up from 4.4 in 2009, according to research published Monday by the Municipal Securities Rulemaking Board.

And issuers who get more bids on their bonds have lower borrowing costs. Winning banks' profit margins for competitive offerings decline to less than 0.02% with 18 or more bids compared with 0.19% with one bid, on a true interest cost basis, according to a paper by Simon Wu, the MSRB's chief economist. On offerings with net interest cost bids, spreads declined to around 0.02% with 10 or more bids from 0.36% with one bid.

"All things being equal, soliciting more competitive bids does indeed improve an issuer's selling price and reduce the yield cost for the issuer," wrote Wu, who will present the findings at the Brookings Institution's Municipal Finance Conference.

Last year, about 24% of long-term debt by par value issued by state and local governments were sold through competitive bids, according to data compiled by Bloomberg. Issuers post public notices asking banks to make proposals and award the debt to the bidder offering the lowest interest cost. The other 76% are done through negotiated underwriting, where municipalities select a bank to price and sell the bonds, similar to an initial public offering in the stock market.

On short-term note sales, municipalities favor the competitive method, auctioning 84% of all notes.

Some academics have found competitive bond-issues result in lower borrowing costs than negotiated deals. While a number of studies compare competitive and negotiated municipal offerings, there's scant research on competitive deals exclusively, said Wu in an interview.

The average number of competitive bids received per issuance increased regardless of the size of the deal, a state's population or per capita income, according to Wu's paper.

And while the average number of bids received has gone up over the last decade, the competitiveness of the bids has also improved. The difference between winning bids and the lowest bid fell to 0.183% in 2019 from 0.383% in 2009. The difference between the winning and cover bid fell to 0.025% from 0.071%

The increase in bids and decline in spreads between winning and other bids may be a result of improved technology and information transparency in the market, as well as factors such as interest rates and volatility, the MSRB paper said.

"As a result, underwriters may be increasingly submitting more informed bids so that competitive bids from different underwriters have become more clustered together."

Bloomberg Markets

By Martin Z Braun

July 13, 2020, 7:13 AM PDT

The Fed Makes Groundbreaking Purchase of Municipal Bonds, But Is it Enough?

In March, as part of its response to COVID-19, the Federal Reserve announced it would for the first time in its history enter the municipal bond market — a $4 trillion market financing everything from transportation infrastructure to affordable housing to schools to economic development. As of June 15, just one state had sold any bonds to the Fed.

That state was Illinois, which sold a $1.2 billion "tax-anticipation note" to the Municipal Lending Facility, managed by the Federal Reserve Bank of New York. The state owes 3.82 percent in interest to the facility, or about $45.8 million, with principal and interest due for repayment in one year.

Some economists have been saying the Federal Reserve should be making many more municipal bond market purchases as part of its normal functioning, not just as part of a crisis response. In addition to helping the Fed perform its mandated function of stabilizing the financial system, they say it would have huge benefits for cities, among other things making it easier to finance public transit, public housing, climate resilience projects and invest in historically disinvested communities.

Continue reading.

NEXT CITY

OSCAR PERRY ABELLO JULY 7, 2020

Main Street Goes to Bay Street: Municipal Governments Exercise New Investment Powers

TORONTO , July 6, 2020 /CNW/ – A group of six Ontario municipalities are among the first to head to Bay Street to exercise new investment powers.

The City of Kenora , District Municipality of Muskoka and Towns of Bracebridge , Huntsville , Innisfil , and Whitby have come together to jointly invest under the Prudent Investor Standard with ONE Investment. By-laws approving investment under the new standard have just come into effect, helping municipalities to diversify their investments and improve returns.

Under Prudent Investor, municipal governments, just like pension plans and trusts, may invest in any product that is prudent for their situation. Previously, municipalities could only invest in a list approved by the Province. Securities were limited to Canadian firms, which make up only 3% of worldwide securities.

ONE Investment is a not-for-profit investment service for municipalities and the public sector. It has been serving municipalities for more than 25 years and currently manages about $2 billion in municipal investments.

"Every dollar a municipality earns through investing is one less dollar it has to collect from taxpayers. That’s more important now than ever,” said Ken Nix , Chair of ONE Investment, and Whitby’s Commissioner of Corporate Services and Treasurer.

Under provincial rules for Prudent Investor, an independent Investment Board must manage investments on behalf of the municipality. ONE has created a Joint Investment Board with the six founding municipalities. It is the first of its kind in Ontario .

“Municipalities don’t have to navigate markets alone,” said Judy Dezell , ONE Investment Co-President/CEO. “The investment advisory team helps with investment planning and policies, while the Joint Investment Board provides hands-on expert management.”

The ONE Joint Investment Board is made up of two municipal representatives and six professionals with a mix of experience in the municipal sector and the investment industry, including global markets and pensions.

“Having professional advice and flexibility are particularly important right now as markets fluctuate in response to COVID-19’s economic impact,” added Donna Herridge, ONE Investment Co-President/CEO and Executive Director of the Municipal Finance Officers’ Association (MFOA). “Municipalities are investing for the long-term. With professional support, they can manage current market conditions to meet future goals.”

“As a joint investment board, we provide every participating municipality with its own tailor-made investment plan,” said Bill Hughes , Chair of the ONE Joint Investment Board. “It’s our job to make wise and prudent investment decisions to meet each municipality’s goals.”

About ONE

ONE Investment combines municipal investments to achieve economies of scale for lower fees and better returns. It is a not-for-profit formed by the municipal sector, including the Local Authority Services (LAS) and CHUMS. LAS is the business services arm of the Association of Municipalities of Ontario (AMO). CHUMS is a subsidiary of MFOA.

ONE has a proven track record of providing competitive returns through products that comply with provincial regulations. The Prudent Investor Standard is now another choice for municipalities to achieve their goals. ONE Investment continues to operate funds under the legal list of provincially approved investments as well.

CUSIP: Municipal CUSIP Request Volume Surges for Third Straight Month

Read Press Release.

JULY 9, 2020

Local Finances Are Troubled, but Fund Investors May Still Profit.

High-grade municipal bond portfolios have been among the best places to find income.

Record unemployment and the coronavirus recession are wreaking havoc with the cash-flow prospects for many municipal bond issuers.

State and local governments that rely on income tax and sales tax face sharply lower revenues. And empty roads, airports, stadiums and convention centers mean there is less (or no) revenue to help pay back the bonds that financed those projects.

Yet many municipal bond mutual funds and exchange-traded funds have managed to post positive returns for the first half of the year. After falling 11 percent in the worst of the coronavirus sell-off in March, the market rallied when the Federal Reserve stepped in with support. At this point, the average high-grade intermediate municipal bond fund is back above water for 2020.

The Vanguard Intermediate-Term Tax-Exempt mutual fund gained 2.2 percent for the first half of the year. American Funds' Tax-Exempt Bond Fund of America rose 1.3 percent this year to date. The iShares National Muni Bond E.T.F. gained 2.3%.

Karl Zeile, a co-manager of the Tax-Exempt Bond Fund of America, is telling clients, "This is not a time to run away from municipals. This is a time to step in."

That's not blind optimism.

While bond investors often focus on having a smooth ride, fund managers tend to become excited in periods like this one, when prices have fallen and bargains may be found.

"It's a very inefficient market with a lot of uncertainty, and that breeds opportunities," said Mathew Kiselak a senior portfolio manager for Vanguard's municipal bond team. The $3.9 trillion municipal bond market has a quirky structure: There are around 50,000 issuers, yet no single exchange where trades can be quickly executed.

In the heat of the March sell-off, that inefficiency sent prices plummeting as sellers had difficulty finding, and then enticing, potential buyers. When bond prices dropped, yields rose. Mr. Kiselak says even with the recent rally, high-quality municipal bond yields are still relatively high compared with other bonds', which suggests there is still value to be mined.

While every segment of the municipal bond market other than truly essential services (for water, sewage and electricity) has a near-term revenue headache, some bond issuers could face continuing challenges even once the economy emerges from the coronavirus pandemic.

Nursing homes may have a harder time attracting residents. Small private colleges that rely more on residential-student revenue than large public universities face a financial hit if online learning becomes more mainstream. And it's not clear how soon arenas, stadiums and convention centers will reopen, or if the seats will be filled.

But most bonds should be just fine, fund managers say. "The bulk of the market is very healthy," said Peter Hayes, head of municipal bonds at BlackRock.

Of the roughly $3 trillion in bonds that have been assigned credit ratings, more than 90 percent are high-grade issues rated AAA, AA, A or BBB. And less than 10 percent of investment-grade municipal bonds are sitting at the lowest rung of BBB. For corporate bonds, more than 50 percent of the high-grade market is rated BBB.

Highly rated municipal bond issuers typically have enough cash set aside to cover at least a year's worth of their obligations to their investors. And for so-called revenue bonds — those whose payment streams rely on revenue from specific projects, like toll roads or stadiums — reserves are often even deeper.

That helps to ensure timely payments in the near future, even if their revenue is scarce and Congress does not step in with help for states and cities, many of which are already projecting budget shortfalls. Longer term, absent federal aid, state and local governments would need to consider raising taxes, reducing services and cutting payrolls to cover bills, including municipal bond payments.

Amid the uncertainty, high-grade municipal bonds offer income investors yields that are relatively high. For example, the average yield for a AAA-rated 10-year municipal bond is 0.9 percent, compared with 0.67 percent for a comparable Treasury note. On top of that, interest on municipal bonds is exempt from federal tax, and bonds issued within your state of residence may also be exempt from state and local income tax.

Just counting the effects of the federal tax exemption, if you're in the 24 percent federal tax bracket, the 1.4 percent current yield on the Vanguard Intermediate-Term Tax-Exempt fund is equivalent to a yield of 1.84 percent in a taxable bond fund (assuming, of course, that neither is held in a tax-sheltered account). For investors in the 35 percent federal tax bracket, the yield is the equivalent to a taxable yield of 2.2 percent The average current yield for core bond funds (whose income is taxable) is 1.4 percent.

If that yield advantage appeals, it bears repeating that the coming months may be rocky.

Mr. Hayes cautioned that even with a reopening of the economy, municipal revenues will "only be at a percentage of what they were pre-Covid." Even if a vaccine arrives, people may not spend as much, rely on public transportation with the same gusto, or drive or fly as much, or flock to stadiums, arenas and convention centers.

Moreover, some states and cities that issued high volumes of bonds already had severe budget problems before the crisis: Illinois and New Jersey had many bonds rated BBB, the lowest rung of investment grade before the coronavirus. These and other states may find it harder to dig out of this recession.

As downgrades emerge, Mr. Hayes says "headline risk" may shake up the market. When one issuer falters, he said, "investors begin to worry about the overall health of the market, and it becomes a contagion and there is a sell-off."

But remember that after such sell-offs in the past (see: Puerto Rico, Detroit), there was no lasting impact on the broader market. "Those usually end up being good long- term buying opportunities," said Mr. Hayes.

There is already opportunity to find value despite the headlines, many managers say.

Mr. Kiselak at Vanguard says that while nursing homes may face a rough road because of coronavirus-related deaths, another type of institution, known as continuing care retirement communities, have not had such problems, but their bonds have been hammered as if they did.

He said the Vanguard municipal bond team is also finding value in the bonds of single-site health care centers that do not have the same challenges as "massive systems that were in epicenters," where coronavirus costs rose and revenue fell as nonessential procedures were closed.

That same nuanced credit-by-credit analysis is why the Tax-Exempt Bond Fund of America has more than 10 percent of its assets invested in issues from the State of Illinois and municipalities including

Chicago, despite broad financial problems in the state and some of its cities.

Mr. Zeile said most of the fund's stake was invested in revenue bonds "that are unnecessarily tarred with the same concerns" as bonds from Illinois that depend on tax collections, which are referred to as general obligation bonds.

A revenue bond for an Illinois toll road, or for O'Hare or Midway Airport, pays back investors from money earned when people drive on those roads and pass through those airports. They aren't dependent on direct government tax collections. Yet the yields for some Illinois and Chicago revenue bonds are higher now simply because of the implied guilt by association with general obligation issues.

In the current market, the embedded diversification of a fund or E.T.F. is especially valuable. "If you get an issuer that decides to go through some type of restructuring, in a fully diversified portfolio, the overall impact will be pretty minimal," Mr. Hayes said.

Downgrades are more likely than outright bankruptcies. According to Moody's Investor Services, from 1970 through 2018, the average rolling five-year default rate for rated municipal bonds was 0.09 percent, compared to 6.6 percent for corporate bonds.

The nation's fiscal problems imply that the value of the tax exemption on municipal bond income isn't likely to wane.

"With these deficits we're running up, taxes aren't going down," Mr. Hayes said. "Who knows if they might go up — that's probably an election outcome decision — but they aren't going down for sure."

The New York Times

By Carla Fried

July 10, 2020

Virus Causes Uncertainty for State Lotteries.

Boston — The coronavirus pandemic has been a rollercoaster for state lotteries across the country, with some getting a boost from the economic downturn and others scrambling to make up for revenue shortfalls.

Since March, Texas, Arkansas and Montana and several other states have seen an increase in sales, in part, driven by housebound residents putting cash down for scratch-off tickets. But lottery officials say other states, like Massachusetts and Oregon, confronted revenue drops due to stay-a--home orders that forced the closure of restaurants, bars and some retailers selling tickets.Some also blamed a lack of an online presence, something only a handful states currently allow.

"We got used to lottery as a constant companion supporting the system and it was a gut punch to realize we don't have the time to react," said Chris Havel, spokesperson for Oregon Parks and Recreation, which laid off 47 people and closed more than two dozen parks due to a $22 million projected budget shortfall through next year driven in part by a drop in lottery revenues.

State lottery revenues do not make up a huge portion of a state budget. But because the monies are often directed to specific programs like education, environment or veterans programs, they can have an outsized impact when there are upticks or declines in sales.

Massachusetts Treasurer Deborah Goldberg told lawmakers in April that the lottery was hobbled by the closure of claims centers and the lack of an online presence — something that helped neighboring New Hampshire and several other states attract new players. Currently, at least nine states allow online lottery sales, according to the North American Association of State & Provincial Lotteries.

“This pandemic has dramatically exposed the limitations and vulnerabilities of the Lottery’s all-cash, in person business model,” Goldberg said.

The pandemic and the subsequent economic downturn were expected to be a good thing for lottery sales. Past studies have shown a correlation between a rise in unemployment and increase in lottery sales — a trend that prompted an anti-gambling group to unsuccessfully call for states to shut down their lotteries until the coronavirus pandemic ended.

“We have known for some time that people end up playing the lottery more often or with more of their dollars when they get put in dire circumstances, when they have a drop in income,” said Cornell University business professor David Just, who has studied lottery purchases.

“Unemployment is one of the potential big drivers for something like that. We saw that at the beginning of the pandemic,” he said. “Massive rises in unemployment, you would expect, would lead people to this place where they want to take more risks to try and get back what they’ve lost.”

That was the trend in several states, including Arkansas, which saw strong sales in April and May.

Arkansas Scholarship Lottery Director Bishop Woosley attributed the sales spike in his state to low gas prices, a lack of other entertainment options and “people simply being bored and looking for activities that they can do in their own homes.

Similar trends were seen in Montana, which has seen sales increase $1.4 million from March through May to more than $16 million. Much of that has been driven by scratch-off tickets, which jumped 83% compared to a year ago, according to state figures.

Minnesota’s stay-at-home order led to lottery sales dropping in March but roared back in April and May. According to the the monthly data, sales in April increased more than $13 million compared to year ago and more than $29 million in May. A majority of lottery proceeds go to the general fund and another portion to environmental programs.

Texas also saw lottery sales increase more than $155 million this fiscal year and more than $753 million compared to the 2018 fiscal year. A big driver was scratch-off tickets, which increased 10% over the last fiscal year and 22% over sales from 2018 mostly because 20,000 retail locations were deemed essential services, according to Gary Grief, executive director of the Texas Lottery Commission.

But not all state lotteries have benefited from the pandemic.

Delaware’s lottery sales are off almost $40 million through May compared to the last fiscal year, mostly due the closure of casinos with video poker and table games, according to state data. Other factors in several states was a drop in revenue from big-money games like Powerball, which saw lower some jackpots.

Virginia saw sales drop 21%, or just over $45 million in March and in April by 8%, or more than $15 million compared to a year ago. They were up nearly 9% in May but are still down 8% for the fiscal year.

In Massachusetts, sales were down by about 13% in March, 30% in April and around 10% in May, leaving the lottery down 5% for the fiscal year. Unlike Texas, which kept many retail outlets open, Massachusetts temporarily closed more than 1,500 due to the pandemic. That left players with fewer places to spend their money.

Lottery profits go into a larger municipal aid program for the state's 351 cities and towns, but it's too early to say the impact on local budgets.

"Declining state tax revenues and Lottery proceeds are a serious budget concern, yet the Massachusetts Municipal Association firmly believes that the state's future depends on protecting local aid and K-12 education funding," Massachusetts Municipal Association's Executive Director Geoff Beckwith said in a statement.

But as states begin to reopen, some of the hardest hit lotteries are bouncing back.

Along with Virginia, Maryland saw its lottery sales recovery after a rocky few weeks. In the midst of the pandemic, lottery officials feared profits would be $50 million below the state's projections for the fiscal year that ended June 30. Now, officials are expecting profits to be about $10 million below those projections.

Gordon Medenica, Maryland's lottery and gaming director, recalled weeks in April when sales were down as much as 30% and "we really didn't know where the bottom was at that point. We were just seeing sales absolutely collapse."

"Since then, they have rebounded remarkably well. In the month of May, we actually had our all-time best month for the year in both sales and profits," Medenica said. "Instant tickets have been booming. Our daily numbers games have been booming. Lottery is doing really well."

By The Associated Press

July 9, 2020

Recession Forces Spending Cuts on States, Cities Hit by Coronavirus.

Education takes the brunt of reductions; governments have cut 1.5 million jobs since March, with more expected

State and local governments from Georgia to California are cutting money for schools, universities and other services as the coronavirus-induced recession wreaks havoc on their finances.

Widespread job losses and closed businesses have reduced revenue from sales and income taxes, forcing officials to make agonizing choices in budgets for the new fiscal year, which started July 1 in much of the country.

Governments have cut 1.5 million jobs since March, mostly in education, and more reductions are likely barring a quick economic recovery. In Washington state, some state workers will take unpaid furloughs. In Idaho, Boise State University cut its baseball and swim teams in an effort to save $3 million.

[Continue reading.](#)

The Wall Street Journal

By David Harrison

Updated July 8, 2020 2:29 pm ET

[University of California Faces Hardship, Eager Bond Buyers.](#)

- **Even with state aid cut by 12%, system considered ‘marquee’**
- **University sold $2.3 billion in municipal debt Thursday**

The University of California knows it faces significant repercussions from the coronavirus pandemic — though it can’t say how extensive. Yet it didn’t have any trouble borrowing money from Wall Street.

The system sold $2.3 billion in revenue bonds Thursday, its first sale since California, dealing with its own shortfalls triggered by the crisis, slashed the university’s funding by 12% in the fiscal year that started in July. The cuts could be reversed if additional federal dollars come through, a scenario that remains uncertain.

The offering of bonds with a final maturity of 2050 shows the dichotomy that’s emerging in the $3.9 trillion municipal market that finances states, cities, schools and other local institutions. While the virus has led to plummeting tax revenue and skyrocketing costs, some issuers are better equipped to manage the turbulence. And when it comes to colleges and universities, investors are weighing which are more likely to succeed with hybrid online and on-campus plans and other steps to educate students safely while balancing the fiscal hit.

“We’re confident that they can manage the stress,” said Bernhard Fischer, senior analyst at Principal Global Fixed Income, which manages $9.9 billion in municipal securities. Calling the 10-campus system a “marquee” school, Fischer said “the brand names, the larger state institutions in particular, should be able to weather this downturn better or best.”

Of the $2.3 billion in bonds, $1.5 billion are taxable. The proceeds will go to retiring existing securities and for working capital. The sale is part of a glut of offerings from higher education facilities, which have already sold more in bonds this year than in 2019, even as they deal with higher costs from the pandemic and reduced revenue from student housing.

