IMMUNITY - NEVADA

Paulos v. FCH1, LLC

Supreme Court of Nevada - January 30, 2020 - P.3d - 2020 WL 497362 - 136 Nev. Adv. Op. 2

Arrestee brought action against police department, officer, casino owner, and casino security guard, asserting claims negligence, false imprisonment, and negligent hiring, training, and supervision. Defendants moved to dismiss, or in the alternative, for summary judgment.

The District Court granted summary judgment to defendants. Arrestee appealed.

The Supreme Court held that:

- As a matter of first impression, federal court decision, addressing only one of the qualified immunity prongs, did not have preclusive effect;
- Police department was entitled to discretionary-act immunity; and
- Casino owner and security guard were not entitled to summary judgment simply based on their joinder to officer's and police department's motion for summary judgment.

Federal court's decision in arrestee's removed action asserting claims for excessive force under § 1983 and negligence against police officer, concluding that police officer was entitled to qualified immunity because he did not violate a clearly established constitutional right by leaving arrestee on hot asphalt for over two minutes while attempting to arrest her, did not have issue preclusive effect for arrestee's state negligence claim alleging that officer acted unreasonably, since federal court only resolved the clearly established prong of qualified immunity and did not resolve whether officer's conduct was unreasonable, such that it amounted to excessive force, for first prong of qualified immunity test.

City police department was entitled to discretionary-act immunity from arrestee's negligent hiring, training, and supervision claims arising from officer's alleged actions in leaving her on hot asphalt for over two minutes while attempting to arrest her, which resulted in her suffering second- and third-degree burns, as police department's decision to hire and train the officer involved an element of choice, and decision on whether to train officers to suspects off hot asphalt during summer months when reasonably safe to do was subject to policy analysis.

Casino owner and casino security guard were not entitled to summary judgment on arrestee's claims of negligence and false imprisonment, arising from security guard's assistance in her arrest, which resulted in arrestee suffering from second- and third-degree burns from being left on hot asphalt for over two minutes during the summer, simply based on their joinder to officer's and police department's motion for summary judgment on § 1983 and negligence claims, since summary judgment for officer and police department was grounded in qualified immunity and governmental immunity, and casino owner and security guard were non-state actors, and further, grant of summary judgment was silent as to any findings of fact or conclusions of law on negligence and false imprisonment issues

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SCHOOL DISTRICTS - OHIO

State ex rel. Dunn v. Plain Local School District Board of Education

Supreme Court of Ohio - February 3, 2020 - N.E.3d - 2020 WL 525160 - 2020 -Ohio- 339

Village residents filed a mandamus action seeking to compel the placement of transfer proposal, which sought to transfer the territory of two villages from first local school district to second local school district, on March primary-election ballot.

The Supreme Court held that:

- The doctrine of laches did not bar village residents from filing mandamus action seeking to compel election board to place transfer proposal on March primary-election ballot;
- Village residents were not entitled to an order compelling school board to recertify transfer proposal to the elections board and specify that the proposal should be placed on the March ballot, rather than the November ballot; and
- Village residents’ claim seeking to compel elections board to review transfer proposal for placement on March primary-election ballot presented a controversy that was ripe for review.

The doctrine of laches did not bar village residents from filing mandamus action seeking to compel election board to place transfer proposal seeking to transfer village’s territory to a different school district on March primary-election ballot, even if residents unreasonably delayed between the date the transfer petition was filed with school board and the date residents filed their first mandamus action; the claim against elections board did not arise until the board verified the petition signatures and the school board certified the proposal back to the board, and school board certified the petition one day before residents filed their mandamus action.

Village residents were not entitled to an order compelling local school board to recertify transfer proposal to the elections board and specify that the proposal should be placed on the March ballot, rather than the November ballot, as indicated in the board’s certification of the proposal; statute required a school board only to specify the date of the election in its certification if the proposal was to be placed on a ballot at a special election, the proposal at issue was not being placed on a special election ballot, and thus the certification’s reference to the November election was inconsequential and had no binding effect.

Village residents’ claim seeking to compel elections board to review transfer proposal for placement on March primary-election ballot presented a controversy that was ripe for review by the Supreme Court, in mandamus action that sought to transfer the territory of villages from first local school district to second school district.

HOME RULE - RHODE ISLAND

K&W Automotive, LLC v. Town of Barrington

Supreme Court of Rhode Island - January 31, 2020 - A.3d - 2020 WL 501698

Owners of business licensed to sell tobacco and electronic cigarettes brought action seeking declaratory and injunctive relief to prevent town from enforcing tobacco ordinance that banned sale of flavored tobacco products and prohibiting the providing of any tobacco products to persons under age of 21 years.

The Superior Court granted plaintiffs' request for declaratory and injunctive relief after concluding that ordinance was null and void. Town appealed.

The Supreme Court held that town lacked authority under its home rule charter to enact the tobacco ordinance.

Town's tobacco ordinance, banning sale of flavored tobacco products and prohibiting the providing of any tobacco products to persons under age of 21 years, exceeded its authority under its home rule charter; matter was of statewide concern for which uniform regulation throughout the state was necessary or desirable, tobacco regulation had traditionally fallen within the purview of the state, and ordinance seemed to benefit businesses outside town.

SIFMA Follow Up Letter to SEC in Response to Proposed Exemptive Order.

SUMMARY

SIFMA submitted comments to the SEC on December 9, 2019 in response to the Proposed Exemptive Order. Subsequent to such submission, on December 12, 2019, representatives of SIFMA and its member firms met with staff from the Division of Trading and Markets and the Office of Municipal Securities, and met separately with Commissioner Lee and Commissioner Roisman and members of their respective staffs to discuss SIFMA's comments and concerns about the Proposed Exemptive Order.

SIFMA and member firm representatives also met separately with Commissioner Jackson and Commissioner Peirce and their respective staffs on December 17, 2019, and with Chairman Clayton and his staff on January 9, 2020, to further discuss those concerns.

Read the SIFMA Comment Letter.

Fitch Rtgs: Bondfield Default Highlights Project Completion Contractor Risk

Fitch Ratings-New York-11 February 2020: The default of a private project contractor for a number of large Design-Build Finance (DBF) social public-private partnership (P3s) projects in Canada highlights the need for robust risk assessment and efficient risk allocation, Fitch Ratings says. Bondfield Construction Company Limited defaulted on its payment obligations for a number of projects for which it served as contractor and filed for insolvency protection. The issues with Bondfield are the latest among a number of high profile construction challenges in the P3 sector, including the I-69 and Denver Great Hall projects, which underscore the importance of understanding and appropriately mitigating key completion risks.

Fitch recently published an Exposure Draft: Completion Risk Rating Criteria, which focuses attention on contractor risk and allocating risk across multiple parties.

Work on the Bondfield projects, located in the province of Ontario, has been delayed from a few months to more than a year as the government sponsor, Infrastructure Ontario, the surety provider, Zurich Insurance Company Ltd, and bank lenders have been working to find a solution to the defaults. The projects employed standard DBF structures, with banks providing all of the financing through construction loans. There was no equity injection, nor was there a project company that actively managed the construction process.

Although relatively simple in scope, the DBF structure used in these projects provided very little liquid security. The lack of adequate liquidity to cover the short and medium-term incremental costs of contractor replacement, such as search and retendering costs, meant lenders were reliant on the sureties when the contractor defaulted. Although sureties typically guarantee completion, they do not guarantee timely completion because the adjudication of claims can take a long time. The Bondfield projects ran out of liquidity before the surety provider was asked to step in. Public information is limited as these projects are not rated.

Many years of successful delivery of social P3s in Canada led to a level of comfort with contractor/completion risk and an increase in competitiveness in the sector that resulted in a compression of construction margins. Underestimating completion risk can result in bids that are mispriced for the level of risk present and lead to cost overruns and delays. In a competitive environment, contractor replacement may also become a challenge because potential replacement contractors are unlikely to assume the contract if the risk is significantly mispriced and will require a significantly higher cost/premium to complete.

Fitch’s completion analysis is heavily dependent on the opinions of technical experts, independent engineers (IEs). However, the processes and standards used in developing these opinions vary, and the influence of the issuer cannot be ignored. Fitch’s Exposure Draft: Completion Risk Rating Criteria consequently identifies minimum levels of performance security required to cover replacement costs relative to the IEs’ estimates based on contractor ratings.

These levels represent Fitch’s experience and judgment, which is informed by discussions with a variety of market experts with considerable experience in construction projects that have experienced delays and cost increases following a contractor default. Fitch will review the IE’s opinion and engage in discussions to ensure there is a complete understanding of the processes and standards used. The ‘right-sizing’ of performance security, both short-term liquid security and long-term performance security, to cover costs of replacing the contractor is vital to mitigate completion risk.

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Fitch Ratings: Coal Industry Declines Fueling Weaker Demographics for Some U.S. States

Fitch Ratings-New York-11 February 2020: The days of coal production meaningfully contributing to state economies appear to be numbered, posing a drag on state GDP, employment, and revenues and contributing to weaker demographics for some coal-producing U.S. states, according to a new report from Fitch Ratings.