“We expect supply in this sector to remain robust as institutions are in dire need of funding,” Barclays Plc analysts said in a report Wednesday.

Yields on the tax-exempt portion included 0.26%, or 15 basis points below benchmark, for bonds due in five years, and 2%, or 37 basis points above benchmark, for bonds maturing in 2050 with a 4% coupon.

The largest U.S. public university system in revenue and enrollment, the University of California also operates five medical schools and three national laboratories. In fiscal 2019, it educated 279,145 full-time equivalent undergraduate and graduate students. Its "excellent strategic position as a globally recognized comprehensive academic, medical and research institution with substantial scale and wealth" merits a credit rating of Aa2 with a positive outlook, Moody's Investors Service said.

It still faces considerable challenges from the pandemic, which led to the cancellation of all spring and summer physical sessions. The university expects all campuses to offer most classes remotely in the fall and some to reduce housing.

"There has been and will continue to be material financial impacts to the university due to the Covid-19 impacts due to a variety of factors including, but not limited to, lower housing occupancy and utilization of auxiliary services, facility cleaning costs, and transitioning to remote instruction," the University of California regents said in documents circulated to investors ahead of the sale.

The system, which this week named its first Black president, has frozen the salaries of some staffers, while the chancellors and the president agreed to cut their pay by 10%.

The state's lawmakers, however, have sought to help. If California receives $14 billion in federal aid by October, the university would see the cuts reversed so that its state allocation is $3.94 billion, about the same as last year.

The university gets so many applications from students nationwide and internationally that California's leaders have urged it to expand the ability of residents to attend. The system was planning to add 15,000 student beds between fall 2021 and fall 2025 to help accommodate the need, according to a 2019 annual report.

"They can make it through difficult times because they have such strong finances and a strong demand" from students, said Dan Solender, head of municipal debt at Lord, Abbett & Co.

Bloomberg Markets

By Romy Varghese

July 9, 2020, 9:23 AM PDT Updated on July 9, 2020, 2:39 PM PDT

— With assistance by Emmy Lucas

Moody's Publishes Combined Methodology for Rating Short-Term Debt of US States, Municipalities and Nonprofits.

New York, July 10, 2020 — Moody's Investors Service has published its methodology for rating short-term debt of US states, municipalities and nonprofits. The update combines and replaces the "US Bond Anticipation Notes and Related Instruments Methodology" published on October 7, 2019, the "Short-Term Cash Flow Notes" methodology published on April 4, 2013, and the "Municipal Bonds and Commercial Paper Supported by a Borrower's Self-Liquidity Methodology" published on October 7, 2019.

Moody's has retained the approach for short-term ratings based on its analysis of the borrower's own liquid resources (self-liquidity), but changed its approaches for rating bond anticipation notes (BANs) and short-term cash flow notes. The key revisions include the elimination of the scorecards for BANs, cash flow notes, and BANs financed by the US Department of Agriculture (USDA). For

BANs and short-term cash flow notes, the issuer's long-term credit quality is a primary factor, and for USDA BANs, the long-term credit quality of the US Government is a primary factor. Short-term ratings for these instruments incorporate additional considerations. Moody's has also made editorial changes to enhance readability.

Moody's expects 2 ratings out of a universe of 366 to change as a result of the publication of the updated methodology.

Fitch Coronavirus Stress Test: U.S. Small Network Toll Roads (Issuer Flexibility Offsets Traffic Declines, Rating Pressure in Stress Scenario)

Read the Fitch Special Report.

Fitch: Strong Liquidity Across The Board For U.S. Toll Roads Despite Coronavirus

Related Fitch Ratings Content:

- Coronavirus Stress Test: U.S. Small Network Toll Roads (Issuer Flexibility Offsets Traffic Declines, Rating Pressure in Stress Scenario)
- Coronavirus Stress Tests: U.S. Toll Roads — Managed Lanes (Structural Protections Offset Steep Traffic Losses; Rating Pressure in Severe Downside Case)
- Coronavirus Stress Test: U.S. Large Network Toll Roads (Resilient Assets with Rating Pressure in Severe Stress Scenario)

Fitch Ratings-San Francisco-06 July 2020: Liquidity for U.S. toll roads will remain strong with few roadblocks for the remainder of the year despite the coronavirus pandemic's severe effects on road traffic, according to stress tests conducted by Fitch Ratings of its entire portfolio of rated U.S. toll roads. The results are detailed in a series of reports published today.

The Rating Outlook on a substantial portion of Fitch's rated toll roads were revised to Negative from Stable shortly after the onset of the pandemic due to the gravity of coronavirus-related losses and the potential for lingering impacts on financial metrics. Fitch's rating case scenario accounts for sharp declines in traffic for 2020 with a two-year recovery to 2019 levels. Like other transportation segments, Fitch also modeled more severe stress scenarios should the fallout of the pandemic prove more severe or longer than expected. "The possibility of a long term impact to the broader economy will inevitably have a trickle-down effect for toll roads as well," said Scott Monroe, Senior Director.

Other questions to consider will be how many people will choose to work from home on a more regular basis, a realistic scenario Monroe says will keep consumer traffic levels reduced. Conversely, "Flying restrictions could actually benefit leisure roads should commuters choose to drive to vacation destinations instead of taking to the air," said Monroe.

This has presented toll roads that have seen their liquidity take a hit with an opportunity to take action to avoid a rating downgrade. "Raising toll rates have helped some toll roads return to a more stable financial outlook," said Anne Tricerri, Director. "Other preventative measures include reductions in O&M and pushing out capital plan projects that have yet to break ground."

Issuer flexibility is also helping to offset traffic declines for both large and small network roads. That said, the roadways to keep a close eye on in the coming months are those that have already seen tangible adverse effects to their credit profile, such as Virginia's Dulles Greenway and Elizabeth River Crossings Opco, and Central Florida Expressway. Managed lanes are also benefiting from structural protections that are helping to offset steep traffic losses, although notable outliers include Blueridge Transportation Group and Colorado High Performance Transportation Enterprise, which is facing a construction delay.

The following reports are all available at www.fitchratings.com.

"Coronavirus Stress Test: U.S. Large Network Toll Roads"
"Coronavirus Stress Test: U.S. Small Network Toll Roads"
"Coronavirus Stress Tests: U.S. Toll Roads – Managed Lanes"

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Additional information is available on www.fitchratings.com

S&P: COVID-19 Activity In U.S. Public Finance as of 7/6/20

Here are links to coronavirus-related activity in U.S. public finance. This file will be updated regularly.

Download

S&P: COVID-19 And The Resulting Recession Are Having A Limited Impact On U.S. Municipal Utility Credit Quality So Far

Key Takeaways

- Although there is evidence of residential customers and businesses having difficulty in meeting

financial obligations, we have yet to see these challenges flow through to electric, water, wastewater, and stormwater utility cash flows.
- The economic stress could constrain ratemaking flexibility, particularly if the recession extends and deepens.
- In the face of these challenges, S&P Global Ratings will monitor whether utilities possess sufficient resources and tools to mitigate cash flow exposure.

Continue reading.

S&P 'AAA'-Rated U.S. Municipalities: Current List

View the Current List.

S&P 'AAA' Rated U.S. School Districts: Current List

View the Current List.

S&P 'AAA' Rated U.S. Counties: Current List

View the Current List.

SIFMA Statement on American Infrastructure Bonds Act.

Washington, D.C., July 8, 2020 – SIFMA today issued the following statement from SIFMA president and CEO Kenneth E. Bentsen, Jr. on the American Infrastructure Bonds Act:

"SIFMA commends Senators Roger Wicker (R-MS) and Senator Michael Bennet (D-CO) on their commitment to infrastructure investment, seen today with the introduction of the American Infrastructure Bonds Act. This bill authorizes a direct-pay subsidy for American Infrastructure Bonds, which allows state and local governments to attract taxable bond investors, such as pension funds and foreign investors, to invest in infrastructure projects. Increasing the demand for municipal securities is particularly helpful now, as state and local governments are experiencing much higher costs due to the COVID-19 pandemic."

Infrastructure Bond Legislation Introduced in Senate with Support of BDA.

Today, Senators Roger Wicker (R-MS) and Michael Bennet (D-CO) formally introduced legislation that creates a new Build America Bonds program exempt from sequestration titled, the *American Infrastructure Bonds Act*. The bill, which is supported by the BDA and multiple state and local government groups, would create a new class of "direct-pay" taxable municipal bonds to help struggling governments finance critical public projects in the wake of the Coronavirus pandemic. This bill follows the recent introduction of the *LOCAL Infrastructure Act* that would fully reinstate advance refundings.

The press release can be viewed here

****BDA Advocacy on these provisions can be viewed here**

The new class of bonds could be used to support a wide range of infrastructure projects, including roads, bridges, water systems, and broadband internet. The bonds would be modeled as a “direct-pay” taxable bond, with the U.S. Treasury paying a percentage of the bond’s interest to the issuing entity to reduce costs for state and local governments. These payments would encourage economic recovery from the Coronavirus pandemic by subsidizing AIBs issued through 2025 at a higher percentage of the bond’s interest. The payments would revert to a revenue neutral percentage for projects after 2025, reducing long-term costs for the federal government and providing a permanent financing option for localities.

The BDA will continue to provide updates on this legislation, as well the corresponding bill to reinstate advance refundings in the Senate.

Bond Dealers of America

July 8, 2020

Wicker, Bennet Introduce American Infrastructure Bonds Act.

U.S. Senators Roger Wicker, R-Miss., and Michael Bennet, D-Colo., today announced the introduction of the “American Infrastructure Bonds Act of 2020,” legislation that would create a new class of “direct-pay” taxable municipal bonds to help struggling governments finance critical public projects in the wake of the coronavirus pandemic. The senators’ proposed “American Infrastructure Bonds (AIBs)” would improve upon the model of “Build America Bonds (BABs)” that were issued after the 2008 financial crisis to attract more investment in public infrastructure.

“Empowering our local leaders to start important infrastructure projects is a proven, cost-effective way to help our communities emerge from severe financial hardship with assets that provide value to the area for years to come,” Wicker said. “The American Infrastructure Bonds Act of 2020 would improve upon previous efforts to expand investment in the state and local bond market by increasing flexibility for communities and adding assurances for the bondholder.”

“This bipartisan proposal will support locally-driven efforts to revitalize our infrastructure, create jobs, and improve quality of life in communities across Colorado,” said Bennet. “American Infrastructure Bonds are a proven, successful model for drawing much-needed investments that are critically important for creating stronger and more resilient communities – from improving roads, bridges, public transit, and tunnels to renovating hospitals and school buildings.”

The senators’ legislation would allow state and local governments to issue taxable bonds for any public expenditure that would be eligible to be financed by tax-exempt bonds. These bonds could be used to support a wide range of infrastructure projects, including roads, bridges, water systems, and broadband internet. The bonds would be modeled as a “direct-pay” taxable bond, with the U.S. Treasury paying a percentage of the bond’s interest to the issuing entity to reduce costs for state and local governments. These payments would encourage economic recovery from the coronavirus pandemic by subsidizing AIBs issued through 2025 at a higher percentage of the bond's interest. The payments would revert to a revenue neutral percentage for projects after 2025, reducing long-term costs for the federal government and providing a permanent financing option for localities.

In plain terms, the senators' legislation is expected to boost investment in infrastructure and other important public projects at a critical time by providing affordable access to the large taxable bond market. The higher interest rates offered by the taxable AIBs increase the expected value of the bonds to some types of investors, such as pension funds and foreign investors, who do not receive the tax advantage from traditional tax-exempt bonds. Expanding the market for municipal bonds increases private investment in the public sector and equips local governments with more options for financing projects. Importantly, AIBs would incentivize private capital to invest in rural areas, where financing can often be harder to secure.

The senators' legislation provides important flexibilities to state and local governments. With AIBs, local communities can develop their infrastructure strategically without the burden of a centralized bureaucracy or the constraint of a state cap on allocation. As an additional benefit, the payments from the U.S. Treasury to issuers would be exempt from sequestration, which would increase the confidence of the bondholder and bond issuer alike.

The American Infrastructure Bonds Act of 2020 is supported by: The National League of Cities, the National Association of Counties, the Government Finance Officers Association, the American Public Gas Association, the National Association of Bond Lawyers, the Bond Dealers of America, the American Society of Civil Engineers, the American Council on Education, the Securities Industry and Financial Markets Association, and the American Planning Association.

For a one-page explanation of the legislation click here.

By Yall Politics Staff

July 8, 2020

Public Pension Reckoning Delayed With Stimulus Pumping Up Stocks.

- **Pensions may return 2% for fiscal year, BNY Mellon estimates**
- **Retirement systems were on pace for 21% loss in March**

U.S. public pensions may have finished the fiscal year with small gains, a dramatic turnaround after losing about $1 trillion during the first quarter when the coronavirus pandemic triggered a stock market plunge.

In March, U.S. public pensions were on pace for an average investment loss of about 21% for the year ending June 30, according to Moody's Investors Service. Thanks to massive monetary and fiscal stimulus, state and local retirement funds, which invest about half of their assets in U.S. and foreign stocks, may have returned 1.9%, according to an analysis by Bank of New York Mellon Corp. Moody's estimates one-year returns at about 1%.

The $2.2 trillion stimulus package from Congress and a commitment by the Federal Reserve to lend as much as $2.3 trillion to support the economy, coupled with optimism about work toward developing a coronavirus vaccine and a gradual reopening of the economy have pushed U.S. stocks up 20%, their best quarter in more than 20 years.

The gains eased the risk that states and cities will be hit with a steep increase in pension contributions just as they're contending with the coronavirus recession that's promising to cut hundreds of billions of dollars from their tax revenue.

"It was definitely a roller-coaster," said Stephen Kolano, chief investment officer at BNY Mellon Investor Solutions. The volatility and plunging tax revenue resulting from the pandemic "make it an extremely uncertain time for how finances look like going forward for pensions."

Government retirement systems, which count on annual gains to cover all the benefits promised to retirees, have increased their allocations to riskier investments in stocks and private equity after a decades-long decline in interest rates and slow global economic growth made it harder for them to meet long-term targets. This has exposed them to greater volatility.

Public pensions assume an average annual investment return of 7.2% and taxpayers make up the difference when returns fall short. Governments don't make up the losses at once; instead they phase in additional contributions to cushion budget shocks.

Had New York City's five pensions lost 20%, for example, taxpayer contributions would have increased more than $400 million in the fiscal year beginning July 1, 2021, according to an estimate by the city's Independent Budget Office, equivalent to the annual budget for libraries.

With investment gains of 2%, the city would need to make an additional $76 million payment.

Strong second-quarter returns pushed the public pensions' funding ratios, or the amount of assets the retirement funds have to pay liabilities, to 71.3% in May from 66% in March, according to the Milliman 100 Public Pension Funding Index. The ratio was 75% at the end of 2019.

While retirement systems have far less than they need to pay pensioners, even the most poorly funded systems like Chicago and New Jersey won't exhaust their assets in the next five years, according to the Center for Retirement Research at Boston College. If funds run dry, state and local governments would have to pay pensions solely with taxpayer dollars.

Yet pensions are unlikely to be a catalyst for widespread municipal defaults, as is sometimes suggested, even as state and local governments deal with revenue hits from the coronavirus pandemic, according to Barclays Plc strategists led by Mikhail Foux. In recent history, only Vallejo, California's bankruptcy in 2008 was directly related to the city's rising pension obligations, the Barclays analysts said.

"We believe even the worst-funded plans can still cover benefit payments for numerous years," Barclays said.

To come up with its estimate for retirement systems' performance, BNY Mellon applied market index returns to median public pension asset allocations in the firm's database. The median allocation was 44% in U.S. and international stocks, 25% to bonds, 10.9% to private equity, 8.6% to both real estate and hedge funds and 3.3% to Treasury Inflation Protected Securities.

Pensions more heavily weighted to U.S. stocks than international equities likely performed better. The Russell 3000 Index, which represents 98% of the U.S. stock market, returned 4.5% for the 1-year period ending June 30. By contrast, non-U.S. stocks fell 7.1%.

U.S. bonds returned 8.7% for the one-year period ending June 30, according to the Bloomberg

Barclays US Aggregate Bond Index.

Bloomberg Markets

By Martin Z Braun

July 6, 2020, 8:46 AM PDT

[Public Pension Funds in an Era of Low Rates and COVID-19.]

What is the most prudent strategy for state and local governments confronting low returns on pension investments, aging workforces, and pressure to build portfolios large enough to cover promised future benefits at the same time that these governments face other pressing demands?

Presentations at the 2020 Municipal Finance Conference provide contrasting answers to this question.

Louise Sheiner and Finn Schuele of the Hutchins Center at Brookings with co-author Jamie Lenney of the Bank of England argued at last year's conference that, in aggregate, state and local government pension liabilities can be stabilized as a share of the economy with relatively moderate fiscal adjustments. Accordingly, they concluded there is no imminent crisis for most pension funds.

Continue reading.

The Brookings Institute

by David Wessel

Monday, July 13, 2020

TAX - HAWAII

Ocean Resort Villas Vacation Owners Association v. County of Maui

Supreme Court of Hawaiʻi - June 19, 2020 - P.3d - 2020 WL 3397756

Taxpayers brought action against county, seeking declaratory relief regarding the legality and constitutionality of county's timeshare real property tax classification and whether its method of promulgation violated the Hawaiʻi Sunshine Law.

The Circuit Court granted taxpayers' motions for partial summary judgment. County brought an interlocutory appeal, and the Supreme Court accepted transfer of the appeal from the Intermediate Court of Appeals. After voluntary mediation and settlement, county moved to partially dismiss the appeal and for remand for vacatur, and the motion was denied.

The Supreme Court held that:

- The Circuit Court lacked subject matter jurisdiction;
- Taxpayers' recourse was through county procedures for appealing tax assessments; and
- Disapproval of stipulation and motion for partial dismissal were warranted without remand for

evaluation of potential vacatur.

Taxpayers’ declaratory-judgment action challenging legality and constitutionality of county’s timeshare real property tax classification was a “controversy with respect to taxes,” and thus circuit court lacked subject matter jurisdiction pursuant to declaratory judgment statute; taxpayers’ original and amended complaints all sought declaratory relief in form of voiding county’s real property timeshare tax, a result which would have interfered with assessment or collection of taxes.

Taxpayers’ recourse to challenge legality and constitutionality of county’s timeshare real property tax classification was through county procedures for appealing tax assessments, rather than declaratory judgment in circuit court; taxpayers alleged classification and rates violated equal protection clauses, rights of free speech and to petition, and procedural due process rights, taxpayers sought declaratory judgment as to illegality of amended assessment, and taxpayers brought § 1983 action that was dependent upon alleged constitutional violations.

Supreme Court’s disapproval of appellees’ and appellant’s stipulation and order to remand and vacate circuit court’s decision, and denial of appellant’s motion for partial dismissal of appeal, were warranted without remand for circuit court to evaluate potential vacatur; there were grave concerns with adopting process by which an appellate court, based solely on settlement of parties, approved stipulation to dismiss an appeal when parties’ end goal was vacating judgment, mootness on appeal occurred solely by reason of voluntary settlement of parties, and no fact-intensive inquiry was required.

TAX - PENNSYLVANIA

Colonial School District v. Montgomery County Board of Assessment Appeals

Commonwealth Court of Pennsylvania - May 28, 2020 - A.3d - 2020 WL 2758698

School district appealed decision of county board of assessment appeals to issue notice of no change to taxpayer’s assessment.

Taxpayer filed petition to dismiss school district’s tax assessment appeal. The Court of Common Pleas denied taxpayer’s petition to dismiss. Taxpayer appealed.

The Commonwealth Court held that:

- Trial court’s order denying taxpayer’s petition to dismiss was collateral order, and
- Trial court relied on factual findings not supported by substantial evidence.