Coal production has declined steadily for over a decade, though direct mining's contribution to U.S. states' economies has remained fairly steady. Notable outliers include West Virginia, where mining's contribution to state GDP gradually descended from 11.4% in 2008 to 7.2% in 2017. Wyoming is another notable outlier with mining's importance slightly growing over this time frame from 12.2% of state GDP in 2008 to 13.4% in 2017. However, this reflects Wyoming's 0.8% annual loss in total GDP over this time reflecting contractions in multiple industries.

Mining activity contributions to state GDP are likely to have softened in 2019 (based on data through the third-quarter). And as the coal industry continues to retract and the secondary impacts of employment and economic loss are incorporated, states unable to replace this economic engine have and will continue to suffer weakening demographics according to Senior Director Marcy Block. 'Met coal prices will exhibit short-term volatility due to numerous factors, and the current coronavirus outbreak also poses downside risks to global demand.'

'Some coal producing states are seeing declines in population and a greater proportion of aged residents, although these trends can be felt more acutely at lower levels of government,' said Block. 'Most coal-producing states have also seen significant losses in coal mining-related employment since 2011, particularly in those states where the industry was heavily labor intensive.'

In total, 41,773 coal mining jobs were lost between 2011 and 2018 with the largest job losses occurring in Kentucky (12,939 jobs) and West Virginia (10,807). For those states with the largest coal mining presence, retraction in this industry has been a drag on overall growth in nonfarm employment. Conversely, coal-related employment has grown in Montana and North Dakota since 2011.

Of the top 10 coal producing states, West Virginia's demographic trends are among the least favorable. Weak trends in population levels, aging of residents and unemployment are also common among Kentucky, Montana and Wyoming, whereas strong growth in oil and gas development (Colorado, North Dakota, and Texas) in addition to other sectors (Colorado and Texas) have strengthened trends in these states' population, GDP and employment.

'Global Trends Sustain Uncertainty for U.S. Coal Producing States' is available at 'www.fitchratings.com'.

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S&P: U.S. Airport Sector Well-Positioned While U.S. Ports Prepare For Volume Declines Under Our Baseline Coronavirus Scenario.

NEW YORK (S&P Global Ratings) Feb. 12, 2020–Based on our initial sample survey of U.S. airport operators, most are well-positioned to manage the operational and financial implications associated with our baseline economic assumptions related to the 2019 new coronavirus (COVID-19) outbreak. However, U.S. ports with exposure to China are preparing for a likely decline in container volume and further softening in trade, as cancelled shipping calls and trade in goods in both directions will be substantially affected by supply outages and disruptions to logistics networks. (For the most current overview, see “Global Credit Conditions: Coronavirus Casts Shadow Over Credit Outlook” published Feb. 11, 2020.)

S&P Global Ratings’ baseline assumption is that COVID-19 will be contained globally in March 2020, allowing travel and other restrictions to be unwound by the middle of the second quarter. We estimate that the virus could lower China’s GDP growth by 70 basis points (bps), to 5.0%, this year, with a peak effect in the first quarter before a rebound begins in the third quarter, and lost output largely recovers by the end of 2021. In turn, it would trim 30 bps from global GDP growth this year. However, if the outbreak is not brought under control in March, the economic impact could be much larger.

To assess what effect, if any, COVID-19 will have on U.S. airport sector, S&P Global Ratings surveyed a select group of airports mostly where U.S. health officials are conducting enhanced screening of passengers. Airports included in our sample are:

- Chicago’s O’Hare International Airport
- Dallas-Fort Worth International Airport
- Guam International Airport
- Honolulu International Airport
- John F. Kennedy International
- Los Angeles International Airport
- Newark Liberty International Airport

- San Francisco International Airport
- Washington Dulles International Airport

Our findings are as follows:

- Most of the airports we surveyed have limited exposure to flights from China;
- None of the airports have revised current enplanement forecasts for 2020 as yet, although we anticipate those with greater exposure will see some softening; and
- The cost recovery financial structure of airports mitigates the financial impact of lower-tha--expected activity levels.

We anticipate the generally favorable overall enplanement forecasts for this year will mitigate any potential weakening in air travel demand related to this health emergency under our baseline scenario.