Trial court’s order denying taxpayer’s petition to dismiss school district’s appeal of county board’s tax assessment ruling was a collateral order, and therefore the order was appealable as of right; trial court’s order related to taxpayer’s constitutional issue asserting that school district’s tax assessment appeal policy violated Uniformity Clause of state constitution, and the constitutional issue was separable from merits of school district’s appeal challenging taxpayer’s real estate valuation as too low, trial court’s order involved an important question involving Uniformity Clause, and if Commonwealth Court declined immediate review, taxpayer’s constitutional claim would be postponed and taxpayer would incur substantial cost.

In denying taxpayer’s petition to dismiss school district’s appeal of county board’s tax assessment ruling, trial court relied on factual findings not supported by substantial evidence when it concluded that school district’s decision to appeal valuation of taxpayer’s mall conformed to Uniformity Clause of state constitution; school district's stated basis for filing assessment appeal was a recorded mortgage that, on its face, indicated that taxpayer's mall had higher fair market value than shown in the assessment, and trial court's finding that mortgage on mall exceeded its fair market value was based on a statement of counsel for school district, which did not constitute evidence.

TAX - CALIFORNIA

Howard Jarvis Taxpayers Association v. Bay Area Toll Authority

Court of Appeal, First District, Division 2, California - June 29, 2020 - Cal.Rptr.3d - 2020 WL 3496798 - 20 Cal. Daily Op. Serv. 6366

Taxpayers brought action against regional transportation commission, regional toll authority, and state legislature to challenge the validity regional ballot measure increasing tolls on area state-owned bridges, which was a ballot measure that received a simple majority of votes in the legislature and at the election but not, as taxpayers alleged was required by the state constitution, a two-thirds majority in both houses of the legislature and at the election.

The Superior Court entered judgment on the pleadings for regional transportation commission, regional toll authority, and state legislature. Taxpayers appealed.

The Court of Appeal held that:

- Toll increase was imposed by state legislature and not by regional transportation authority, and
- Toll increase was a charge imposed for entrance to or use of state property.

Increase in tolls to cross region's state-owned bridges, which was increase approved by simple majority of voters at election pursuant to bill passed by state legislature, was imposed by state legislature and not by regional transportation authority, as was relevant to determining, pursuant to state constitution, what kind of majorities needed to approve increase in state legislature and at election, assuming that increase was a "tax" as defined by state constitution's provision on tax increases; legislative bill at issue required boards of supervisors in region's counties to call a special election, bill required imposition of a toll increase of up to three dollars, subject to voter approval, and bill specified in great detail the uses to which the resulting revenue would be put.

Increase in region's tolls to cross state-owned bridges, which was an increase approved by simple majority of voters at election called pursuant to bill passed by the state legislature, was a charge imposed for entrance to or use of state property, and thus it was not a "tax" as defined by state constitution's provision on majorities required for tax increases, despite argument that funds resulting from toll increase were to be used for improvements to public transit and other programs unrelated to crossing the bridges.

TAX - CALIFORNIA

City of Chula Vista v. Sandoval

Court of Appeal, Third District, California - May 27, 2020 - 49 Cal.App.5th 539 - 263 Cal.Rptr.3d 236 - 20 Cal. Daily Op. Serv. 4859 - 2020 Daily Journal D.A.R. 5050

Seven cities filed a petition for a writ of mandate and a complaint for declaratory relief against county auditor-controller, challenging the methodology used to distribute the residual pool of former tax increment following dissolution of redevelopment agencies.

The Superior Court granted the petition. Auditor-controller appealed.

The Court of Appeal held that taxing entities with favorable passthrough agreements are paid in full and can also receive a proportionate amount of the residual pool of money.

Taxing entities which have favorable passthrough agreements with a redevelopment agency are paid in full and can also receive a proportionate amount of the residual pool of money left after the obligations, including passthrough agreements, are paid, when county auditors distribute the residual pool of former tax increment from the dissolution of redevelopment agencies; passthrough payments are not capped at their pro rata shares.

Biggest Muni-Sales Wave Since Covid Crash Tests Surging Demand.

- **Maturing debt, cash inflows has investors hunting for bonds**
- **Citi says supply-demand mismatch to keep supporting market**

Even the biggest wave of municipal-bond sales since the end of the coronavirus crash may not be enough to satisfy investors.

State and local governments are scheduled to issue $17.7 billion in bonds over the next 30 days, the heaviest schedule since April 2, according to data compiled by Bloomberg.

Yet, that’s still far less than the $27 billion of securities that are set to be paid off, providing bondholders with a large amount of cash to reinvest. At the same time, mutual funds have picked up more than $1 billion of new cash every week since late May, according to Refinitiv Lipper US Fund Flows, further adding to demand.

Citigroup Inc. municipal strategists led by Vikram Rai wrote in a note Monday that the mismatch between supply and demand is likely to keep yields low.

“Technicals remain favorable at least for the next two months and we expect that the municipal market, including taxables, will remain well supported,” Rai wrote. He said that muni yields are unlikely to increase “even during strong supply” though they may not be able to keep pace with Treasuries.

Muni issuers expected to sell debt at the fastest pace since April
Ten-year benchmark municipals are yielding 0.79%, the lowest since at least 2011, and a gauge of 20-year yields is hovering near a more-than six decade low.

With interest rates down so much, government agencies have sold $205 billion of municipal bonds so far this year, 19% higher than the same period a year ago, according to data compiled by Bloomberg.

But most of that is attributable to a surge in the sale of taxable securities, helping to fuel a relative scarcity in tax-exempt bonds, as rates hold low enough that borrowers are choosing to avoid the federal regulations that come with traditional municipal bonds.

Citigroup estimates that taxable issuance will be the highest since a record $152 billion was sold in 2010, when the federal government was subsidizing the payments on Build America Bonds to help jump-start the economy.

The taxable bond-sales boom is a positive for the market because it is attracting new investors and helping to diversify the traditionally concentrated buyer base, Citi says.

“In the longer run, a larger buyer base will likely lead to more stable funding costs,” Rai wrote.

Bloomberg Markets

By Danielle Moran

July 13, 2020, 10:36 AM PDT

— With assistance by Mike Alagna

Red Storm Rising In The Municipal Market.

We are all concerned with the economic impact of the Covid-19 pandemic and are fed daily platitudes about the coming recovery. Fears of bankruptcy are being realized among listed companies as the Federal government and the Federal Reserve Bank extend themselves in unprecedented ways. The municipal market is another story.

State governments are making appeals to Congress for bailouts and the Fed is likely to intervene in purchasing state debt issues to provide funding for them to supplement the financial holes created by the shutdowns of regional economies. But there is a huge segment of the muni market for which little relief will be forthcoming, the small localities and the private purpose or conduit bonds. The fact that these entities and bond issuers have suffered from the pandemic is a forgone conclusion. How many of them have the financial means to avoid default is something to fear.

The vulnerability of municipal bonds is that they are usually the equity component of the capital structure of an undertaking or project. Yet they differ in that they are generally better secured than actual creditors when it comes to default or bankruptcy because they have first claim on the hard assets of the project or enforceable promises from the governmental entity. For this reason default or bankruptcy recoveries tend to be better than in corporate bonds.

A pandemic changes the dynamics of a muni financed bond project in that revenues suddenly fall off a cliff so that merely defaulting on interest payments or principal maturities does not deal with the fact that there is no cash on hand or lines of credit to fund the ongoing expenses of the entity. One current example of such a desperate strait was a nursing home operator who not only couldn’t make the bond payment obligations for debt service, but actually tapped the debt payment reserve for operating cash, with bondholder consent.

A second source of likely defaults this year are in bond issues with high coupon rates that are capable of being refinanced but have no early call provisions. We term these “staged defaults.” They were quite common in the 1980s and are likely to see a wide comeback this year. Since such issuers arrange the new financing in advance of the default, it results in no loss of interest or principal by existing bondholders. It is only a loss of the opportunity to replace the investment with another bond with a similar yield. Unfortunately, there was never a legal challenge to this blatant breach of contract so it is likely viewed today as a legitimate remedy. Unfortunately, insured bonds are the most vulnerable here since the insurer can not only reduce their exposure to the viability of the enterprise they insured going forward, but also, they can earn a second up-front insurance fee while also capturing the balance of the accruing up-front fee on the refinanced issue. For bond insurers, it doesn't get any better than this.

There is no way to estimate how serious a problem this represents for the municipal bond market. I do expect, however, that bank trustees will be more alert about reporting new payment failures on a timely basis. Hence, we have started a graph based on the dollar amount of payment defaults and included not just defaults in payments to bondholders, but also, failures to make payment obligations to the bond trustee, i.e. distressed issues. We feel this is a better measure of what the market can expect. The chart below shows that defaults as of early July total 59 defaults on $3.8 billion. This compares to 16 defaults on $1.7 billion by July of last year and 49 defaults on $4.1 billion for all of 2019.

Forbes

by Richard Lehmann

Jul 13, 2020

[Muni Bonds Could be Bolstered by Interesting Revenue Stream.]

Amid fears, plenty of which are being realized, that the coronavirus pandemic will punish state revenue intake, previously steady municipals are taking some lumps this year. For example, the VanEck Vectors High-Yield Municipal ETF (CBOE: HYD) is lower by 7.62% year-to-date.

Due to the economic shutdown, which led to a spike in unemployment rates across the country, plenty of states are facing budget woes. Some of those with the worst shortfalls are among the largest issuers of municipal bonds, meaning they're also among the biggest weights in this category's ETFs.

“Potential methods for long-term revenue growth are likely to be discussed by legislators to enable new revenue streams, such as sin taxes,” said Jim Colby of VanEck in a recent note. “For states such as New York, which according to The New York State Division of the Budget, projects a $13.3 billion shortfall in revenue in FY21 and a $61 billion decline in revenues through FY24, any potential sources of revenue growth deserve discussion. States that have not yet exhausted the maximum potential of their sin tax revenues may have more opportunities for new long-term revenue streams to mitigate, to some degree, the financial impact of the COVID-19 pandemic.”

Colby notes a prime avenue for states looking to plug budget gaps is sin taxes. Specifically, casinos and sports betting.

Sin Is In for Tax Collectors

Given the robust growth forecasts associated with sports betting, the activity is a sensible one for cash-strapped states to consider in the wake of COVID-19.

During the multi-month shutdown forced by the virus, states' collection of gas, sales, and gaming taxes were in trouble. Now coffers are running light, prompting some analysts to say more states will approve internet casinos and/or sports betting as avenues for generating revenue.

iGaming and sports wagering are in the early innings of growth, and as such, there will be some bumps in the road. Estimates run as high as $20 billion apiece for the respective market sizes of online casinos and sports betting over the next several years, assuming more than 30 states come online.

"Nationwide, only 12 states are realizing tax revenues from legal sports betting's $22.2 billion handle, totaling $210.3 million in sports betting tax revenues from June 1, 2018, to June 29, 2020, according to Legal Sports Report, notes Colby. "However, an indicator of the sizeable nationwide appetite for sports betting is visible in the estimated handle of bets placed through bookies and legal offshore sportsbooks, totaling $150 billion annually, according to the American Gaming Association."

Today, the number of states where sports betting is permitted and operational is 18 (some states joined the fray during the coronavirus shutdown) and that rising number could provide some ballast to municipal bonds and HYD in the future.

ETF TRENDS

by TOM LYDON on JULY 13, 2020

How Did Post-2008 Reforms Affect the Muni Bond Market?

The global financial crisis of 2008 led to far-reaching changes in financial regulation. Papers presented at the 2020 Municipal Finance Conference investigate two aspects of the impact of these changes on the municipal bond market.

In 2016, the Securities and Exchange Commission implemented a series of reforms designed to reduce the risk of runs on money market mutual funds (MMFs) such as the ones that occurred during the financial crisis. The new regulations required funds held by institutional investors to adopt a floating net asset value (NAV) instead of maintaining a fixed $1 per share NAV, among other things. This reform impacted tax-exempt municipal MMFs, which were a crucial source of financing for state and local governments as they held over $200 billion in municipal government debt.

Chuck Boyer and Kelly Posenau of the University of Chicago Booth School of Business find that the reform led to a dramatic drop in demand for tax-exempt funds. In turn, tax-exempt fund holdings of municipal debt dropped from $225 billion at the end of 2015 to under $125 billion at the end of 2016. The authors show that this drop in demand was associated with an increase in short-term borrowing costs. They also observe a larger increase in short-term borrowing rates for municipalities with a larger share of borrowing from institutional funds. Importantly, since the reform mainly targeted institutional funds, these municipalities were more exposed to the demand shock. Furthermore, smaller issuers and sectors were most affected by the reform. The authors conclude that "any policies which may decrease the attractiveness of funds holding tax-exempt municipal debt may lead to decreased lending to municipal governments and consequently higher borrowing costs."

In another post-crisis change, the Basel Committee on Banking Supervision required banks to maintain a minimum liquidity coverage ratio (LCR) based on the amount of high-quality liquid assets (HQLA) on their balance sheets—basically enough liquidity to last during 30 days of stress. Initially, U.S. regulators decided that municipal bonds would not be considered HQLA. Banking regulators initially questioned the liquidity of municipal bonds and decided against classifying them as HQLA. The Federal Reserve Board unilaterally reversed this decision a year later and allowed general obligation municipal bonds (i.e., bonds backed up with the full faith and credit of the issuer) to be considered as HQLA, but not revenue bonds (i.e., bonds backed by a specific revenue stream).

Jacob Ott from the University of Minnesota finds that changing this rule had important effects on municipal bond markets. Including general obligation bonds as HQLA led to an increase in bank demand for these bonds. This led to a decrease of about 5 basis points in the spread between the yields on general obligation bonds and revenue bonds. While this decrease might appear small, Ott points out that since the average yield spread in his sample is 25 basis points, this result is economically significant. Importantly, he finds no evidence that this decrease in yields reflected a change in risk. Rather, municipalities that are able to issue both types of bonds issued a higher proportion of general obligation bonds in the aftermath of the rule change. The author concludes that "classifying general obligation municipal bonds as high-quality liquid assets in the regulatory accounting for the liquidity coverage ratio has a spillover effect by influencing municipal market pricing and behavior."

The Brookings Institute

by Manuel Alcalá Kovalski and David WesselMonday, July 13, 2020

New Tax Schemes To Help Fill State Coffers.

MUNIS in FOCUS: Eric Kazatsky, Senior U.S. Municipals Strategist for Bloomberg Intelligence, discusses the new tax schemes that will be needed to help fill state coffers. Hosted by Paul Sweeney and Vonnie Quinn.

Play Episode.

Bloomberg Radio

July 10, 2020

Nuveen's Junk Muni Fund Received $1 Billion Lifeline From TIAA.

- **TIAA, Nuveen's parent, bought shares as investors yanked funds**
- **Investment provided cash as funds were hit by forced selling**

In March, when investors were pulling record amounts of cash out of municipal bond funds as the coronavirus shut down much of the U.S., Nuveen's parent, TIAA, extended a lifeline to the high-yield fund run by investment star John Miller.

With the withdrawals triggering rounds of forced selling that drove bond prices into virtual free fall, TIAA stepped up and purchased $1.1 billion worth of shares in the Nuveen fund, the largest focused on the riskiest debt sold through state and local government agencies, according to a regulatory filing.

TIAA, with $1.1 trillion of assets under management, purchased $350 million worth of the fund's shares on March 19 and another $750 million on March 26, according to the filing.

The purchases provided a crucial source of money as investors yanked about $3.7 billion from Nuveen's high-yield fund in March, according to Refinitiv Lipper US Fund Flows data. The mass exodus from the market forced managers to dump securities to raise cash, triggering a vicious cycle of selling that sent prices tumbling by the most in at least four decades.

TIAA bought the shares "to provide the Fund with additional cash to meet redemptions and to reduce the Fund's borrowings, and to provide TIAA itself with an attractive investment with a desirable risk profile," the filing said.

The rout put considerable pressure on mutual funds like Nuveen's, some of which used borrowed money to enhance returns. In March, Nuveen's high-yield muni fund unwound $410 million of tender-option bond trusts, reducing leverage that magnified the fund's losses during the sell-off.

The investment by TIAA was well timed, coming just before the economic stimulus package enacted by Congress put an end to the panic racing through Wall Street. The prices of even the riskiest municipal bonds have since rebounded, paring most of March's losses, and investors have been sending cash back to mutual funds, including Miller's.

The Nuveen high-yield fund's shares, which fell to as low as $14.63 on March 23, rebounded to $16.91 by Wednesday, according to data compiled by Bloomberg.

TIAA is known for providing retirement services and insurance to teachers. The company has no publicly traded stock.

TIAA has sold the shares and made a profit on the investment, said Jessica Greaney, a Nuveen spokesperson.

"The purchases were made by the TIAA General Account in March, reflecting the general account's recognition that the municipal market had been dislocated from fundamentals and that Nuveen's market expertise would create value," she said in a statement. "Indeed the general account has since redeemed and realized a very attractive return on the investment."

Bloomberg Markets

By Martin Z Braun

July 9, 2020, 5:56 AM PDT

The Bay Area's Transit Dilemma: Too Many Agencies, Not Enough Riders.

With budget gaps fraying a large and fragmented public transportation system, transit voices in San Francisco and Oakland push for a single regional operator.

As public transit agencies across the U.S. grapple with budget holes, safety concerns, and ongoing economic uncertainty, a number of policymakers, advocates and officials in the San Francisco Bay Area are calling for the region's numerous and disjointed systems to join together for better interoperability. Bus and rail operators must coordinate pandemic response plans and reduce barriers to access, or riders will suffer, they say.

"The Covid-19 crisis has laid bare the ways in which our current system puts modes in competition with each other—with serious consequences for access, equity, and the financial stability of the network," Laura Tolkoff, a regional planning policy director at the think tank SPUR, wrote in a letter to regional transportation leaders on Sunday. "The failure to coordinate service now could leave the Bay Area's riders with significantly degraded service and access."

Tolkoff's letter was addressed to the members of the Blue Ribbon Transit Recovery Task Force, a group of agency leaders, politicians, government officials and stakeholder representatives convened by the Metropolitan Transportation Commission to split up tranches of federal pandemic aid. The MTC—a regional authority charged with coordinating and allocating funding to transportation projects around the Bay—does not have authority to override or require agencies to plan or operate service in tandem with one other. With 27 transit agencies serving the region's 9 counties and 101 municipalities, lack of coordination is a real problem.

The fragmentation of Bay Area transit has long been a target of local complaints. Back in 1872, "Emperor" Joshua Abraham Norton, a local eccentric known for issuing pretend proclamations via newspaper, called for the immediate construction of underwater link between Oakland and San Francisco. Norton commanded the leaders of the two cities to "determine the practicability of a tunnel under water; and if found practicable, that said tunnel be forthwith built for a railroad communication."

More than a century later, the real-life Transbay Tube opened as the final segment of the original Bay Area Rapid Transit plan. But while BART provides rail service across a vast area, it is just one player on a crowded stage of transit providers and agencies. From large operators such as the San Francisco Municipal Transportation Agency, Alameda-Contra Costa Transit District, and Caltrain to much smaller ones such as the Golden Gate Transportation District and the Rio Vista Delta Breeze, each agency largely functions as an independent fiefdom, with its own planning, operations, and fare payment concerns. The Bay Area is unique in the U.S. for being a massive metropolitan area without one central transit operator, in contrast with the Metropolitan Transportation Authority in New York City, the Los Angeles County Metropolitan Transportation Authority, or Regional Transportation District in Denver.

That splintering creates problems for riders and taxpayers even under normal circumstances, advocates say. Complaints about afternoon SFMTA trains scheduled to arrive just minutes after a Caltrain departure at the adjacent station are common. A multibillion-dollar BART extension plan that has redundancies with a simultaneously planned Caltrain electrification has been a recent punching bag for local rail wonks.

"There's never been a better moment to reimagine this entire system."

Ian Griffiths, the policy director for Seamless Bay Area, a group that advocates for a regional transit merger, said that the pandemic is revealing new frictions, such as the SFMTA bus routes traveling near full capacity, while BART trains that are nearly empty run parallel underground.

"If an alien came to look at the Bay Area and saw those long trains running empty, they'd probably observe that it's not very efficient," he said. With ridership and sales tax revenues gutted amid the pandemic, "there's never been a better moment to reimagine this entire system."