For the U.S. port sector, we see the COVID-19 outbreak as an additional risk–on top of weakness due to the ongoing trade and tariff dispute–if it becomes a drag on the overall Chinese economy, dampening GDP growth that, in turn, will cause lower-than-forecast levels of goods imported to or exported from China. The demand shock is larger for China than for its trading partners, so all else being equal, this should mean that the decline in imports of goods and services (including tourism) will be larger than that for global exports. At the same time, trade in goods in both directions will be substantially affected by supply outages and disruptions to logistics networks. Overall, it seems likely that imports will be hardest hit and this will provide an offsetting, but moderate, positive contribution to growth that will unwind later in 2020. (Continue to check our website for an update on the port sector at https://www.spglobal.com/ratings/en/sector/u-s-public-finance/transportation)

We consider this latest health emergency an evolving one that we believe is still in its early stages. Therefore, it is difficult to say if it will have a material impact on those U.S. airport and port credits we rate. Consequently, this potential risk does not change the positive and negative 2020 sector outlooks we have for the airport and port sectors, respectively. During past outbreaks, we took no negative rating actions, since their impact was temporary. For example, the SARS coronavirus outbreak in 2003 led to a 14% reduction in total passengers for San Francisco International Airport's Asia traffic for the year, followed by a 19.5% rebound in Asia traffic the following year. However, should this outbreak create a persistent, durable, and material drag on air travel demand or trade flows, we would consider it a major credit risk, potentially leading us to lower the ratings on some issuers.

Related Research

Global Credit Conditions: Coronavirus Casts Shadow Over Credit Outlook, Feb. 11, 2020
Unless Coronavirus Spreads More Widely, Its Impact On The U.S. Economy Should Be Modest, Feb. 11, 2020
Coronavirus To Inflict A Large, Temporary Blow To China's Economy, Feb. 7, 2020
Coronavirus Impact: Key Takeaways From Our Articles, Feb. 12, 2020
Australian And New Zealand Airports Brace For More Pain With Coronavirus Outbreak, Feb. 4, 2020
Coronavirus Will Take A Big Toll On China's Transport Operators, Feb. 3, 2020

This report does not constitute a rating action.

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

View the list.

Virtually All Issuer Statements and Information Subject to SEC Rule 10b-5 (Anti-Fraud) Liability.

The Securities and Exchange Commission (SEC) announced in September 2019 that it would release a staff bulletin to provide more certainty on the SEC's position regarding the application of certain antifraud laws to municipal issuers, particularly Rule 10b-5 of the Securities Exchange Act of 1934 (the Act). The concern was raised as issuers and other obligated persons have been called upon to provide more material event disclosures, interim financials, and other disclosures pursuant to continuing disclosure obligations under Rule 15c2-12 of the Act. The SEC fulfilled the promise by releasing on Feb. 7, 2020, its "Application of Antifraud Provisions to Public Statements of Issuers and Obligated Persons of Municipal Securities in the Secondary Market: Staff Legal Bulletin No. 21 (OMS)" (the SEC Bulletin), which can be found here:

Rule 10b-5 prohibits, in connection with the purchase or sale of any security (including publicly offered bonds), the making of any untrue statement of material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. See 17 C.F.R. Section 240.10b-5(b) (2019).

There are several questions to consider, as provided in the SEC Bulletin, when determining whether someone has violated Rule 10b-5:

- Scienter Standard – Was there a mental state embracing intent to deceive, manipulate, or defraud (includes recklessness)?
- Materiality and Total Mix of Information – Is there a substantial likelihood that the information would have been viewed by a reasonable investor as having significantly altered the total mix of information?
- Information Reasonably Expected to Reach Investors – Did the statements made by the issuer provide information that is reasonably expected to reach investors?

The SEC staff provided that Rule 10b-5 applies to all issuer statements that are reasonably expected to reach investors, regardless of who the intended audience is and the method of delivery. Even though a statement was not made for the purpose of informing an investor it does not prevent liability or the application of Rule 10b-5. Such statements could include information on the issuer's website, information in public reports to other governmental entities, and information made in speeches, interviews or press releases. This is a very broad list and could include any statements made or information provided by an issuer, including board members, staff and elected officials, that is then promulgated on the internet or social media. For that reason, the SEC staff encourages issuers to adopt policies and procedures, which establish information dissemination principles, designate a compliance individual, and establish training requirements for staff among other things.

It is important for issuers to speak with an attorney about adopting such policies and procedures, providing appropriate disclaimer language in provided information, and ensuring compliance with Rule 10b-5.

Frost Brown Todd LLC – Beau F. Zoeller, Denise Y. Barkdull, David A. Rogers and Laura H.

Theilmann

[CUSIP: Municipal Volumes Increase Year over Year.]

"So far this year, we're starting to see pockets of very strong CUSIP request volume emerge in specific asset classes, most notably in corporate debt," said Gerard Faulkner, Director of Operations for CUSIP Global Services. "There is some volatility in the data, however, with other asset classes such as international debt and equity and some municipal categories still making big month-t--month moves."