Efforts by SPUR, Seamless, and other local policy and advocacy groups culminated earlier this year in AB 2057, a bill put forth by California State Assembly member David Chiu that sought to force transit agencies to improve interconnectivity, with efforts like discounted fare programs that work between systems, standardized wayfinding and real-time arrival signage, and a comprehensive system map. "Every agency has wanted to do these kinds of things, but the bill would finally require it," Chiu said.

The bill would have also convened a task force for tackling harder things like coordinating route planning and considering a common set of bus and rail fares—all paving the way towards a centralized transit-planning authority.

The pandemic knocked AB 2057 off the state's formal legislative docket in late April. But Chiu, Griffiths, and other advocates are continuing to push their vision while the region's transit recovery task force splits up emergency transit funding from Congress and develops a cohesive public health plan. They've gained support among a few county supervisors and smaller-agency transit managers.

"We are faced with an opportunity that we haven't had in all the years I've served on the commission, which is to look at how transit operates across the region," Jim Spering, a Solano County Supervisor who is also chair of the task force, said at a virtual meeting in April.

But plenty of transit leaders warn that the devil is in the details. Jeffrey Tumlin, the executive director of the SFMTA, said that forcing big city transit agencies to cede their independent route planning authorities—in the absence of additional state or federal funding—would inevitably mean worsened service quality on systems like his, which is the largest in the Bay and serves 45% of the region's transit riders. For example, if SFMTA bus arrivals had to match BART's schedule, it would almost inevitably mean fewer buses for SFMTA passengers than what they have now. "Advocates are just not understanding the massive unintended consequences of their well-intentioned ideas," he said.

Tumlin said that he and other agency heads recognize that they must work together, and that there are appropriate ways to coordinate, such as creating an official regional service map and helping passengers navigate stations and stops with more uniform and legible signage. State Senator Scott Wiener's recent bill, which would remove environmental review requirements for simple transit and bike lane projects, is another way the entire Bay Area can speed transit improvements, he said.

Janice Li, a member of the Bay Area Rapid Transit Board of Directors, is conflicted. She said that she believes that advocacy for system integration is logical, and that eliminating certain redundancies could help transit agencies save money. At the same time, she worries about the effects on riders who are already reeling from the pandemic's grave social and economic impacts.

"Communities of color are already facing evictions, police brutality and the inability to access employment," she said. Given that those groups have disproportionately used public transit in the past and have continued to as essential workers through the pandemic, "pushing forward with dramatic changes" on transit could be yet another disruption in their lives.

Further complicating these challenges are the dramatic changes that the transit landscape has undergone in the past three months, and which continue to unfold. Virtually every agency in the country is dealing with massive budget shocks, but in the Bay Area that looks different for each fiefdom: Caltrain's ridership base of tech workers are still largely working from home, and it's now mulling shutdown. Meanwhile, SFMTA is continuing to transport tens of thousands of daily riders, but still faces $568 million in revenue loss over the next four years.

While the vision of a "seamless" regional transit system was always supposed to about providing better service for Bay Area transit riders, the harsh financial reality could mean fewer transit agencies, period—which could be counterproductive to the original goal, said Bob Allen, the director of policy and advocacy campaigns at Urban Habitat, a housing and transportation justice nonprofit that has urged network coordination.

"Consolidating and saving money doesn't mean transit is better or more equitable for riders," he said. "The goal should be to run more and better transit service."

But that leaves difficult questions for transit agencies across the region as leaders argue about how to fairly allocate resources, with limited emergency aid from Congress eventually set to expire.

"What are the answers? And who makes the answers?" Li asked. "Then the question of restructuring and governance reform also becomes, who lives and who dies? It feels kind of Hunger Games-y."

Bloomberg CityLab

By Laura Bliss

July 6, 2020, 7:01 AM PDT Corrected July 7, 2020, 10:18 AM PDT

S&P Bulletin: New York City Fiscal 2021 Budget Reflects Caution Amid Uncertain Economic Recovery

NEW YORK (S&P Global Ratings) July 7, 2020–S&P Global Ratings said today that New York City's $88.2 billion fiscal 2021 adopted budget is balanced and reflects a reduction of $4.6 billion, or nearly 5%, from the fiscal 2020 adopted budget, indicative of the ongoing revenue challenges stemming from the fragile economic recovery as well as uncertainty over further state aid reductions that could be implemented to shore up the state's financial position. Furthermore, we believe the unknown timing for a rebound in tourist activity could weigh on the revenue forecast, as the governor recently implemented a travel quarantine for visitors arriving from states with high infection rates while federal restrictions on arrivals from many foreign countries remain in place.

We believe the city's fiscal 2021 budget and June 2020 financial plan incorporate a cautious approach to recovery, including total private sector employment not returning to the precrisis peak until first-quarter 2023. It mirrors S&P Global Economics' forecast as identified in our report "The U.S. Faces A Longer And Slower Climb From The Bottom," published June 25, 2020 on RatingsDirect, which indicated that although the recession may have reached bottom in May 2020, the lingering effects of COVID-19 will severely limit upside potential until an effective vaccine is widely available. Over the longer term, we will observe how various changes could affect the city's revenue sources, including how smaller real estate footprints by major corporations or continued net out-migration by individuals and families could initiate a negative feedback loop of declining property values and lower personal income tax revenue, potentially leading to service cuts. That said, New York City has successfully diversified its corporate tax base with technology and other service sector companies. We believe that this, coupled with excellent universities, diverse entertainment offerings, and attractiveness as a leisure and business travel destination, will lead the city's economy to ultimately rebound, albeit potentially at a slower pace than that of other large cities.

Central to the budget negotiations and a key factor in adopting the budget is a $1 billion reduction to the New York Police Department's budget, which consists of:

Shifting $430 million in operating funds to youth and social services and $537 million in capital funds primarily to the New York City Housing Authority;
Limiting overtime costs; and
Reducing headcount by 1,100 by canceling a cadet class.

The revision largely reflects the community unrest that led to a change in expenditure priorities. We believe policing practices could be modified in a way that reduces the social risk stemming from these protests. Furthermore, despite the acceleration in revenue loss from March to June to $9 billion (affecting both fiscal years 2020 and 2021), the utilization of reserves remains the same with $1.3 billion in fiscal 2020 and $2.75 billion in fiscal 2021.

The June 2020 financial plan through 2024 reflects out-year budget gaps in fiscal years 2022 through 2024 at 4.4%, 3.1%, and 3.2%, sequentially, declining to 3.1%, 1.8%, and 1.9% of revenue net of contingency line items for the city's general and capital stabilization reserves equal to $1.25 billion. Given the recurring personnel and agency expense savings, the projected gaps are smaller than those estimated with the April executive budget. The plan includes restoration of the general and capital stabilization reserves in the out-years as anticipated in the fiscal 2021 executive budget following near depletion in fiscal years 2020 and 2021.

This report does not constitute a rating action.

Howard Taps Bond Market Most Black Colleges Miss Out On.

- **University plans to sell $215 million in debt on Thursday**
- **Marks first deal by historically Black college since pandemic**

When Howard University completes a $215 million bond sale this week, it will become the first historically Black college to join in the unprecedented borrowing binge that has swept over U.S. markets.

American universities as a whole have been active participants in this frenzy, with more than 100 of them selling $27 billion of bonds this year. But historically Black colleges and universities, known as HBCUs, have accounted for only $147 million, or 0.5%, of that amount. And that came from a deal that Howard, which was founded in Washington, D.C., in 1867, did in February. The country's 100 other HBCUs have been left out.

By many measures, the cards are stacked against Black institutions. They tend to serve lower-income students, which makes their balance sheets less robust and their endowments smaller — the sorts of things that may limit prospective bond buyers. No Black institution cracks the top-100 richest schools in the country and HBCUs average $15,000 per student in endowment funds, compared to $410,000 for similar non-HBCU schools, according to a 2018 U.S. Government Accountability Office report.

It is only now, months into the torrid bond-market rebound orchestrated by the Federal Reserve, that Howard's Chief Financial Officer Michael Masch is confident that investors are ready to buy the school's debt once again. Masch was forced to put a planned sale on hold in March, when the pandemic briefly caused the bond market to seize up, and has been waiting for the right moment to revive it ever since.

"There was just no market to go to," Masch said in an interview. "We just folded our tents and faded back into the night and waited until there would be a settling down of the credit markets."

The sale also marks the first debt offering by an HBCU since the police killing of George Floyd on May 25 sparked widespread protests and a broader national conversation about racism and systemic inequality in the U.S.

The heightened focus on such issues may lure in more buyers than normal and help push down the interest rate that Howard has to pay, bond analysts say, but that will ultimately do little to address the financial difficulties that HBCUs face.

Serving underrepresented groups means that Black institutions have to chip in more for tuition for low-income students than peers, said Emily Wadhwani, an analyst for Fitch Ratings. Their endowments are much smaller as well, with the median endowment coming in at half that of a comparable predominantly white school, according to the 2018 GAO report. The combined endowment of all 101 HBCUs totals about $3.86 billion, a tenth of Harvard University's endowment, according to an estimate by the United Negro College Fund.

This financial picture is not one that's rewarded by Wall Street. As a result, even a top-tier HBCU like Howard carries a low investment grade credit rating, despite receiving more than $200 million in direct aid annually from the federal government. Most of the universities that tapped the muni market since the sell-off in March have been in the highest rating tier.

For lower-rated issuers, it costs more to borrow because investors require higher yields to make up for owning riskier bonds. And HBCUs have to contend with racial bias on Wall Street, according to a 2018 academic study that found they pay higher fees than peer schools even when accounting for credit quality, maturity and the size of the deal.

Bill Mayew, a professor of accounting at Duke University and one of the original authors of the 2018 report, said that two years later, such bias likely still exists though he hasn't done an updated analysis. There is "no reason to suspect any difference in how the market operates," he said.

"Their resources that they have on hand via a foundation or cash endowments, are often, not always, but often smaller than their peers," said Fitch's Wadhwani, who analyzes higher education credits. "How well they fundraise and how long they've been around — all of those things are frequently weaker than those of their greater peers."

The Howard deal has underlying ratings one notch above junk by S&P Global Ratings and Fitch. The taxable offering is scheduled to price Thursday, in a negotiated sale managed by Barclays Plc and Loop Capital Markets. The bonds are expected to carry Assured Guaranty Municipal Corp. insurance, and proceeds will be used to refinance higher yielding debt sold in 2011.

Howard, named for Civil War hero General Oliver O. Howard, head of the post-Civil War Freedman's Bureau, has awarded more than 100,000 degrees. The university is made up of 13 schools and colleges and hosts a leading research library on African American history. Howard's alumni include California Senator Kamala Harris, Supreme Court Justice Thurgood Marshall and novelist Toni Morrison.

The timing of Howard's bond sale during a national reckoning around racial inequality may draw more demand and new buyers to the deal. Clients have been asking about ways they can invest in minority communities, said Ron Homer, head of impact strategy at RBC Global Asset Management.

And investing in HBCUs checks the boxes for impact investment strategies, said Eric Glass, a portfolio manager at AllianceBernstein. "There's no better social investment within the education space in my opinion," he said. Glass said he participated in Howard's February sale, receiving a smaller allocation than he wanted because the deal was "incredibly" oversubscribed.

That interest is already beginning to be reflected on the fundraising side, where HBCUs have lagged historically, according to Michael Lomax, chief executive officer and president of the United Negro

College Fund.

In June, Netflix CEO Reed Hastings and Patty Quillan donated $120 million to the UNCF, Spelman College and Morehouse College, the largest individual gift for scholarships at HBCUs ever. Public funding for HBCUs has seen some increased support even amid other pandemic-induced spending cuts. In Florida, Governor Ron DeSantis set aside $123 million in the budget for the state's historically Black institutions, including $17 million for Bethune-Cookman University, which has been grappling with major financial challenges. And HBCUs received $577 million from the federal stimulus package in April.

The Netflix donation is a breakthrough, but it will take more than a one-time donation to push these schools forward, Lomax said. "This is a community which has received significant gifts but is generally speaking not the beneficiary of the same level of philanthropy as their white peers."

Still, the Howard sale doesn't appear to be the prelude to an HBCU bond boom. There are no other such deals on the calendar so far, according to data complied by Bloomberg. Howard plans to come to market again this year, its first new money issuance since 2011, to finance a steam distribution center, said Masch.

But even as the market continues to favor borrowers, HBCUs simply don't have the financial profile to come to market and take advantage in the way other, richer institutions can, he said.

"If you have a lot of cash around and a pretty robust income portfolio which is not tuition dependent — the bond markets are going to view your ability to repay your debt favorably," Masch said. "It's a great opportunity if you have the cash."

Bloomberg Markets

By Danielle Moran and Fola Akinnibi

July 7, 2020, 9:35 AM PDT

— With assistance by Janet Lorin

Annual Top 25 Opportunity Zone Influencers List Released.

The prestigious insider listing of who's who in the Opportunity Zone industry – the Top 25 OZ Influencers – has been released in the latest edition of Opportunity Zone Magazine.

The prestigious insider listing of who's who in the Opportunity Zone industry – the Top 25 OZ Influencers – has been released in the latest edition of Opportunity Zone Magazine. The annual tribute showcases the industry's leading and most influential OZ professionals, who inspire and lead through their vision and innovative accomplishments. Through their work and advocacy, the Opportunity Zones continue to change lives by serving as a driving force to revitalize the economy and distressed communities across the country.

New for this year is the ranked Top 25 category, honoring the most powerful OZ professionals who stand out among their peers. The list also revealed the winners in five other categories: attorneys, fund managers/developers, tax specialists, policy influencers and professionals in specialized fields. To see the complete list, visit http://www.opportunityzone.com/magazine.

“We are excited to recognize the best of the best in the Opportunity Zone industry with our Top 25 OZ Influencers award,” said Ali Jahangiri, CEO of OpportunityZone.com.

RANKED OVERALL WINNERS:

1. Daniel Kowalski, Treasury
2. Tim Scott, U.S. Senator (R-SC)
3. Scott Turner, White House Opportunity and Revitalization Council
4. Margaret Anadu, Goldman Sachs
5. Barry Sternlicht, Starwood Capital
6. Joseph Scalio, KPMG
7. Craig Bernstein, OPZ Capital
8. Michael Novogradac, Novogradac & Company
9. Jessica Millett, Duval & Stachenfeld, LLP
10. Alfonso Costa Jr, Housing and Urban Development
11. James Lang, Greenberg Traurig
12. Steve Case, Revolution
13. Brad Molotsky, Duane Morris
14. Steve Glickman, Develop
15. Avy Stein, Cresset Capital Management
16. David Coelho, Bridge Investment Group
17. Daniel Cullen, Baker McKenzie
18. Andrew Comiter, Comiter, Singer, Baseman & Braun, LLP
19. Shafron “Shay” Hawkins, Opportunity Funds Association
20. Kevin Shields, Griffin Capital
21. Olivia Byrne, K&L Gates
22. Reid Thomas, NES Financial
23. John Lettieri, Economic Innovation Group
24. Ira Weinstein, CohnReznick
25. Blake Christian, Holthouse, Carlin, Van Trigt, LLP

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[Fed's Williams: SOFR Rate System Has Performed Well During Coronavirus Crisis]

The New York Fed president said banks should stop pricing new deals using Libor now

Federal Reserve Bank of New York President John Williams said Monday that a replacement for the scandal-plagued Libor interest-rate reference regime has fared well amid the stresses seen in the financial system during the coronavirus pandemic.

"If the pandemic has confirmed one thing about financial benchmarks, it's the resilience of robust reference rates," including new ones like the Secured Overnight Financing Rate, or SOFR, Mr. Williams said in the text of a speech to be delivered by video.

SOFR, which is published by the New York Fed, provides a reference rate system to replace Libor, which is based on banks' judgments and has been the source of manipulation in the past. Libor is scheduled to be phased out on Jan. 1, 2022, and regulators have been pushing financial firms to adopt SOFR to replace it.

Mr. Williams, who also serves as vice chairman of the rate setting Federal Open Market Committee, didn't discuss the economic outlook in his prepared remarks.

The official said amid the market tumult seen during the spring, which saw an unprecedented support effort by the Fed, "SOFR was a dog that didn't bark or bite." He added, his bank "publishes a number of overnight secured and unsecured funding rates, and during this tumultuous period, they all moved in concert, anchored by the rates set by the Federal Reserve."

Mr. Williams said progress is being made to move away from Libor. He added that it's time for firms to stop using Libor, saying "let's not make the existing hole we're trying to climb out of even deeper."

The Wall Street Journal

By Michael S. Derby

July 13, 2020 11:45 am ET

Single-Family Rental Investment Strategies in Opportunity Zones, with Jeff Pintar.

How can built-to-own single family rentals be incorporated into an Opportunity Zone investment portfolio? Jeff Pintar is founder and CEO…

CONTINUE READING »

Opportunity Db

July 8, 2020

S&P Bulletin: Michigan's 2020 Budget Agreement Is Not Expected To Materially Affect Most Schools, Despite Aid Cuts

NEW YORK (S&P Global Ratings) July 8, 2020–On June 29, Michigan's governor and legislature reached an agreement to balance the state's 2020 budget for the fiscal year ending Sept. 30. We believe this agreement, which includes a $256 million reduction in per-pupil state aid, does not pose immediate fiscal pressure for most public schools, including locally governed school districts as well as charter schools. This is primarily because the state will be allocating $530 million in federal CARES (Coronavirus Aid, Relief, and Economic Security) Act funding for COVID-19 related expenses that schools have or will incur as they prepare for the 2020-2021 academic year. Our understanding is that this funding will function as a grant to schools to offset related expenses. And while the exact timing and allocation of funds is still uncertain, it affords flexibility as the federal funding can provide relief for COVID-related expenses that may have otherwise been supported by state aid.

The $256 million state aid reduction translates to a $175 per-pupil, or 23%, cut in the August 2020 disbursement to schools, which equates to a 2% cut to the total fiscal 2020 foundation allowance. The August payment is the last payment of the state's fiscal year, as funding is distributed to schools from October through August in equal increments. S&P Global Ratings maintains public ratings on 317 school districts and 28 charter schools in Michigan, with median enrollment of 1,985 and 811, equating to a median cut of $347,000 and $142,000, respectively. The state has not released new information regarding fiscal 2021 funding since its May revenue estimating conference, at which time it projected a $3 billion budget shortfall, with more than two-thirds of its funding derived from sales and income taxes. We expect more clarity in the coming months as budget deliberations continue for the fiscal year beginning Oct. 1. In our view, as state aid is a major revenue source for charter schools and most school districts, Michigan schools will face increased credit pressure should state aid cuts increase in magnitude in fiscal 2021, especially if they are not offset by additional relief funding. This stress would be heightened for those schools with a greater reliance on state funding, low liquidity, or already limited operations, such as many of our rated Michigan charter schools which have a weaker ratings distribution compared to the sector as a whole. For more information on Michigan charter schools, see our "Charter School Brief: Michigan," published May 17, 2019, on RatingsDirect.

In anticipation of possible cuts, school districts and charter schools across the state have already begun adjusting their budgets, focusing on staffing plans and expense flexibility. In our view, these decisions will be key to maintaining credit quality. Those that have already taken action will be better prepared for the August reduction and possible further cuts. Many schools annually issue state aid anticipation notes in July and August (and in particular through the Michigan Finance Authority borrowing pool), which should help weather potential cash flow disruptions. We expect the number of borrowers and sizing of borrowings could increase, in anticipation of further cuts. While the pandemic has resulted in certain expense savings from facilities being closed and federal relief provides near-term support, we expect increased costs associated with preparing to reopen in the fall will place a greater burden on schools' fiscal 2021 expenses. In addition, we believe enrollment trends could also fluctuate for individual schools given uncertainty around modes of instruction, which would have a direct impact on revenues and operations. We expect to monitor state aid updates closely in the coming months and evaluate each school's operating flexibility, liquidity cushion, and ability to make necessary expense adjustments in response to any further funding cuts.

This report does not constitute a rating action.

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EOE/M/F/D/V

Department of Labor Proposes New Guidance for Fiduciaries: Paul Hastings

On June 29, 2020, the U.S. Department of Labor (the "DOL") issued a regulation reinstating its old rule defining when an investment advisor will be deemed to be a "fiduciary" under ERISA, and proposed a broad new prohibited transaction class exemption (the "Proposed Exemption") for financial institutions and investment professionals that are plan fiduciaries by virtue of providing investment advice for compensation to employee benefit plans and IRAs. The new regulation and the Proposed Exemption are intended to replace the so-called "fiduciary rule" that was issued by the DOL in 2016 (the "2016 Rule"), which was vacated by the Fifth Circuit Court of Appeals in 2018.

Key Take-Aways

- *Reinstatement of the Five-Part Test* – The "new" fiduciary regulation actually reinstates the old ERISA regulation defining who is an "investment advice fiduciary" (the "Five-Part Test") which had been revoked with the 2016 Rule, and also reinstates various class exemptions and Interpretive Bulletins (PTEs 75-1, 77-4, 80-83, 83-1, 84-24, and 86-128 and Interpretive Bulletin 96-1 (relating to the provision of investment education to participants and beneficiaries in participant-directed individual account plans)) that had long been in effect prior to the adoption of the now-defunct

2016 Rule. The DOL also removed prohibited transaction exemptions issued contemporaneously with the 2016 Rule, including the controversial Best Interest Contract Exemption (the "BIC Exemption").

- *Broad Relief* – The Proposed Exemption is intended to provide relief from ERISA's prohibited transaction restrictions that is broader and more flexible than existing exemptions and will allow "Investment Advice Fiduciaries" (as defined below) to rely on one exemption, rather than several exemptions that cover specific types of transactions. The Proposed Exemption generally covers any advice to acquire, hold, dispose of, or exchange securities, as well as certain principal transactions and advice to plan participants to rollover assets from an ERISA plan to an IRA.
- *Alignment with Regulation Best Interest* – Reliance on the Proposed Exemption is conditioned on compliance with the "Impartial Conduct Standards," and certain disclosure and compliance requirements. The Proposed Exemption is generally designed to align with rules issued under federal securities law and state regulations, including the SEC's "Regulation Best Interest" and the fiduciary standards applicable to registered investment advisers so as to promote compliance efficiencies.
- *Extension of FAB 2018-02* – The DOL formally extended FAB 2018-02 (the "FAB"), which provides relief for fiduciaries that have complied with the impartial conduct standards set forth in the BIC Exemption. Accordingly, financial institutions that have implemented systems to comply with the FAB may continue to do so, subject to the other conditions of the Proposed Exemption.
- *No Private Right of Action* – The Proposed Exemption does not create any private right of action or expand legal claims beyond those provided under ERISA. However, entities relying on the FAB will continue to be subject to a private right of action as described under the FAB.

Five-Part Test

Under the Five-Part Test in the fiduciary regulation, a person will be considered to be a fiduciary to the extent that such person: (1) renders advice to a retirement plan as to the value of securities or other property, or makes recommendations as to the advisability of investing in, purchasing, or selling securities or other property; (2) on a regular basis; (3) pursuant to a mutual agreement, arrangement, or understanding with the plan, plan fiduciary, or IRA owner, that; (4) the advice will serve as a primary basis for investment decisions with respect to plan or IRA assets, and that; (5) the advice will be individualized based on the particular needs of the plan or IRA. This is the same five-part test that had been in effect since 1976. In reinstating the old regulation, the DOL has done away with the most controversial aspects of the 2016 Rule that would have made any person who makes a sales or marketing presentation to a plan an ERISA "fiduciary" subject to the fiduciary responsibility and prohibited transaction restrictions of ERISA.

The Five-Part Test is a facts-and-circumstances test. In the Preamble to the Proposed Exemption, the DOL elaborates on the application of the Five-Part Test in the rollover to IRA context.

- *Regular Basis* – Among other things, if the provider's relationship to the Retirement Investor is limited to advice regarding the rollover, the provider may not be a fiduciary because it is not providing advice to the Retirement Investor on a regular basis. However, if the parties anticipate that the provider will provide investment management services to the Retirement Investor on an ongoing basis after the rollover, the provider may satisfy the regular basis prong and, therefore, may be a fiduciary.
- *Mutual Understanding* – Whether an agreement, arrangement, or understanding that the investment advice will serve as a primary basis for investment decisions exists will be based on the reasonable understanding of the parties if no mutual agreement or arrangement is demonstrated. Written statements disclaiming such a mutual understanding may be considered, but are not determinative.

- *Primary Basis* – The advice need not serve as "the" primary basis for an investment decision; rather, the relevant inquiry is whether the advice is "a" primary basis.

Finally, whether such advice is rendered "for a fee" as required under ERISA should be interpreted broadly and should include incident fees and compensation received from transactions involving rollover assets.

The Proposed Exemption

The Proposed Exemption generally covers prohibited transactions resulting from any advice to acquire, hold, dispose of, or exchange securities that is rendered by Investment Advice Fiduciaries (i.e., SEC or state registered investment advisers ("RIAs"), broker-dealers, banks, and insurance companies ("Financial Institutions") and their individual employees, agents, and representatives) to ERISA plan fiduciaries, participants and beneficiaries, and IRA owners and fiduciaries (collectively, "Retirement Investors").

The Proposed Exemption also covers "Riskless Principal Transactions" and "Covered Principal Transactions." A "Riskless Principal Transaction" occurs when a Financial Institution receives an order from a Retirement Investor to buy or sell an investment product and subsequently purchases or sells the same investment product for the Financial Institution's own account (or an account of certain of its affiliates) to offset the contemporaneous transaction with the Retirement Investor. A "Covered Principal Transaction" is the purchase of any securities or other investment property from a plan or IRA, or a sale to a plan or IRA of corporate debt securities offered pursuant to a registration statement under the Securities Act of 1933, U.S. Treasury securities, debt securities issued or guaranteed by a U.S. federal government agency other than the U.S. Department of Treasury, debt securities issued or guaranteed by a government-sponsored enterprise, municipal bonds, certificates of deposits, and interests in Unit Investment Trusts.

Investment Advice Fiduciaries that comply with the Proposed Exemption may receive a wide array of compensation that might otherwise be prohibited under existing exemptions, including, without limitation, commissions, 12b-1 fees, trailing commissions, sales loads, mark-ups and mark-downs and revenue sharing payments, provided the compensation is "reasonable compensation," as described in further detail below. In addition, Investment Advice Fiduciaries would be permitted to receive compensation relating to investment advice on proprietary products or investments that generate third-party payments.

Investment Advice Fiduciaries could choose to rely solely on the Proposed Exemption, existing class, statutory and administrative exemptions, or a combination thereof, depending on business needs. In order to rely on the Proposed Exemption, the Investment Advice Fiduciary must comply with the Impartial Conduct Standards, as well as certain other disclosure and compliance requirements.

Impartial Conduct Standards

Under the Impartial Conduct Standards, the Investment Advice Fiduciary (i) must provide advice that is in the "Best Interest" of the Retirement Investor, (ii) may receive no more than "reasonable compensation", and (iii) may not make misleading statements to the Retirement Investor.

Best Interest Standard

The Best Interest Standard requires that such advice reflect the "care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor." The Best Interest Standard is intended to be an objective, principles-based standard, applied at the time the advice is provided.

Moreover, consistent with the SEC's Regulation Best Interest and the fiduciary standards applicable to RIAs, the needs of the Retirement Investor must be paramount—any financial or other interests of the Investment Advice Fiduciary must be subordinate to those of the Retirement Investor. However, an Investment Advice Fiduciary is not required to seek out the single "best" option for the Retirement Investor and is not precluded from receiving fees from proprietary products or investments that generate third-party payments.

Reasonable Compensation

Any compensation received by the Investment Advice Fiduciary may not exceed "reasonable compensation," and the Investment Advice Fiduciary is obligated to seek the best execution of the investment transaction reasonably available under the circumstances. Whether fees are reasonable is determined at the time of the transaction and is based on facts and circumstances. The essential question is whether the charges are reasonable in terms of what the investor receives, and, while no single factor is dispositive, relevant factors may include the market price of the service to be provided, the scope of monitoring, and the complexity of the product. The application of the "best execution" standards is intended to be applied in a manner consistent with similar requirements under federal securities laws.

No Misleading Statements

An Investment Advice Fiduciary may not make any "materially misleading" statements regarding the recommended transaction or other relevant matters (determined at the time such statements are made), including statements regarding fees and compensation, material conflicts of interest, and any other fact that could reasonably be expected to affect the Retirement Investor's investment decisions.

Disclosures

Prior to engaging in the transaction, an Investment Advice Fiduciary must acknowledge its fiduciary status in writing and provide a written description of the services to be provided and material conflicts of interest that are accurate and not misleading in all material respects. The disclosures must be in plain English and take into account the Retirement Investors' level of expertise. The disclosures may be provided in one or a series of documents, including through disclosures required by other applicable regulators.

Compliance Requirements

An Investment Advice Fiduciary must maintain and enforce written policies and procedures prudently designed to ensure compliance with the Impartial Conduct Standards. Such policies and procedures must mitigate any conflicts of interest so that the Investment Advice Fiduciary's incentive practices as a whole avoid misalignment of interests between the Investment Advice Fiduciary and the Retirement Investors.

Under the Proposed Exemption, a conflict of interest is "an interest that might incline a Financial Institution or Investment Professional – consciously or unconsciously – to make a recommendation that is not in the Best Interest of the Retirement Investor." For example, a Financial Institution's policies and procedures must be prudently designed to protect against recommendations to make excessive trades or buy investment products, annuities, or riders that are not in the best interest of the investor or that allocate excessive amounts to illiquid or risky investments.

A Financial Institution must perform an annual retrospective review that is designed to detect and prevent violations of the Impartial Conduct Standards and other relevant policies and procedures. The review must be documented in a written report to the Financial Institution's chief executive officer or chief compliance officer. The Financial Institution would also be required to maintain, and make available, records demonstrating compliance with the exemption for six years.

Exclusions

Transactions with an ERISA plan where the Investment Advice Fiduciary or one of its affiliates is either the employer of employees covered under the plan, or a named fiduciary or plan administrator, or an affiliate thereof, who was selected to provide advice to the plan by a fiduciary who is not independent of the Investment Advice Fiduciary or affiliate, are not eligible for relief under the Proposed Exemption.

In addition, the Proposed Exemption would not apply to pure "robo-advice" arrangements that do not involve interactions with an investment professional, as these arrangements are covered by statutory exemptions.

Finally, certain Financial Institutions and other investment professionals that have engaged in certain criminal conduct may be ineligible from coverage under the Proposed Exemption. The DOL may also find certain persons that have engaged in systematic violations of the exemption or provided materially misleading statements ineligible for relief under the exemption.

Effective Date

The reinstatement of the Five-Part Test and the exemptions listed herein is effective immediately upon publication in the Federal Register. The Proposed Exemption is currently open for comments.

Paul Hastings LLP – Christine Matott, Lawrence J. Hass and Joshua H. Sternoff

July 10 2020

Bond Investors Have Been Jumping Back into Muni ETFs.

The coronavirus pandemic has taken its toll on the municipal bond market as shutdowns and record unemployment cut down on business activity and the stable source of revenue, but investors have been jumping back into munis and related exchange traded funds.

Ten municipal borrowers defaulted for the first time in May and another 10 followed suit in June, the highest default rates for those months since 2012, when borrowers were still recovering from the 2008 financial crisis, the Wall Street Journal reports.

Many municipal borrowers are suffering from the negative consequences of a precipitous falloff in the collection of sales, income and hotel taxes, airport fees, and other revenues.

Nevertheless, investors are seeing a buying opportunity as many hunt for yields and look for the relative safety of bonds over equities. Since mid-May, investors have funneled $11 billion back into muni bond mutual funds, or over one-third the amount was withdrawn in March and early April, according to Refinitiv data.

Among the most popular muni bond ETF plays, the iShares National Muni Bond ETF (NYSEArca: MUB) attracted $1.4 billion in net inflows and Vanguard Tax-Exempt Bond ETF (NYSEArca: VTEB) brought in $595 million since mid-May, according to ETFdb data.

The inflows have continued unabated even as some government and nonprofit borrowers face financial problems. For example, universities, convention centers, student housing, senior living facilities, and some transportation projects face significant revenue disruptions, and those in trouble could fall into insolvency.

Despite these risks, Dan Genter, chief executive of Los Angeles-based RNC Genter, noted that many of his clients are shifting into municipal bonds to avoid the ongoing uncertainty and volatility spikes in the stock markets.

"The fire alarm has sounded, and people really need to go look at their bond portfolios," Genter told the WSJ.

ETF TRENDS

by MAX CHEN on JULY 6, 2020

[Municipal Bond CEFs Still Providing Good Value And Safety.]()

Summary

- It has been hard to feel confident in this space in the last couple of months due to both liquidity concerns at the outset and credit concerns more recently.
- The combination of these two risks pushed the ratio of AAA muni yields to Treasuries to highs rarely seen. Typically near 85%, the ratio hit over 200%.
- We have seen rapidly-rising muni cef NAVs. During these periods, waiting for the discount-based timing flag to flip from HOLD to BUY can result in a higher buy price.
- We have updated the buy under and sell over thresholds based on the new NAV yields and all the distribution changes since June 1.

[Continue reading.]()

Seeking Alpha

Alpha Gen Capital

Jul. 7, 2020

[The Muni Market Overall is Set for More Gains, but Some Bonds are Riskier Than They Appear.]()

KEY POINTS

- In the bond universe, munis are cheap but buyers need to beware of what is in their muni portfolio as Covid exposure has not impacted all sectors equally.
- The market should find a positive catalyst this summer in another round of federal aid, which Congress will address later this month.
- Water and sewer bonds, with their steady revenue stream, outperformed other sectors in the first half, while hospitals and transportation were the weakest.
- Strategists say education bonds provide opportunities, but investors should pick carefully because the coronavirus could have a big impact on the revenues of some private schools.

Continue reading.

cnbc.com

by Patti Domm

JUL 9 20202

Riskier Bet: Why CalPERS, the Country's Largest Pension Fund, is Getting into Banking.

IN SUMMARY

How does the nation's biggest public pension system pay down its debts amid a global economic collapse? One idea: Become a banker.

Retired DMV clerks, former firefighters and aging government bean-counters across California, put on your three piece suits: You might be getting into the banking business.

The California Public Employees' Retirement System, which manages a nearly $400 billion basket of nest eggs for retired public workers across the state, is wading into the rollicking market for private debt.

It used to be that lending directly to small and medium-sized companies not traded on public stock exchanges was the business of big banks. But after the financial crisis of 2008, those traditional lenders were forced to park their money into less risky ventures. And that left behind a financial vacuum into which "shadow bankers" such as private equity financiers have been rushing ever since.

Continue reading.

CALMATTERS.ORG

BY BEN CHRISTOPHER

JULY 9, 2020

- GASB Proposes Concepts for Recognition of Financial Statement Elements.
- GASB Requests Input on Revenue and Expense Recognition Proposals.

- GASB Releases Accounting and Financial Reporting Guidance Related to the CARES Act and Coronavirus Diseases.
- SEC Puts LIBOR Transition Testing in Focus: Latham & Watkins
- MSRB Modifies Rules to Align with Reg. BI: Cadwalader
- BDA Calls SEC's Municipal Advisor Exemption "Dangerous."
- Investors Want Details on Bonds that Pay for Police Misconduct.
- And finally, Should Probably Keep An Eye Out For That One (so, so sorry) is brought to us this week by *Sawyers v. Norton*, in which,, "[Inmate] was arrested for [as one does] having set fire to an art gallery under the belief that God had told him to 'cleanse the business of witches with fire.'" In custody, "inmate repeated, strange, and self-harmful acts over the days leading up to the eye incident." (Foreshadowing!) Jailers were "beseeched" (that turned Biblical quickly) by medical professionals to monitor inmate carefully. Thus, jailers had a little explaining to do following the "eye incident." The incident? So glad you asked. Inmate PULLED HIS OWN EYEBALL OUT OF ITS SOCKET. "Inmate vividly remembers removing his own eye to prevent it from being 'harvested by the witches,' but he doesn't recall anything else from earlier that day." Art gallery should probably consider requiring some kind of waiver.

IMMUNITY - COLORADO

Sawyers v. Norton

United States Court of Appeals, Tenth Circuit - June 23, 2020 - F.3d - 2020 WL 3424927

Pretrial detainee in county jail, whose delusional behavior deteriorated to the point that he removed his eyeball from its socket, filed action raising § 1983 deliberate indifference and state-law negligence claims against sheriff and on-duty law enforcement corrections officers, in their individual and official capacities.

The United States District Court for the District of Colorado granted in part and denied in part defendants' motion for summary judgment. Defendants appealed.

The Court of Appeals held that:

- The Court lacked jurisdiction over officers' challenges to district court's factual findings as to objective component of deliberate indifference claim;
- Pretrial detainee established that his medical condition was sufficiently serious, satisfying objective component of deliberate indifference claim;
- The Court lacked jurisdiction over officers' challenges to district court's factual findings as to subjective component of deliberate indifference claim; and
- County was not entitled to sovereign immunity from state-law negligence claims.

BALLOT INITIATIVES - COLORADO

Matter of Title, Ballot Title and Submission Clause for 2019-2020 #315

Supreme Court of Colorado - June 22, 2020 - P.3d - 2020 WL 3407177 - 2020 CO 61

Initiative opponent petitioned for review of Title Board decisions setting title and ballot title for initiative to create and administer a preschool program funded by state taxes on nicotine and tobacco products.

The Supreme Court held that:

- Initiative did not violate single subject requirement, and
- Ballot title satisfied clear title requirement.

Initiative to create and administer a preschool program funded by state taxes on nicotine and tobacco products did not violate single subject requirement, even though initiative reallocated to the preschool program existing state cigarette and tobacco tax revenue from local governments that banned sales of tobacco and nicotine products; initiative raised money through a new sales tax on vaping products and reallocated a portion of cigarette and tax revenue from education, health, and cessation programs, reallocation provisions were implementing provisions necessarily and properly related to single subject, and voters would not be surprised to learn that localities choosing to ban the sales of tobacco and nicotine products would lose tax revenue derived from the sales of such products.

Ballot title for initiative to amend constitution and create and administer preschool program funded by state taxes on nicotine and tobacco products satisfied clear title requirement, even though title mentioned amount of new tax on vaping products without noting constitutional and statutory bases, did not inform voters about reallocation of tax revenue from jurisdictions that banned tobacco and nicotine products, and did not advise voters of reallocation of funds from education, health, and cessation programs; creation of tax by constitution or statutes was not central feature and was not shown to influence voters, reallocation provision effective in case of sales ban was one of several, and Board was not required to set forth in the title all of details of each funding mechanism.

PUBLIC UTILITIES - HAWAII

Matter of Gas Company, LLC

Supreme Court of Hawaiʻi - June 9, 2020 - P.3d - 2020 WL 3055315

Environmental organization and organization representing native Hawaiʻian interests appealed Public Utilities Commission's (PUC) decision to approve gas utility rate increase allowing gas company to pass costs of two liquid natural gas projects to its customers.

The Supreme Court held that:

- Organizations were "persons aggrieved" who participated in contested rate case, and thus had standing to appeal PUC's decision;
- PUC did not fulfill its statutory obligation to consider the effect of State's reliance on fossil fuels on out-of-state greenhouse gas emissions produced by gas company's imported liquid natural gas;
- PUC did not fulfill its statutory obligation to reduce State's reliance on fossil fuels through energy efficiency and increased renewable energy generation;
- PUC violated due process rights of organizations by limiting their participation in rate case to addressing whether company's gas costs were unreasonable due to effects of company's use of imported gas on State's reliance on fossil fuels and greenhouse gas emissions and restricting organizations' input on emissions issue; and
- PUC did not abuse its discretion in adjudicating company's rate case, rather than proceeding through rule-making.

EMINENT DOMAIN - ILLINOIS

City of Chicago v. Eychaner

Appellate Court of Illinois, First District, First Division - May 11, 2020 - N.E.3d - 2020 IL App (1st) 191053 - 2020 WL 2322731

City brought action to condemn landowner's property through eminent domain and landowner filed traverse and motion to dismiss, challenging constitutionality of the taking.