Read Press Release.

Final Tax Regulations Offer More Certainty to Opportunity Zone Fund Managers and Investors: Orrick

Opportunity Zone (or "OZ") investment was hailed in 2018 and 2019 as the hottest and most innovative way of attracting significant private capital to distressed communities in the United States and its territories by offering significant tax deferrals, reductions and exclusions to investors with capital gains willing to make these investments. Despite its promise, OZ investment stalled in 2018 and 2019 due to significant uncertainty over how the generous tax incentives enacted by Congress under the December 2017 Tax Cuts and Jobs Act would be implemented by the U.S. Internal Revenue Service ("IRS"). The Final Regulations issued by the IRS on December 18, 2019 (the "Final Regulations"), have addressed many areas of major concern for managers of a "qualified opportunity fund" ("QOF") and investors in those QOFs, opening the door for many more opportunities for these tax-advantaged investments. The Final Regulations are effective for tax years beginning after March 13, 2020 (but an election may be made to apply the Final Regulations retroactively, which likely will be applied in most cases). Where early application of the Final Regulations is not elected and prior to effectiveness of the Final Regulations, the rules applicable to OZ investment continue to be those under the regulations proposed by Treasury and the IRS on October 29, 2018 and May 1, 2019 (the "Proposed Regulations").

Orrick's November 2018 client alert on Opportunity Zones and Qualified Opportunity Funds Accelerating U.S. Community Impact Financing sets forth the key elements of the tax benefits provided by investment in Opportunity Zones. In large part, these key elements remain unchanged:

- WHAT ARE OPPORTUNITY ZONES: Qualified Opportunity Zones ("QOZ") are approximately 8,700 low-income census tracts, and areas contiguous to such tracts, throughout the United States and its territories that were selected by the chief executive (e.g., governor) of each state or territory and confirmed by the IRS. These will not change without an act of Congress.
- WHO IS ELIGIBLE TO RECEIVE TAX BENEFITS: Any U.S. taxpayer who invests capital gains in a QOF and elects to receive OZ tax benefits with respect to its investment.
- WHAT ARE THE TAX BENEFITS: Three types are offered by the OZ program: (1) the deferral of tax on capital gain being contributed as equity to a QOF, until 2026; (2) increase in basis related to a QOF interest, resulting in exclusion of a portion of capital gain from deferred tax; and (3) a further increase in basis related to a QOF interest, so as to exclude gain on a QOF interest if held for at least 10 years.
- WHAT IS A QOF REQUIRED TO DO: A QOF, organized as a corporation or a partnership, must

meet a test (the "QOF 90% Test") each six months that requires the QOF to hold 90% of its assets in equity of a Qualified Opportunity Zone Business ("QOZB") or a Qualified Opportunity Zone Property ("QOZP"); QOZBs in turn must hold substantially all of their tangible property (i.e., 70%) as Qualified Opportunity Zone Business Property ("QOZB Property"). The QOF 90% Test has many technical aspects that led to confusion and uncertainty and resulted in hundreds of comments to the October 2018 and May 2019 Proposed Regulations that preceded the Final Regulations, and much of the 500 pages of the Final Regulations appear to be aimed at allowing for more flexible application of the QOF 90% Test. Failure to meet the QOF 90% Test for any six-month period can lead to a penalty being assessed on the QOF (and each partner in a QOF where the QOF is organized as a partnership) equal to the deficiency multiplied by the IRS's underpayment penalty rate, unless the QOF can show the failure was due to reasonable cause (i.e., factors beyond its control, such as delays in required government approvals).

The Final Regulations

The Final Regulations are divided into six parts, corresponding with operative sections of the Internal Revenue Code: (1) Regulation Section 1.1400Z2(a)-1 deals with the procedure for deferring gains and sets forth the operative definitions; (2) Regulation Section 1.1400Z2(b)-1 deals with the inclusion of gains that have been deferred; (3) Regulation Section 1.1400Z2(c)-1 deals with issues associated with QOF investments that have been held for at least 10 years and that are eligible for the tax exemption; (4) Regulation Section 1.1400Z2(c)-1 sets forth the requirements for QOZP; (5) Regulation Section 1.1400Z2(d)-2 sets forth the QOZB Property requirements; and (6) Regulation Section 1.1400Z2f)-1 deals with the reinvestment of proceeds and establishes a number of anti-abuse rules.

The focus of this Client Alert is certain of the changes introduced by the Final Regulations, which serve to encourage investment in operating businesses and commingled funds, arguably the areas which hold the most promise for positively impacting existing communities in the Opportunity Zones.

Changes and Clarifications Introduced by the Final Regulations

Better Rules for Operating Businesses

More Flexible Qualifying Rules for QOZBs: QOF investment in operating businesses are expected to be through QOZBs. By way of review, a QOZB is a trade or business that meets each of the following requirements:

- Substantially all (i.e., at least 70%) of the tangible property owned or leased in connection with the trade or business must be QOZB Property (this 70% requirement provides an incentive for QOFs to invest in QOZBs rather than directly into QOZP, because all of a QOF's investment in QOZP must otherwise qualify (not just 70%)). Under the Final Regulations, leased property can now qualify as QOZB Property if entered into at market rental rates (unless the lessor is a state, city or tribal nation where market rates are not required) and valued as set forth in the Final Regulations.
- Tangible property held in connection with a QOZB must either be "original use" or if not original use, "substantially improved" (i.e., improvements equal in value to the tax basis of the tangible property must be made by the QOZB). Under the Final Regulations, (i) this "substantial improvement" test can now be satisfied on an aggregate basis rather than on an asset-by-asset basis if the assets are in the same QOZ, are used in the same trade or business and they improve the functionality of the property to be improved, and (ii) brownfields and vacant land (i.e., land vacant for at least one year) are generally exempted from the "substantial improvement" test and treated as original use, except property that becomes vacant in a designated QOZ must be vacant for three years in order to be treated as original-use property. This loosening of the substantial

improvement rules provides greater certainty to a wider variety of operating businesses, both as to how to measure substantial improvement and how to manage abandoned lots.
- The QOZB must satisfy certain operating tests, set forth below, all of which were loosened under the Final Regulations.

(i) First, at least 50% of the total gross income of the QOZB must be derived from the active conduct of the trade or business in the QOZ. Under the Final Regulations, (i) this test can be satisfied based on where employees (which now includes independent contractors) are located (based on hours worked or compensation), based on the location of management and key tangible assets used in the business or based on facts and circumstances, all of which invite a wider range of businesses (operating business, start-up businesses, manufacturing businesses, tech businesses and others) to be able to be capitalized with OZ investment.

(ii) Second, a substantial portion (i.e., at least 40%) of the intangible property of the QOZB must be used in the active conduct of the trade or business in the QOZ. According to the Final Regulations, intangible property is treated as used in an active trade or business if the use is normal, usual or customary in the conduct of the trade or business and the intangible property is used in the OZ in the business to contribute to the generation of gross income for the business. There may be uncertainty about the application of these principles in specific situations.

(iii) Third, less than 5% of the average of the aggregate unadjusted bases of the property of the QOZB must be attributable to nonqualified financial property (e.g., cash and cash equivalents). The Proposed Regulations provided a safe-harbor to allowing capital contributed to the QOZB to be spent to develop a property over a period of 31 months, as long as there is a written plan and schedule in place for deploying the capital and the capital is actually used in a manner substantially consistent with the plan and schedule. The Final Regulations clarify that the 31-month spending period can be applied to a start-up operating business and provide that this period can be extended to 62 months if there are multiple tranches of capital contributions to the QOZB.

- The QOZB cannot be a so-called “sin business,” such as massage parlors, tanning salons, tattoo parlors, liquor stores and golf courses, except that the Final Regulations permit a QOZB to have a small portion of its assets (i.e., less than 5%) in such businesses as part of a larger development, such as a liquor store that is part of a larger shopping mall or a tanning salon that is part of a hotel’s spa facilities.

Better Rules for Commingled Funds and Multi-Tiered Investment

Sales of Property by Individual QOZBs. Under the Proposed Regulations, a QOF investor could only elect after a 10-year holding period to exclude gains from the sale of qualifying investments or capital gain property sold by a QOF operating in partnership or S corporation form, but not property sold by its QOZB. This approach had a chilling effect on the formation of commingled funds that are invested in multiple properties or businesses, because it was very hard to plan a tax-free exit by the QOF for multiple assets at the same time in the future. The Final Regulations provide that capital gains from the sale of property by a QOZB that is held by such a QOF may also be excluded from income as long as the investor’s qualifying investment in the QOF has been held for 10 years. In such event, the amount of gain from such QOFs or its QOZB’s asset sales that an investor in the QOF may elect to exclude each year will reduce the amount of the investor’s interest in the QOF that remains a qualifying QOF investment eligible for further QOF tax benefits.