The Circuit Court, following jury trial, found that city could use eminent domain to take landowner's property and ordered just compensation, which was later affirmed on appeal but remanded for new trial on just compensation. On remand, the Circuit Court entered judgment based upon new jury award for just compensation, denied landowner's posttrial motion with regard to taking's constitutionality, and denied landowner's motion to reconsider original traverse motion. Landowner appealed.

The Appellate Court held that:

- Law-of-the-case doctrine bound Appellate Court to prior appellate decision regarding constitutionality of taking;
- Landowner did not meet timeliness elements required to grant motion for reconsideration;
- Appellate Court mandate did not prevent the Circuit Court from hearing motion for reconsideration before second trial commenced; and
- Landowner failed to demonstrate that newly discovered evidence would change outcome to warrant granting motion for reconsideration.

Landowner failed to demonstrate that newly discovered evidence of new zoning and financing circumstances of city's plan to redevelop would change outcome of constitutionality of taking of landowner's property to warrant granting motion for reconsideration of original traverse and motion to dismiss; city's tax increment finance redevelopment plan that Appellate Court relied on to affirm taking remained in effect at time motion to reconsider was filed, new zoning aspects of city's plan to allow broader economic redevelopment beyond strict industrial uses and tax increment plan together carried out city's purpose to promote economic revitalization in area, and area around landowner's property continued to qualify as conservation area that ran risk of blighting without intervention by city.

EMINENT DOMAIN - NEW YORK

National Fuel Gas Supply Corporation v. Schueckler

Court of Appeals of New York - June 25, 2020 - N.E.3d - 2020 WL 3453939 - 2020 N.Y. Slip Op. 03563

Natural gas company brought action to acquire, by eminent domain, temporary construction easements and a permanent easement over respondent's property in order to facilitate construction and operation of natural gas pipeline.

The Supreme Court granted petition. Property owner appealed. The Supreme Court, Appellate Division, reversed and dismissed petition. Gas company appealed.

The Court of Appeals held that:

- Federal Energy Regulatory Commission's (FERC) issuance of certificate of public convenience and necessity to natural gas company satisfied Eminent Domain Procedure Law (EDPL) exemption, and
- Conditions in FERC's certificate of public convenience did not preclude company from pursuing eminent domain before all pre-construction conditions were fulfilled.

Federal Energy Regulatory Commission's (FERC) issuance of certificate of public convenience and necessity to natural gas company to build natural gas pipeline satisfied provision of Eminent Domain Procedure Law (EDPL) exempting a condemnor from certain procedures required prior to initiating condemnation proceedings if it received approval from an agency after submitting factors similar to those required by EDPL; company submitted materials to FERC concerning the public benefit, use, and need for proposed pipeline, FERC considered the public use, benefit or purpose to be served, approximate location of project, and general effect of project on environment and residents, FERC considered positions of numerous stakeholders, and FERC concluded that an environmental impact statement was not required.

Conditions in Federal Energy Regulatory Commission's (FERC) certificate of public convenience and necessity issued to natural gas company to build pipeline, including obtaining a water quality certificate and other pre-construction conditions that might have affected the ultimate completion of the project, did not preclude company from pursuing eminent domain under Eminent Domain Procedure Law (EDPL) before all pre-construction conditions were fulfilled; such conditions were not preconditions to the validity of the certificate itself and FERC could have conditioned company's eminent domain authority on completion of some act or obligation, but did not do so.

COLLECTIVE BARGAINING AGREEMENTS. - RHODE ISLAND

City of Cranston v. International Brotherhood of Police Officers, Local 301

Supreme Court of Rhode Island - June 23, 2020 - A.3d - 2020 WL 3423789

City brought action for declaratory relief against police union and former police sergeant seeking to enjoin union from arbitrating grievance it filed alleging that removal of sergeant from injured-o--duty status and from his employment violated collective bargaining agreement.

The Superior Court granted union's motion to compel arbitration after finding that sergeant had not retired and thus remained member of bargaining unit and entered judgment in favor of union and sergeant. City appealed.

The Supreme Court held that:

- Retirement board for Municipal Employees Retirement System (MERS) did not have authority to unilaterally retire sergeant after he applied for ordinary disability retirement;
- Sergeant did not de facto retire; and
- Trial court acted within its discretion when it refused to reopen record to consider affidavit from city employee attesting to amount of termination payment city paid to sergeant.

Retirement board for Municipal Employees Retirement System (MERS) did not have authority to unilaterally retire police sergeant, who had injured-on-duty status, after he applied for ordinary disability retirement; although it was necessary for board to grant employee's application for ordinary disability retirement before employee could retire, board neither retired employee nor terminated employment with employer, statute governing retirement system for public officers and employees did not indicate that General Assembly endowed board with statutory authority to unilaterally retire employee, voluntary retirement required that employee make decision to terminate his own employment, and board required affirmative action by employee before it would process payment of retirement allowance.

CHARTER SCHOOLS - TEXAS

El Paso Education Initiative, Inc. v. Amex Properties, LLC

Supreme Court of Texas - May 22, 2020 - S.W.3d - 2020 WL 2601641 - 63 Tex. Sup. Ct. J. 1166

Landlord/developer filed suit against charter school district for anticipatory breach of lease executed by district superintendent for development of new charter school, and for compensatory damages and attorney fees.

The County Court at Law denied district's plea to jurisdiction, on grounds of immunity, and district appealed. The El Paso Court of Appeals affirmed in relevant part, on basis that fact issues remained whether lease was properly executed, as condition precedent to waiver of school district's government immunity. Petition for review was granted.

The Supreme Court held that:

- As matter of first impression, charter school district was entitled to governmental immunity from liability and suit, to same extent as public school;
- Lease negotiated and signed by superintendent of charter school district for development of new open-enrollment charter school was not "properly executed," and thus, district did not waive its governmental immunity from suit and liability;
- School district was not estopped from asserting its entitlement to governmental immunity from suit.

EMINENT DOMAIN - UTAH

Utah Department of Transportation v. Boggess-Draper Company, LLC

Supreme Court of Utah - June 11, 2020 - P.3d - 2020 WL 3118665 - 2020 UT 35

The Department of Transportation (DOT) brought eminent domain action against property owner.

The Third District Court entered judgment on jury verdict awarding property owner over $1.7 million. the DOT appealed, and property owner cross-appealed.

The Supreme Court, Lee held that:

- Post-valuation-date sale or other development of the remaining property was potentially relevant evidence, and not subject to a categorical bar under the Utah Code;
- District Court's error in categorically excluding evidence of post-valuation-date sale or other development of the remaining property was harmful to the DOT, and thus, constituted reversible error; and
- Guarantee of just compensation under the takings clause of the Utah Constitution did not extend to costs and fees incurred by property owner in addition to his damages to the market value of the remaining property.

HIGHWAYS - VERMONT

Fortieth Burlington, LLC v. City of Burlington

Supreme Court of Vermont - June 19, 2020 - A.3d - 2020 WL 3396444 - 2020 VT 45

Owner of real property abutting highway filed petition and complaint alleging that necessity hearing and resulting decision to acquire property and lay out new section of road were void because city did not comply with statutory notice requirements.

Superior Court granted city's motion for summary judgment, and property owner appealed.

The Supreme Court held that owner did not have a "legal interest of record in the property affected" as required for standing to appeal.

Owner of land which abutted highway did not have a "legal interest of record in the property affected" as required for standing to appeal city's decision regarding the necessity of highway construction project, which included obtaining temporary and permanent easements, as owner did not have an interest in any property through which the highway was laid out.

Necessity hearing regarding acquisition of easements for road construction project was informational and not quasi-judicial, and thus abutting landowner did not have due process right to present evidence and testimony or to provide cross-examination; necessity hearing was not a contested hearing that entitled participants to evidentiary requirements, like presenting evidence or conducting cross-examination, and statute required only that a municipality must examine premises and hear any interested parties.

Even accepting that owner of property abutting road construction project was entitled to notice of necessity hearing regarding acquisition of easements, which did not include owner's property, city's failure to provide that notice was not an error of jurisdictional magnitude, where city provided general notice and landowner actually participated in the proceeding.

IMMUNITY - WASHINGTON

W.H. v. Olympia School District

Supreme Court of Washington - June 18, 2020 - P.3d - 2020 WL 3275612

The parents of students who were sexually abused by school bus driver brought action, individually and on behalf of their children, against the school district and individual defendants, alleging the sexual abuse constituted sex discrimination in a place of public accommodation under the Washington Law Against Discrimination (WLAD).

The United States District Court for the Western District of Washington granted defendants' motions for summary judgment in part, and denied them in part. Defendants appealed. The United States Court of Appeals affirmed in part, reversed in part, and remanded. On remand, the United States District Court for the Western District of Washington certified two questions to the Washington Supreme Court in connection with the meaning of the WLAD.

The Supreme Court held that:

- School districts are subject to strict liability for discrimination by their employees in violation of

the Washington Law Against Discrimination (WLAD) in places of public accommodation;
- Statute governing actions against public corporations did not control over anything in the WLAD, and did not make non-WLAD tort suits the only means of recovery against schools and other public corporations;
- To whatever extent sovereign immunity may have protected school districts from discrimination lawsuits prior to the Washington Law Against Discrimination (WLAD), the WLAD clearly abrogated that sovereign immunity; and
- “Discrimination,” for purposes of a discrimination claim under the WLAD, encompasses intentional sexual misconduct, including physical abuse and assault.

BDA: Fed Economists Cite Municipal Market’s Recovery.

Economists at the Federal Reserve Bank of New York released a report yesterday on the performance of the municipal market during the pandemic. The report highlights the extraordinary volatility and yield spikes in the municipal market in March and the stabilization that has occurred since. The report examines trends such as the movement of the yield curve, municipal bond mutual fund outflows, and issuance patterns to track the market’s response to the virus.

The report concludes by saying “both the primary and secondary markets for municipal securities underwent considerable stress during the early stages of the COVID-19 pandemic in the United States. Market conditions for municipal securities have improved significantly since then: yields for most issuers have receded to below pre-pandemic levels, outflows from municipal bond mutual funds have turned into inflows, and issuance has picked up.” The report also notes continued market stress for lower rated issuers.

The New York Fed’s report is available here. Please call or write with any questions.

Bond Dealers of America

June 30, 2020

BDA Support for HR 2 and Muni Bond Provisions – Including IDB Expansion.

AR bill being introduced in Senate today

BDA today sent a letter to House Speaker Nancy Pelosi (D-CA) and House Minority Leader Kevin McCarthy (R-CA) in support of HR 2, the Moving Forward Act. HR 2 would reauthorize federal surface transportation grant programs as well as restore tax-exempt advance refundings and make other improvements to tax-exempt bond law.

Our letter to the congressional leaders emphasizes provisions in HR 2 intended to expand the use of small issue industrial development and first-time farmer bonds. HR 2 incorporates the provisions of HR 5422, legislation sponsored by Reps. Stephanie Murphy (D-FL) and Darin LaHood (R-IL). Their bill would raise the capitalization limit for small manufacturing companies eligible to use small issue IDBs from $10 to $30 million and index that number for inflation annually. The bill would raise the issuance cap for first time farmers from $450,000 to $552,500, also indexed for inflation going forward, and make other related changes. All those provisions are included in HR 2.

Our letter on HR 2 also emphasized our support for provisions in the bill intended to expand bank qualified bonds and reinstate tax-exempt advance refundings and direct pay bonds. We expect the House to vote on HR 2 as early as today, but certainly before the July 4 recess.

In addition, we expect that legislation to restore advance refundings will be introduced today in the US Senate. We anticipate that Sens. Roger Wicker (R-MS) and Debbie Stabenow (D-MI) will introduce a bill which would restore advance refunding law to its status before the 2017 tax bill was enacted. This would be a companion bill to HR 2772, advance refunding legislation introduced last year in the House of Representatives. HR 2772 has been incorporated into HR 2 and will be voted on by the House this week. Other expected original coposnors in the Senate include Sens. Michael Bennet (D-CO), Shelly Moore Capito (R-WV), John Barrasso (R-WY), Bob Menendez (D-NJ), Jerry Moran (R-KS), and Tom Carper (D-DE).

A copy of our letter is available here. Please call if you have any questions.

Bond Dealers of America

July 1, 2020

BDA Sends Letter of Support to Senators Wicker (R-MS) and Stabenow (D-MI) on Advanced Refundings.

Read the Letter.

Investors Want Details on Bonds that Pay for Police Misconduct.

Bond investors seek details on police settlements

As Black Lives Matter protests march on around the U.S., some investment advisers and asset managers are pushing for more disclosure on so-called judgment allocation bonds issued by cities and states to fund payouts for settlements of lawsuits against police.

Protests against police brutality sparked by George Floyd's killing in Minneapolis in May have drawn attention to the role of municipal bonds in covering the costs of police misconduct. When governments lack the budget to pay settlements, they often turn to Wall Street to raise money with judgment allocation bonds.

The City of Los Angeles used Judgement Obligation Bond, Series 2009-A to cover $20.5 million of the $95 million paid out to settle lawsuits connected with the Rampart Police corruption scandal of the 1990s and 2000s, according to a 2018 report by the Action Center for Race and the Economy. The scandal involved members of the city's anti-gang Rampart Division, who allegedly abused suspects.

Such bonds defray immediate costs to the government, though taxpayers end up footing the legal bill over time as the bonds are repaid with interest. They are also on the hook for fees paid to underwrite them. Banks hired by Los Angeles to underwrite 2009 and 2010 judgment obligation bonds collected more than $1 million in fees.

“This is just starting to filter into investors’ consciousness,” said Maya Philipson, a partner at wealth management firm Robasciotti & Philipson, which has studied the role bonds play in funding police lawsuit payouts for its clients. “As soon as we start giving them education, they get really up in arms about it. It’s not something they want to support.”

Rachel Robasciotti, the firm’s founder, added that more disclosure would empower investors.

“The trouble with municipal bonds is that people tend to think of them as wholly good,” she said in an interview. “But if they are paying out settlements for police misconduct, what they’re doing is enabling that behavior by offering a credit line to those who are abusing their citizens.

“If the municipality as a whole saw police conduct as something that impacts their ability to do long-term investment there, I think the pressure would come in for policy reform from all sides,” she said.

Cities, states and utilities traditionally use municipal bonds to fund public works, including updates to school facilities, switches to renewable energy sources, expansions of public transportation networks, or building healthcare infrastructure. They are also used to cover budget shortfalls.

Eric Glass, a portfolio manager for AllianceBernstein, said it can be difficult to discern between bonds funding settlements and those raising money for public projects because municipalities rarely provide details. AllianceBernstein manages $542 billion in assets including municipal bonds.

“You get to pick and choose what you invest in, but it isn’t always clear,” Glass told CQ Roll Call in an interview, adding that funds tied to settlements are often lumped into general obligation bonds. “If investors knew they were paying off judgments against police departments, I don’t think they would buy the bonds.”

‘No visibility’

The absence of disclosures means there’s not much widely available data on how common it is for cities to pay for civil rights abuse settlements through bonds. The Action Center on Race and the Economy in 2018 released a report detailing settlements paid for through bonds by 12 cities and counties, totaling well into millions of dollars.

From 2008 to 2017, Los Angeles raised $71.4 million through municipal bonds to pay for settlements involving police misconduct. During that period, Milwaukee raised about $26 million, the study said.

For Chicago, the center found it difficult to confirm an exact payout amount funded by bonds because the city doesn’t track the specific settlements that bond proceeds are used for, though it’s transparent about the use of bonds to pay for legal costs in general. The center estimated that from 2010 to 2017 the city raised almost $710 million in bonds to fund settlements.

City officials didn’t immediately return CQ Roll Call’s requests for comment.

Maurice BP-Weeks, co-executive director of the center, told CQ Roll Call that the research isn’t meant to discourage the settlements. Rather, he said his goal is to draw attention to the cost of misconduct to the cities and pressure municipalities to deduct payouts from police department budgets.

Collecting data on even 12 municipalities is labor intensive.

Action Center on Race and the Economy researchers cross-referenced news reports of settlements with amounts raised through bonds reported to the Municipal Securities Rulemaking Board’s

Electronic Municipal Market Access system, which houses munibond data and disclosures. They also spoke directly with city officials, poured over municipal documents, and used Freedom of Information Act requests to access the data.

Ryan Bowers, co-founder of Activest, a policy group that seeks to pressure bond issuers and investors on social issues, said the bonds shift the settlement costs onto future taxpayers and protects police departments. He said investors and city residents lack basic information about the number of police misconduct incidents, how many result in lawsuits, or how many end in settlements or their amounts.

"We have no visibility on that," he said.

'Each and every dollar'

AllianceBernstein's Glass says he wants to see cities disclose an itemized list of what "each and every dollar" raised through a bond pays for. Disclosures about the settlements paid out by the city or structures in place to oversee police departments would also benefit investors, he said.

In addition to a moral case, there are financial reasons for more disclosure around the use of municipal bonds, Glass said. When settlements are paid out, that has a direct impact on the profit and loss statement of a city. If a company uses insurance to pay its legal costs, those premiums will increase. A smaller community could be bankrupted by a hefty settlement. All of those considerations influence whether a city's bonds are a smart investment, he said.

Maggie Kulyk, CEO of the sustainable asset management firm Chicory Wealth, said she would like to see more disclosure from cities, and a trail of expensive bond-funded settlements would make her think twice about advising a client to invest in a municipality. The wealth management firm works with clients who want their investments to align with progressive values.

"I think it does speak to the financial viability of a community," she said. "I would be very hesitant to invest in that city or state for fear that it would not have a good long-term trajectory."

An analysis released last month by credit rating company Moody's on the potential effects of the Black Lives Matter protests supports that assessment. Cities that fail to address the root causes of the protests could take an economic hit, it said, adding that long-term credit health will depend on whether unrest recurs and whether a municipality can adopt policies that improve racial and income inequality.

"These solutions could take multiple years to implement and could be costly," Moody's said.

Pending legislation

Investors could push for greater transparency on the local, state, or federal level. Bowers pointed to city auditors or state treasurers as officials who could require more disclosure of police misconduct cases.

The Governmental Accounting Standards Board, an independent regulator that sets standards for state and local governments, is another possibility. The board could require municipal governments to share their expected exposure to litigation tied to police misconduct as part of risk disclosures, he said.

In Congress, Rep. Gregory W. Meeks introduced a bill in June that would push for more transparency on Wall Street's role in the process. The proposal would require banks to report if they underwrite a municipal bond that funds police payouts and disclose what they earned from the work.

The New York Democrat told CQ Roll Call that the proposal is about creating more transparency and accountability for cities, their police departments, and banks. The bill includes a provision that would require banks to disclose whether they partnered with a minority- or woman-owned business on the work.

“That money should be further invested in communities that have been victimized by this bad behavior,” he said.

Roll Call

By Caitlin Reilly

Posted July 1, 2020 at 6:09pm

Where’s the Greenium?

Environmental, social, and governance (ESG) measurement, corporate social responsibility (CSR) activities, and socially responsible investing (SRI) are increasingly important research topics in both academic and professional areas. This recent research focus has been primarily due to the increased number of assets invested following ESG principles, now reportedly more than one-quarter of the $88 trillion of assets under management globally. While there is growing evidence of an association between ESG and CSR activities on security pricing, comparatively little is known about the channels through which ESG factors may affect asset prices.

A question of primary importance in this area is whether ESG investments have value to investors beyond the expected risk and return attributes of a security. For instance, if we were to present investors with a high-ESG security and a low-ESG security whose risk and returns are identical, would investors pay more for the high-ESG security? While standard arguments suggest that these securities should price identically, there is a growing literature that argues otherwise. Several studies present theoretical models where investors are willing to give up financial benefits to invest in environmentally friendly or socially responsible assets.

There is evidence of these effects showing that both investors and managers value green investments for their societal benefits. In experimental markets, investors respond positively to reports of green investments even when they are independent of future cash flows and risk, suggesting a tradeoff between wealth and societal benefits. The critical question is whether such experimental results generalize to actual market settings.