Disposition by QOF Investors of Stakes in Multi-Asset Funds. As noted above, the rule of the Proposed Regulations made the tax exemption available only upon disposition by a QOF after the 10-year holding period. However, in a typical sale by a QOF, a portion of the gain would not be capital gain and thereby would potentially reduce the QOZ tax benefits as compared to a sale by the QOF investor of its interests in the QOF which often led to structuring issues for a QOF with multiple properties or QOZBs. The Final Regulations significantly expand the proposed rules by providing for gain exclusion for asset sales. In particular, the Final Regulations permit a taxpayer that invests in a QOF partnership or S corporation to make an election for each taxable year to exclude a QOF's gains and losses from all sales or exchanges in the taxable year, rather than just capital gains or losses. Thus, the Final Regulations more closely align the QOZ tax benefits on a sale by a QOF with the benefits on a sale by the QOF investor of its interests in the QOF, thereby providing more flexibility for multi-asset QOFs to sell underlying assets, businesses and real estate projects.

Distributions. The Final Regulations also clarify that certain distributions by a QOF to its investors may qualify for the exemption, and certain interim distributions offered prior to the end of the 10-year holding period may be made tax free to the extent an investor's basis has been stepped-up in an amount sufficient to cover the distribution (whether due to partnership tax allocations of profit and loss, an allocation of leverage incurred by the QOF, upon payment of deferred tax in 2026, or otherwise).

Multi-Tier Investment; Investment by Members of a Consolidated Group. Any U.S. taxpayer seeking to obtain the tax benefits offered by the OZ program must invest directly into a QOF rather than through an intermediary such as a fund-of-funds that might act to aggregate investors' capital gains for purpose of investment in QOFs. The Final Regulations have not changed these rules but have loosened the rules relating to consolidated groups. Under the Proposed Regulations, if a consolidated group wished to invest in a QOF, it had to do so through its parent but could not do so through other members of the consolidated group. The Final Regulations have eliminated this restriction. Now, any member of a corporate consolidated group can make the investment.

Continuing Questions and Uncertainty

Although the Final Regulations have provided a great deal of useful guidance that is generally favorable to promoting OZ investment, many issues remain uncertain and will require further clarification by the IRS or through the development of practices. The preamble to the Final Regulations specifies certain areas for future guidance. Among the areas where practical issues continue are the manner for integrating partnership tax accounting rules with OZ accounting, FIRPTA withholding tax, the consequences of failing to comply with the 31-month plan for spending capital and other violations of tax requirements (e.g., the 70%, 40% and 50% tests, and more).

Conclusion

The issuance of Final Regulations represents another significant step toward providing diverse place-based investment and community development for the benefit of low-income communities throughout the United States and the investors in those communities. With added rules providing flexibility to operating businesses and commingled funds, many in the industry expect a growth in QOFs attracting private capital to a variety of businesses that go well beyond the OZ real estate developments seen in 2018 and 2019.

February 7, 2020

Orrick, Herrington & Sutcliffe LLP

SEC Legal Bulletin: Antifraud Provisions Apply to Public Statements by Public Officials - Day Pitney Alert

On February 7, the Securities and Exchange Commission (SEC) provided a legal bulletin setting forth the views of the Office of Municipal Securities (the Office) regarding the application of the antifraud provisions of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder (collectively, the antifraud provisions) with respect to public statements made by issuers of municipal securities.[1] The Office indicated it issued the bulletin in response to questions raised about the application of antifraud provisions to statements of municipal securities issuers.

Antifraud Provisions

The antifraud provisions apply to the purchase and sale of municipal securities in the primary and secondary markets. They prohibit an issuer from making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. The primary elements in determining whether there has been a violation of these provisions are scienter and materiality.

Scienter

Scienter involves the intent to deceive, manipulate or defraud. However, the courts and the SEC have stated that scienter may be satisfied by a showing of recklessness. Recklessness is an extreme departure from the standards of ordinary care and involves the danger of misleading market participants known to the person making the statement, or so obvious that the official must have been aware of the possibility of misleading the market participants

Materiality

Under the antifraud provisions, a fact is material if there is a substantial likelihood that the information would have been viewed by the reasonable investor as having significantly altered the total mix of information available to an investor. Determining whether a statement is material is based on an analysis of facts and circumstances (a total mix analysis). The Office noted that it believes all statements of a municipal securities issuer that are reasonably expected to reach investors and trading markets are subject to the antifraud provisions even if the issuer is in compliance with its continuing disclosure undertakings. However, the total mix analysis may affect the materiality of a public statement made by an issuer and may depend on whether access to accurate, timely and comprehensive information about an issuer is “uneven and inefficient” rather than regularly available to investors through the MSRB’s EMMA system or another investor-based communication vehicle such as an investor website.