In our analysis, we focus on U.S. municipal issuers because these entities have been one of the largest issuers of green bonds. This setting is ideal for exploring our research question because these securities are explicitly issued to fund environmentally sustainable projects. As important, the way municipalities issue bonds provides a novel experiment to assess whether investors value the societal benefits associated with ESG activities. We leverage three unique institutional features of the U.S. municipal securities market to implement a methodological approach that is less prone to the standard correlated omitted-variable critique of prior ESG research.

The first is that municipal issuers commonly price multiple tranches of securities, both green and nongreen securities, on the same day with similar maturities. This occurs for several reasons, such as issuer requirements to track their use of funds to comply with IRS requirements and limits to bond issuance by state constitutional mandates.

The second feature of municipal bonds is that the credit for these green bonds is identical to the credit for their nongreen counterparts. Green bonds are identical to ordinary municipal bonds in all ways except that the use of proceeds is allocated to fund “environmentally friendly projects” (e.g., sustainable water management and energy production). The only effective difference between a green bond and a nongreen bond is the use of proceeds. Thus we can attribute any differences in security pricing to investor preferences for nonmonetary security features rather than differences in expectations about future cash flows or risk.

Finally, there are strong reasons to believe that our setting is one where we are most likely to find a greenium (if it exists), though it is a relatively small and specialized asset class. Specifically, the average issuance size (supply) in our sample is small ($5.36 million on average) compared with corporate green-bond issuances, which are often hundreds of millions (or even billions) of dollars. Since the size of green issues is small, there is ample opportunity for green investors to be the marginal trader (which would not be the case for very large green issues in a market setting where green investors do not have the capacity to buy most of the offering). Thus our focus on small issues of green municipal securities is very likely to provide a powerful test of whether a greenium exists.

The primary result of our paper is that the greenium, or the premium that green assets trade to otherwise identical nongreen securities, is precisely equal to zero. Our results are based on a sample of 640 matched pairs of green and nongreen issues given out on the same day, with identical maturity and rating, and issued by the same municipality. We observe an economically trivial difference in yield (and spread) between green and nongreen bonds of approximately 0.45 basis points (indicating a slight green-bond discount). In fact, in approximately 85 percent of matched cases, the differential yield is exactly zero. These results provide strong evidence that investors are unwilling to sacrifice returns to support environmentally friendly projects, and thus the greenium is equal to zero.

We also examine how much investment bankers charge for issuing green securities (or the underwriter’s discount) in comparison to nongreen securities. This is important for two reasons. First, it indicates whether banks consider green securities as riskier or more challenging to underwrite. Second, one of the primary challenges attributed to the growth of green bonds in municipal markets is the perceived cost of issuance. For our matched sample, we find that the underwriting cost charged for issuing green bonds is higher than nongreen bonds. Specifically, borrowing costs are on average approximately 10 percent higher for green securities than almost identical nongreen securities. The combination of equivalent yield and higher transactions costs is not consistent with the existence of greenium.

Concerns over greenwashing have arisen among investors due to the absence of a universal set of standards on whether a security is actually green. In response to these concerns, several agencies have created a new form of economic certification to ensure that issuers of green bonds are using the financing proceeds for environmentally friendly purposes. The Climate Bonds Initiative is the leading provider of these services and has been used by a number of municipalities to provide third-party certification. We explore the pricing effects of this certification and find no evidence that this leads to incremental yield benefits to municipalities. This finding mitigates concerns that greenwashing is responsible for our documented lack of premium. Additional tests relate to the underlying use of proceeds, and bond-specific green ratings also support these inferences.

In our final sets of tests, we explore various nonissuance cost-related benefits associated with green issuances. Specifically, some issuers have suggested that green issuances help to broaden the issuers' base of investors. We find evidence consistent with this, as green issues have a lower amount of ownership concentration by approximately 12–20 percent. Other market participants have also suggested that while a greenium does not currently exist, as the market matures and gains momentum, a greenium may emerge. We hypothesize and find that those states that value environmental sustainability issue more green bonds and pay these slightly higher costs for their perceived future benefits. Despite this effect, even in states with the highest level of green preferences (and therefore issuance), we still find no evidence of a current greenium.

Our analyses also provide new policy-relevant insights on the pricing of green securities of municipal markets and the benefits of third-party certification. Based on prior research that claims to document a greenium, some policy analysts are calling for more green-bond issuance to reduce the cost of government borrowing. Our results suggest just the opposite conclusion. Not only is there no pricing differential but investment banks also appear to charge slightly more to issue green bonds on average. As there are other costs associated with green-bond issuance, our results suggest that municipalities increase their borrowing costs by issuing green bonds.

NOTE: This research brief is based on David Larcker and Edward Watts, "Where's the Greenium?," Journal of Accounting and Economics 69, no. 2–3 (April–May 2020), https://www.sciencedirect.com/science/article/abs/pii/S0165410120300148.

Download the Research Briefs in Economic Policy

The Cato Institute

Research Briefs in Economic Policy No. 221

By David F. Larcker and Edward Watts

July 1, 2020

'Social Bonds' are Surging as Conscious Investing Turns Mainstream.

KEY POINTS

- According to S&P Global Ratings, social bond issuance has quadrupled so far this year as conscious investors combine purpose with profit.
- Social bonds are already being used to address rising inequalities created by the coronavirus pandemic.
- Morgan Stanley says $32 billion dollars of social and sustainability bonds were issued in April 2020 alone.

New research shows the issuance of social bonds has reached record levels and more than quadrupled so far this year, as conscious investors combine profit and purpose to address rising inequalities created by the coronavirus.

Continue reading.

cnbc.com

by Dan Murphy

JUN 23 2020

Coronavirus Surge Strains Municipal Bond Market, but Investors Still Pile In.

Despite pressure on state and local governments from lost tax revenue, investors are drawn by yield and relative safety

The recent surge in Covid-19 cases has brought more bad news for a municipal bond market already reeling from the impact of coast-to-coast shutdowns and record unemployment.

On Wednesday, the U.S. Virgin Islands Water and Power Authority narrowly avoided default. The utility got a badly needed reprieve when Chicago-based Nuveen LLC agreed to accept a $34 million payment due Wednesday on Aug. 31 instead.

Analysts question whether the territory has enough money on hand to make the payment.

The territory isn't alone in facing pressure. Ten municipal borrowers defaulted for the first time in May and another 10 in June, the highest for those months since 2012, when borrowers were still absorbing hits from the 2008 financial crisis, according to Municipal Market Analytics data.

Many municipal borrowers are being crushed by the massive falloff in the collection of sales, income and hotel taxes, airport fees and other revenues. Even some investment-grade issuers are showing signs of serious strain in their abilities to pay future debts.

Despite the pressure on issuers, some investors are seeing opportunity rather than a reason for panic.

Even with coronavirus losses weighing heavily on the roughly $4 trillion municipal market, investors are piling back into municipal debt, hungry for yield and seeking more safety than the stock market can provide. Many fled munis in droves when the U.S. first shut down in March, but investors seem to have overcome their initial fears and have plowed about $11 billion back into muni mutual funds since mid-May, more than one-third of the amount withdrawn in March and early April, according to Refinitiv.

Inflows have continued even as some government and nonprofit borrowers face financial struggles. Universities, convention centers, student housing, senior living facilities and some transportation projects are confronting significant revenue disruptions, and those already in trouble could tip into insolvency. The Archdiocese of New Orleans, already facing expensive payouts for sexual-abuse claims, filed for bankruptcy in May and said in a filing June 26 that it wouldn't make a debt payment due Wednesday.

Dan Genter, chief executive of Los Angeles-based RNC Genter, said many of his clients are shifting more of their portfolios into bonds to avoid the uncertainty and volatility of stocks. But the stakes of picking which muni bonds to invest in are particularly high, he said, and the risks include more than default. A bond that is downgraded to junk can lose 25% of its market value, a concern for any investor who wants to resell it rather than wait until maturity.

“The fire alarm has sounded, and people really need to go look at their bond portfolios,” Mr. Genter said.

High-yield muni funds lost $14 billion in investments during 11 weeks of almost ceaseless outflows from the beginning of March through mid-May, according to Refinitiv.

Those risky funds are now in their sixth straight week of inflows and have added back nearly $2 billion. The buying has pushed up prices, and the S&P Municipal Bond High Yield Index has regained 68% of its March losses.

Some high-yield borrowers including the Virgin Islands face a deteriorating financial picture, however, as tourism revenue dries up. About $345 million worth of debt issued by the junk-rated U.S. territory sits in Nuveen mutual funds, most of them high-yield. The debt, whose interest is exempt from all state taxes, also appears in state-specific funds not listed as high-yield for Arizona, Kansas, Louisiana, Maryland, New Mexico, Virginia and Wisconsin, according to records of holdings disclosed by the firm. In the Wisconsin fund, Virgin Islands debt makes up 4% of total holdings.

A Nuveen spokeswoman said most of the debt "is secured by dedicated tax revenues backed by strong security features." The Water and Power Authority debt on which Nuveen granted the two-month extension is held in four high-yield funds, she said.

Virgin Islands Gov. Albert Bryan Jr. said last month that the pandemic had caused significant shortfalls in revenue collections, but he still expected to be able "to find ways to streamline government operations while maintaining an acceptable level of service."

The many U.S. towns that thrive on local or regional tourism are in particular distress, and nearly 90% of cities are projecting budget shortfalls, according to April surveys by the National League of Cities and the U.S. Conference of Mayors. More than a third reported they were having to make cuts to capital improvements, infrastructure maintenance and other critical public works services.

New Jersey's governor and New York City's mayor said this week they would postpone the planned resumption of indoor restaurant dining as Covid-19 cases spiked across the country. Even before those announcements, New York City was expecting to lay off or furlough as many as 22,000 employees in the fall, and New Jersey was anticipating a $10 billion budget shortfall over the next two years.

"The one certainty forecasters can agree on at this point is that uncertainty lies ahead," said New Jersey Treasurer Elizabeth Maher Muoio. "Unfortunately, this means we must brace ourselves for more painful decisions on the road ahead."

The delay in indoor dining meant casinos scheduled to reopen in Atlantic City this week will have to do so without food or alcohol, a serious blow to the economy of the city, which narrowly avoided default in 2016. The value of taxable property in Atlantic City has been falling since the recession, and the unemployment rate already topped 8% before the pandemic in February, according to a May report by Moody's Investors Service, which rates the city's debt as speculative, or junk, grade.

"It's not a popular decision due to the fact that a lot of casinos and a lot of restaurants were looking forward to doing indoor dining this weekend," Atlantic City Mayor Marty Small said of the delay announced by Gov. Phil Murphy days before the Fourth of July holiday.

Congress hasn't approved any aid to make up for lost revenue, and cities and states are suffering massive losses in sales and income tax collection as the pandemic has driven unemployment to record levels and eroded consumer spending.

Mikhail Foux, head of municipal strategy at Barclays, said the widening spread of the virus might inspire more stimulus measures in Congress, which would help the municipal market.

“The negative might actually become a positive,” he said.

The Wall Street Journal

By Heather Gillers

July 2, 2020

[Junk Munis See Best Run Since 2009 With Pandemic Panic a Memory.]

- **Bonds see big back-to-back gains as investors seek high yields**
- **Nuveen’s John Miller says people ‘are no longer in panic mode’**

Since the middle of May, mutual funds that buy the riskiest state and local government bonds have received hundreds of millions of dollars of new cash from investors hunting for higher returns.

At the same time, the economic chaos unleashed by the coronavirus has put many speculative projects on hold, causing sales of junk and unrated municipal bonds to slow to a trickle.

That mismatch between supply and demand had a predictable effect: Prices of high-yield securities have rallied, driving them to a more than 8% gain from May through June. That marks the best two-month period since 2009, according to the Bloomberg Barclays indexes.

Continue reading.

Bloomberg Markets

By Shruti Singh and Danielle Moran

July 2, 2020, 10:33 AM PDT

Bottoms-Up Bond Fund Manager DiMella Bullish On Municipals.

Buy insured municipal bonds and taxable munis while seeking mismatches in the bond market, said Robert DiMella, executive managing director of MacKay Shields.

“That’s what I am doing,” DiMella said during a recent SHOOKtalk.

This kind of advice probably seems counter intuitive given the bond market meltdown this past spring. Last month, Fed Chairman Jerome H. Powell’s said it will take years for the economy to recover. He promised to hold interest rates near zero for the foreseeable future.

Not exactly positive news for bond investors.

SHOOKtalks turned to DiMella, 53, a bond market sage. DiMella co-manages MacKay’s $6.5 billion tax-free bond MainStay Tax Free Bond (MTBIX), up 2.36% year to date.

As an active bond fund manager, MacKay applies a bottoms-up approach to investing, exploiting mismatches in the market like what happened this past March when $40 billion exited the market within a matter of weeks.

“Investors just said I just want to get cash in my portfolio. People were worried,” DiMella told SHOOKtalks. “These were indiscriminate sellers. They didn’t care what price they sold a bond at. We are still in the midst of this dislocation playing out.”

Since March, DiMella, a top executive for a team that manages some $51 billion in municipal bonds, has been buying top rated bonds other investors were dumping, reaping higher yields.

DiMella is a big fan of bonds carrying insurance against default, limiting default risk.

“You are buying a bond with both belt and suspenders on it,” he says. “The bond is guaranteed by the issuer, but then you have this financial wrapper on it. That does a couple things. It protects you from default, but it also protects you in case you get a delay in coupon payments. The financial guarantor will actually pay you.”

The insurance, or what is commonly called a wrap, makes the bond easier to sell, giving the bondholder greater liquidity, DiMella said. “Insured bonds are a lot more liquid than uninsured bonds.”

MacKay’s Municipal Insured ETF (MMIN) with assets of $110 million is 90 percent focused on insured bonds and sports an annualized return of 5.6% since the fund’s inception in 2017.

DiMella says financial advisers often will buy the MainStay Tax Free Bond, while pairing it with Municipal Insured EFT, the only insured exchange traded municipal bond fund on the market that is actively managed.

He is also big on taxable munis. MacKay’s MainStay Intrastructure (MGOIX), is a $540 million taxable bond fund that focuses on buying public infrastructure bonds. It’s 10-year return is 2.78 percent.

DiMella says it is only a matter of time before the federal government pushes forward with financing an estimated $4.5 trillion in road, bridge, tunnel, and sea wall projects. DiMella expects the project cost to be shared with city and state governments and the financing will come, in part, from the issuance of taxable bonds.

DiMella shrugs off critics who say bonds are dead money for the foreseeable future. “Everyone needs income. You don’t want to be 100 percent in equities,” he says noting that insured bonds offer a better yield in a down market. “Being in equities can be painful as we witnessed in the first quarter.”

Forbes

by R.J. Shook

Jul 1, 2020

The Crushing Budget Blow Awaiting State and Local Government Workers.

State and local government jobs are being gutted, even as the labor market shows signs of a slight recovery.

Why it matters: The coronavirus pandemic blew a hole in state and local government budgets. A slew of states cut spending and jobs — with more planned layoffs announced this week as states try to balance budgets.

- Even more could be coming as states face more pressure from spiking caseloads and people hunkering back down.

Continue reading.

AXIOS

by Courtenay Brown

Jul 2, 2020

The Coronavirus Crisis is Costing States and Locals Hundreds of Billions, Analysis Finds.

State and local budget cuts aren't an abstraction to most Americans: libraries will close, class sizes will go up, potholes won't get filled, and forget improvements or expansion

Just how bad is the economic impact of the COVID-19 pandemic?

On the national and international level, things are tough, but perhaps a little more manageable than many analysts had feared at the onset of the crisis. Corporations are reporting earnings that are better than Wall Street expected, jobs were added, not lost, in May, and central banks and fiscal policymakers stepped up with robust aid packages.

On the state and local level, it's a whole different ballgame, and observers of public finance and the municipal bond market are bracing for a long, slow burn. States, counties, cities and towns are on the hook for most of the costs associated with the pandemic — health care, emergency responses, and so on — even as their tax revenues, mostly from income and sales taxes, dwindle. Even revenue streams often seen as safe, like usage fees for things like airports, toll roads, arena ticket charges, and so on, have swooned in line with economic activity.

Continue reading.

MarketWatch

By Andrea Riquier

Published: July 3, 2020 at 6:49 a.m. ET

COVID-19 Pandemic Could Slash 2020-21 State Revenues By $200 Billion.

Revised forecast data from 27 states suggest tax revenues are expected to fall $34 billion short of pre-COVID-19 forecasts in fiscal year 2020 and $80 billion short in fiscal year 2021 (Figure 1). Based on the information from those 27 states, total tax revenue shortfalls for all 50 states will be roughly

$75 billion in fiscal year 2020 and $125 billion in fiscal year 2021.

Fiscal year 2021 begins July 1, 2020 in 46 states. Last January, all states were projecting solid revenue growth for the remainder of the 2020 budget year. But the COVID-19 pandemic hit the states like a tsunami starting in March.

Several states have not yet passed their fiscal year 2021 budgets. Revenue forecasters in some of these states are waiting for final individual income tax payments now due by July 15th to revise their estimates. But 27 states already have updated their projections, including some of the largest such as New York, California, and Illinois.

Continue reading.

Tax Policy Center.

by Lucy Dadayan

July 1, 2020

U.S. States Beg, Borrow and Cut to Close Massive Budget Gaps.

- **Eleven states haven't passed a budget for the new fiscal year**
- **States race to pass budgets in face of worst crisis in decades**

It's crunch time for U.S. states as they face their worst fiscal crisis in decades brought on by the Covid-19 pandemic that's decimated tax collections.

Eleven states have yet to enact a budget for the fiscal year that begins Wednesday. And for those that have, they've been forced to slash spending, lay off workers and count on billions of dollars in potential federal aid that remains bogged down in Washington.

"The biggest theme that we are seeing across state budgets is uncertainty," said Eric Kim, senior director of public finance at Fitch Ratings.

The financial crisis amid the pandemic is forcing states and cities to make tough choices even as they seek help from Washington. Moody's Analytics has projected that state and local governments will need at least $500 billion in additional federal aid over the next two years to avoid major economic damage. While House Democrats passed a stimulus measure that would provide some $1 trillion of aid to governments, the rescue has stalled in the Republican-led Senate.

Thirty-five states have enacted a full-year budget for fiscal 2021, including two — Virginia and Wyoming — that have authorized two-year budgets for both fiscal 2021 and fiscal 2022. Forty-six states operate on a fiscal year that begins July 1. New York starts its year on April 1, while Texas begins on Sept. 1, and Alabama and Michigan start on Oct. 1.

For those states that have yet to enact a full-year budget or temporary budget for fiscal 2021, some are awaiting their governors' signature, while others are holding off for updated economic and revenue estimates.

"Even with states that have enacted full-year budgets, this will be a banner year for mid-year adjustments," Kim said. "And that's because the revenue picture is constantly falling, and that's really going to be an unprecedented level of change for state budgets."

New Jersey opted to extend its fiscal year through Sept. 30, with lawmakers approving a temporary $7.7 billion spending plan intended to buy the state more time to close the massive budget shortfall caused by business closings and record unemployment. It cuts or shifts $5 billion in expenses.

Vermont also expects to enact a three-month temporary budget, and Massachusetts signed a temporary one-month budget for July. Kentucky, which normally operates on a two-year budget, passed a one-year spending plan, citing pandemic uncertainties.

The budget that Illinois enacted earlier this month allows the state to borrow up to $5 billion from the Federal Reserve that could be repaid with anticipated federal aid. The state has already borrowed $1.2 billion from the Municipal Liquidity Facility program to help pay down bills. Illinois's spending plan is "precariously balanced," according to S&P Global Ratings.

California Governor Gavin Newsom Monday signed a $133.9 billion budget that defers almost $13 billion in payments and borrows another $9 billion internally to help fill a deficit expected to reach $54 billion over two years. The spending plan is intended to avoid steep cuts in the hope that Washington will send additional aid by October.

Most states aren't depending on federal aid in their budgets, but they're "strongly advocating for it," Kim said.

"They are trying to position themselves that if they get the revenue," he said. "then they have a sense of the kinds of cuts they can roll back."

Bloomberg Politics

By Emmy Lucas

June 30, 2020, 11:02 AM PDT

[S&P: States Demonstrate Resilience As Cash Falls Short]

Key Takeaways

- We have seen a notable uptick in short-term borrowing by states and payment deferrals to address sudden shortfalls.
- A majority of states will likely have sufficient cash to weather revenue declines through fiscal 2021.
- Short-term borrowing can make sense when states lack the internal cash resources to meet current obligations and deficits are temporary.
- Cash shortfalls signal fiscal stress when they become structural challenges.

As the COVID-19 pandemic wreaks havoc on revenue, S&P Global Ratings has observed that states are grappling with how to manage cash flow. Early forecasts indicate that state revenue declines will likely surpass the 11.6% drop during the Great Recession, exceeding the 8.0% median state rainy day fund balance. Many states extended tax-filing deadlines to July from April to provide taxpayer relief, exacerbating cash-flow pressures. At the same time, they are absorbing significant unbudgeted pandemic-related costs. Although the Coronavirus Aid, Relief, and Economic Security (CARES) Act funds help offset pandemic-related expenses, the federal government has yet to provide support to offset lost tax revenue.

Continue reading.

30 Jun, 2020

S&P: As COVID-19 Grips U.S. State Finances, Some Budget Debates Will Continue Well Beyond The Deadline.

Key Takeaways

- States' uncertainty about their finances due to COVID-19 and the recession is likely to cause some to delay action on fiscal 2021 spending plans beyond the July 1 fiscal start.
- 12 states have yet to enact a full-year fiscal 2021 budget. Reasons include compressed budget negotiations in a shortened legislative session, prioritizing closing current-year budget gaps, and waiting for updated economic and revenue estimates.
- Several have passed or plan to pass short-term or interim budgets until the revenue, expenditure, and federal aid picture comes into sharper focus, which is not uncommon during recessions.
- While late budget enactment is rarely a good sign, it is not necessarily an immediate threat to credit quality. Many states have procedures to keep operations going and protect debt service.

Continue reading.

29 Jun, 2020

S&P Credit Trends: U.S. Public Finance Saw Calm Before COVID-19

Key Takeaways

- The upgrade-to-downgrade ratio for U.S. public finance in the first quarter was 1.2 to 1, lower than the 1.75 average for the last 12 quarters.
- Improvements in finances caused the most upgrades, with 42, followed by debt service coverage with 30.
- Deterioration in finances also caused the most downgrades, with 55, followed by business issues, which led to 13 downgrades.
- There were two defaults in the first quarter, both in housing.

Total U.S. public finance (USPF) rating actions before the COVID-19 pandemic hit painted a calmer picture. The housing and nonhousing sectors have averaged 263 upgrades and 148 downgrades quarterly over the past 12 quarters. In first-quarter 2020, there were 133 upgrades (down from 221 in fourth-quarter 2019) and 110 downgrades (down from 142 in fourth-quarter 2019). The ratio of upgrades to downgrades from January to March for the combined sectors was 1.21 to 1, down from 1.56 at the end of 2019 and below the trailing-12-month average of 1.82.

There were two defaults in the first quarter, the same as in the fourth quarter of 2019, both related to Glen Hope Harbor in Texas, which defaulted from 'CCC' in February when interest payments were missed on bonds issued to finance a senior living facility.

[Continue reading.](#)

[Fitch Ratings Updates Toll Road Criteria.](#)

Related Fitch Ratings Content: [Toll Roads, Bridges and Tunnels Rating Criteria](#)

Fitch Ratings-San Francisco-01 July 2020: Fitch Ratings has published an updated version of its "Toll Roads, Bridges and Tunnels Rating Criteria." This criteria updates Fitch's criteria of the same title published on March 24, 2020. The primary changes improve alignment with the Infrastructure and Project Finance Rating Criteria (March 2020) in the areas of debt structure, infrastructure development/renewal, and financial metric definitions.

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[No Rating Actions Expected After Fitch Ratings Updates U.S. Military Housing Rating Criteria.](#)

Related Fitch Ratings Content: [U.S. Military Housing Rating Criteria](#)

Fitch Ratings-New York-02 July 2020: Fitch Ratings has published an updated criteria report titled "U.S. Military Housing Rating Criteria." The report replaces the existing criteria of the same title published on July 12, 2019.

No material changes to Fitch's underlying methodology were made, and the updated criteria are not expected to result in rating actions..

The full report is available at www.fitchratings.com.

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Invest in Infrastructure with Qualified Infrastructure Bonds.

We are experiencing interlocking and mutually reinforcing crises. Some, like COVID-19 and the resulting recession and massive unemployment, are sudden, like falling off a cliff.

Others, like droughts, floods, fires, sea level rise, and severe storms and mass extinctions caused by climate change, we are experiencing slowly like the frog in the proverbial pot; or explosively, like a punch to the gut.

The infrastructure crisis undergirds the COVID-19 and climate crises and saps our ability to be resilient. **The lack of robust, well designed, operated and maintained infrastructure—including roads, bridges and tunnels, water and energy facilities, mobility and transit projects, levees and sea walls, and communications networks but also schools, hospitals, and public and private buildings—is both a threat and damage multiplier.** Better infrastructure softens and manages impacts, and also can create jobs and help address structural racism and inequality.

Continue reading.

National Resources Defense Council

by Douglass Sims

July 01, 2020

MSRB: EMMA New Issue Calendar

Curious about the bonds coming to market? EMMA’s new issue calendar displays relevant information about upcoming offerings.

Access the new issue calendar.

Read about how to use the new issue calendar.

GFOA: June 2020 Edition of Government Finance Review

The full issue of the June 2020 Government Finance Review is available to read electronically. Individual articles are also available for download below. This edition includes important information on how to navigate a financial crisis.

SIFMA Statement on LOCAL Infrastructure Act.

Washington, D.C., July 1, 2020 – SIFMA today issued the following statement from SIFMA president and CEO Kenneth E. Bentsen, Jr. on the LOCAL Infrastructure Act:

"SIFMA commends Senators Roger Wicker (R-MS), Debbie Stabenow (D-MI), Michael Bennet (D-CO), Shelley Moore Capito (R-W.Va.), John Barrasso (R-WY), Bob Menendez (D-NJ), Jerry Moran (R-KS), and Tom Carper (D-DE) on their commitment to infrastructure investment, seen today with the introduction of the Lifting Our Communities through Advance Liquidity for Infrastructure (LOCAL Infrastructure) Act. This bipartisan, timely legislation reinstates advance refunding, which is a critical tool to help state and local governments lower their interest costs to more easily finance their infrastructure needs, such as schools, roads, and hospitals. Infrastructure spending is essential, and this legislation is particularly welcome now, when state and local governments are facing unprecedented expenses due to the COVID-19 pandemic."

GASB Proposes Concepts for Recognition of Financial Statement Elements.

Norwalk, CT, June 30, 2020 — The Governmental Accounting Standards Board (GASB) today issued a proposed Concepts Statement addressing concepts for recognition of assets, liabilities, and other elements of state and local government financial statements.

The Exposure Draft, *Recognition of Elements of Financial Statements*, proposes a framework of interrelated objectives and fundamental principles that can be used by the Board to establish consistent accounting and financial reporting principles for recognition of elements of financial statements.

Recognition concepts encompass two aspects of financial statements:

- The measurement focus determines what items should be reported in a financial statement.

- The related basis of accounting determines when those items should be reported in a financial statement.

The Exposure Draft proposes a recognition framework for both (1) the economic resources measurement focus and accrual basis of accounting and (2) the short-term financial resources measurement focus and accrual basis of accounting. The proposed Concepts Statement also contains a recognition hierarchy that would be followed when evaluating an item for recognition in financial statements.

Although primarily intended to guide the Board in establishing standards, Concepts Statements may be used by preparers and auditors when applying the generally accepted accounting principles hierarchy in assessing transactions and other events for which the GASB does not provide authoritative guidance. Concepts Statements also may help stakeholders to better understand the fundamental concepts underlying future GASB standards.

The Exposure Draft is available for download at no charge on the GASB website, www.gasb.org. Stakeholders are encouraged to review and provide comments by February 26, 2021.

The Board tentatively has scheduled a series of public hearings and user forums to enable stakeholders to share their views directly with the Board on this Exposure Draft as well as two related proposals: a forthcoming Exposure Draft, Financial Reporting Model Improvements (approved by the Board on June 30) and a Preliminary Views, Revenue and Expense Recognition. Additional information is available in the Exposure Draft. The deadline for providing written notice of intent to participate is February 26, 2021.

GASB Requests Input on Revenue and Expense Recognition Proposals.

Norwalk, CT, June 30, 2020 — The Governmental Accounting Standards Board (GASB) today issued for public feedback a Preliminary Views (PV) on revenue and expense recognition model proposals.

The Board added this project to its technical agenda with the intent of:

- Developing guidance applicable to topics for which existing guidance is limited,
- Improving existing guidance that has been identified as challenging to apply,
- Considering inclusion of a performance obligation approach in the GASB's authoritative literature, and
- Assessing existing and proposed guidance based on the conceptual framework.

The PV, *Revenue and Expense Recognition*, is intended to present the Board's current thinking about the development of a comprehensive, principles-based model that establishes categorization, recognition, and measurement guidance applicable to a wide range of revenue and expense transactions, which, if adopted as standards, is expected to enhance the usefulness of information governments report on their revenues and expenses.

The Board introduced in the PV a new methodology for categorizing transactions, which is then used as a basis for applying recognition proposals. Determining the transaction category would be based on the assessment of specific characteristics that a binding arrangement may or may not contain. This categorization methodology is intended to identify transactions with performance obligations.

If a transaction is determined to have a performance obligation based on the categorization characteristics, the associated revenue or expense would be recognized based on the satisfaction of the performance obligation. For transactions that are determined not to have a performance obligation, the Board proposed specific recognition guidance based on the various subcategories of transactions (for example, derived taxes, such as income and sales taxes and imposed taxes, such as property taxes).

Stakeholders are asked to review and provide input on the document by February 26, 2021. A series of public hearings and user forums on the PV tentatively have been scheduled to enable stakeholders to share their views with the Board.

GASB Releases Accounting and Financial Reporting Guidance Related to the CARES Act and Coronavirus Diseases.

Norwalk, CT, July 2, 2020 — As part of its continuing efforts to assist state and local governments during the COVID-19 pandemic, the Governmental Accounting Standards Board (GASB) today released a Technical Bulletin containing guidance for applying existing standards to transactions related to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and certain outflows incurred in response to the coronavirus. The Technical Bulletin addresses specific questions raised by the GASB's stakeholders.

Technical Bulletin 2020-1, *Accounting and Financial Reporting Issues Related to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and Coronavirus Diseases*, clarifies the application of existing recognition requirements to resources received from certain programs established by the CARES Act. It also clarifies how existing presentation requirements apply to certain inflows of CARES Act resources and to the unplanned and additional outflows of resources incurred in response to the coronavirus disease.

COVID-19-related resources for stakeholders, including an emergency toolbox, are available on the GASB website at www.gasb.org/COVID19.

SEC and DOJ Sign Memorandum of Understanding: Sidley

On June 22, the SEC and the DOJ Antitrust Division signed a Memorandum of Understanding (MOU) to foster cooperation and communication with respect to promoting competitive conditions in the securities industry.1 Although the two enforcement agencies have worked together in recent years in relation to their respective enforcement responsibilities, this MOU is intended to foster even greater collaboration around law enforcement and regulatory matters.

SEC Chairman Jay Clayton and Antitrust Division Assistant Attorney General (AAG) Makan Delrahim announced the MOU at a conference hosted by MIT's Golub Center for Finance and Policy the day it was signed. AAG Delrahim's prepared remarks noted that the MOU contains two key provisions to facilitate interagency cooperation.2 First, the MOU establishes a twice-annual meeting between the SEC and the Antitrust Division, which will involve discussions and reviews of law enforcement and regulatory matters affecting competition in the securities industry. Second, it establishes guidelines facilitating the exchange of relevant and useful information—including nonpublic legal, economic and technical analyses. The MOU does not identify the subject matters that are likely to see increased interagency attention, but at a minimum, we expect that the agencies' joint efforts in the recent LIBOR and municipal bonds investigations will inform the path forward.

The MOU is noteworthy given that the two agencies have not always coordinated on areas of shared interest. For example, in the Credit Suisse v. Billing decision in 2007, the Supreme Court noted that the SEC and the Antitrust Division took conflicting positions in lower courts regarding whether antitrust laws applied to certain allegedly anticompetitive conduct in the securities markets.3 The MOU appears aimed in part at avoiding this type of conflict when possible.

Since Credit Suisse, the agencies have increasingly cooperated in investigations of shared interest. A notable example is the collaboration on cases involving manipulation of LIBOR and other interest-rate benchmarks, which focused on brokers and traders who allegedly profited by colluding to manipulate the benchmark interest rates. AAG Delrahim spoke at an event late last year and expressly acknowledged the efficiencies from interagency cooperation during these investigations, including the coordination of interview requests and document demands, and echoed these sentiments in his remarks last Monday.4

In addition, the agencies have recently worked together on the municipal bonds (munibonds) investigations. The munibonds investigations focused on alleged conspiracies to rig the bidding process on munibond investment contracts, and during Monday's conference, AAG Delrahim noted that the Antitrust Division "worked closely with the SEC [during the investigations] — which also brought its own actions."5

At the MIT conference, Chairman Clayton provided additional guidance as to the likely areas of future collaboration. For example, he highlighted both agencies' recent efforts to improve the SEC rules governing access to market data—i.e., data that historically has been disseminated by one market-data consolidator (or aggregator), known as the SIP. The SEC recently proposed a rule that seeks to displace the SIP model with a model that improves competition by "(1) accommodat[ing] multiple competing consolidators, and (2) … allow[ing] firms to process, or 'self-aggregate,' … market data feeds, in a way that is similar and consistent with the way in which firms self-aggregate proprietary data feeds today."6 DOJ submitted a comment letter in support of the SEC's proposed rule, commending the agency for seeking to introduce "greater competition and market forces into the collection, consolidation, and dissemination of market data for equities."7 Chairman Clayton also noted that the new MOU could help the SEC benefit from the Antitrust Division's views on theories of competitive harm as it works to determine whether the fees charged by exchanges for access to data are fair and reasonable.

In addition to these areas of potential collaboration, we expect that the MOU could further enhance collaborative efforts between the SEC and the Antitrust Division in the following areas:

- fraud in the merger and acquisition context, especially related to disclosures
- price-fixing conspiracies in a variety of financial contexts, including real estate, municipal securities and foreign currency exchange rates
- the role and conduct of exchanges and other trading venues
- the nature of certain fees charged by participants within the financial industry, including mutual fund advisory fees and hedge fund fees
- improving retail investors' access to information about equities and equity derivatives traded in the OTC markets

There is little doubt that meetings between the agencies to discuss their respective enforcement dockets will result in new investigations by both agencies. Accordingly, companies and financial services firms should be mindful of the potential for additional investigations when dealing with either of these agencies and assess the potential for follow-on or parallel investigations.

To view all formatting for this article (eg, tables, footnotes), please access the original here.

Sidley Austin LLP – Ike Adams, Stephen L. Cohen, Karen Kazmerzak, John I. Sakhleh, James Bowden, Jr. and Stewart Inman

July 2 2020

SEC Puts LIBOR Transition Testing in Focus: Latham & Watkins

In anticipation of LIBOR discontinuation, the SEC will begin examining transition progress.

Nearly a year after the US Securities and Exchange Commission's (SEC's) release of a Staff Statement on LIBOR Transition, the SEC's Office of Compliance Inspections and Examinations (OCIE) appears ready to shift from passively monitoring LIBOR-transition risks to actively testing SEC-registered firms on their progress. OCIE previously mentioned LIBOR transition as an area to watch in its 2020 Examination Priorities, noting that "OCIE will be reviewing firms' preparations and disclosures regarding their readiness, particularly in relation to the transition's effects on investors."

OCIE released its latest Risk Alert on June 18, 2020 (Examination Initiative: LIBOR Transition Preparedness). The Alert provides registrants with specific information about the scope and content of OCIE's upcoming LIBOR-transition examinations and information requests. SEC registrants, including investment advisers, broker-dealers, investment companies, municipal advisors, transfer agents, and clearing agencies, may find the Alert helpful in reviewing and formulating their own plans and priorities.

Background

In its statement issued on July 12, 2019, the SEC noted that the risks associated with the transition away from LIBOR "will be exacerbated if the work necessary to effect an orderly transition to an alternative reference rate is not completed in a timely manner." To that end, the SEC affirmed that it was "actively monitoring the extent to which market participants are identifying and addressing" LIBOR-transition risks.

Planning Is Good, Progress Is Better

OCIE intends to review the extent to which registrants have evaluated the potential internal and external impacts of transitioning away from LIBOR, specifically as they relate to a firm's:

- Business activities
- Operations
- Services
- Customers, clients, or investors

Specifically, OCIE will review registrants' plans and progress with regards to:

- **Inventory:** Assessment of exposure to LIBOR-linked contracts with maturities beyond the expected discontinuation date of end-2021

- **Fallbacks**: Implementation of fallback language into impacted contracts
- **Operational readiness:** Enhancements or modifications to systems, controls, processes, and risk or valuation models
- **Communications:** Disclosures, representations, and reporting to investors regarding LIBOR transition efforts
- **Conflicts:** Identification and remediation of any potential conflicts of interest arising from LIBOR transition
- **Clients' efforts:** Clients' efforts to employ appropriate alternative reference rates

Appended to the Alert is an extensive (although not exclusive) list of potential documents and categories of information that OCIE may request from registrants during LIBOR transition examinations. While examinations may vary depending on the facts and circumstances of each registrant, requests for information may relate to:

- Organizational structure, particularly as it may be impacted by LIBOR transition
- Individuals or committees responsible for LIBOR transition oversight, and their related activities
- Impact assessments and results
- Strategic plans and timelines
- Risk management documentation
- Impacted risk and valuation models
- Communication made both externally to clients and internally to management, employees, or supervised persons
- Third parties or vendors that may be impacted by the transition away from LIBOR, or that a registrant may have employed to assist with LIBOR transition

Implications

Market participants have long been aware that the discontinuation of LIBOR would pose a complex set of operational challenges. The intervening COVID-19 pandemic, however, undoubtedly diverted resources and attention away from execution of LIBOR transition plans. Market participants, however, should keep LIBOR transition in focus and continue to address the array of challenges it presents, as regulatory authorities across the globe have communicated that LIBOR discontinuation remains on track.

On March 25, 2020, the UK Financial Conduct Authority (FCA), Bank of England, and members of the Sterling RFR Working Group issued a statement on the impact of COVID-19 on firms' LIBOR transition planning. The UK authorities acknowledged in that statement that COVID-19 had impacted the timing of some aspects of the transition programs, but confirmed that there is no change to the assumption that firms cannot rely on LIBOR being published after the end of 2021. The UK authorities reconfirmed this assumption on April 29, 2020. Subsequently, on May 13, 2020, the UK Prudential Regulation Authority (PRA) and FCA announced a resumption of full supervisory engagement with firms on their LIBOR transition progress beginning June 1, 2020, including data reporting at the end of Q2 (previously suspended at the end of Q1 due to the COVID-19 pandemic).

In its 2020 Examination Priorities, OCIE warned that "insufficient preparation could cause harm to retail investors and significant legal and compliance, economic and operational risks for registrants." Regulatory risk can be added to that list, as OCIE begins to incorporate LIBOR-transition readiness into its examinations. Registrants must now be prepared to evidence their transition efforts in preparing for the scheduled discontinuation of LIBOR.

For more information on LIBOR transition issues, see:

[10 LIBOR Transition Focus Areas in 2020]

[LIBOR Discontinuation and Transition — What Investment Managers Should Know]

[FCA Indicates LIBOR Transition Deadline Will Not Be Extended Due to COVID-19]

[HM Treasury Announces Welcome Proposed Amendments to the UK Benchmarks Regulation]

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June 30 2020