Information Reasonably Expected to Reach Investors

The Office further noted that “information reasonably expected to reach investors” may be in the form of public announcements, press releases, interviews with media representatives and discussions with groups. The fact that the information is not published for purposes of informing the securities markets does not alter the mandate that it not violate the antifraud provisions. Information reasonably expected to reach investors includes the following:

Information on Websites

- Information needs to be accurate and not misleading.
- Historical information should be accurately reflected as such.
- Summaries should be accurately reflected as such, with layered links to more detailed information.
- Hyperlinks should be included with care as the information may be attributed to the issuer.
  – If an issuer was involved in the preparation of the hyperlinked information, the information may be attributed to the issuer.
  – If an issuer endorses or approves the hyperlinked information, it may be attributed to the issuer.
  – Issuers should add exit notices or intermediate screens before visitors enter the hyperlinked site, to minimize risk of attribution.
  – Issuers should add disclaimers to minimize the risk of attribution.

Public Reports Delivered to Other Governmental Bodies

- Comprehensive Annual Financial Reports (CAFRs)
- Budgets
- Mid-year financial reports
- Reports submitted by a municipality to a state agency
- Reports made by a state or local official to a legislative body (state legislature, city council, etc.)
- Reports made part of a public record and available to the public

Statements Made by Issuer Officials

"Officials" include those who may be viewed as having knowledge regarding the financial condition and operation of the issuer, and statements may include:

- Speeches
- Public announcements
- Interviews with media
- Statements disseminated through other avenues, including social media
- Disclosure Policy and Procedures

Finally, the Office noted that proper disclosure policies and procedures, when consistently implemented, can benefit an issuer in its compliance with the antifraud provisions, and it encouraged issuers to adopt appropriate policies.

The attorneys in Day Pitney's Municipal Finance group routinely counsel clients on addressing compliance with the antifraud provisions and drafting disclosure policies and procedures. Please feel free to contact any of the attorneys listed to the right of this alert if you would like to discuss this alert, compliance with the antifraud provisions or drafting a disclosure policy.

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[1] The Bulletin can be found here. Note that the statements in the bulletin represent the views of the Office and the bulletin is not a rule, regulation or statement of the SEC and has no legal force or effect.

Publisher: Day Pitney Alert

Day Pitney Author(s) Namita Tripathi Shah

February 11, 2020

Puerto Rico Reaches Deal to Settle $35 Billion in Debt.

The agreement with general-obligation bondholders gives them more cash up front and more attractive debt, while costing the territory $1 billion less than previously expected.

Puerto Rico has reached a deal with creditors who hold $35 billion in its general obligation bonds, passing an important milestone as it tries to resolve its $129 billion debt crisis.

The agreement, contained in a regulatory filing made Sunday evening by the territory's federal oversight board, revises parts of the debt-adjustment plan it announced last year and makes peace with some of its most litigious creditors, potentially opening a shorter path out of bankruptcy.

Under the restructuring plan released in September, the board suggested paying the general obligation bondholders $11.8 billion, including $2 billion up front. Under the new agreement, the debt would be settled for $10.7 billion, with $3.8 billion up front.

José Carrión, the chairman of the oversight board, called the deal "a win for Puerto Rico" that would also shorten the maturities of its new debts by a decade. The new terms, Mr. Carrión said, won "significantly more support from bondholders" than Puerto Rico had until now.

The deal still requires the approval of Puerto Rico's Legislature, but it would provide for holders of the island's general-obligation bonds to exchange them for a combination of cash and new debt. The new debt would be an even split of general-obligation bonds and new bonds backed by Puerto Rico's sales tax — a more attractive option than the old proposal, which included only general obligation bonds.

The new bonds would be for a shorter duration than those they would replace: 20 years instead of 30. That should help prevent the kind of budget deficits that led the island to borrow too much in the past, said Natalie Jaresko, the executive director of the federal oversight board.

"We are doing a great deal in these agreements to protect the people of Puerto Rico," she said.

Although the agreement removes another of the roadblocks facing the island as it tries to claw its way out of debt, a number of hurdles remain.

The agreement does not include bonds issued by Puerto Rico's power authority or the other bodies that provide drinking water and public works on the island. Nor does it apply to the roughly $50 billion in pensions that the island owes its retired government workers — the territory's biggest debt.

Puerto Rico's governor, Wanda Vázquez, supported the debt restructuring plan last year, but she recently said the retirees should get sweeteners, too.

The territory was able to improve the deal for bondholders because of a recent economic windfall. Though the island's economy remains fragile — it was battered by a major hurricane that caused a monthslong power failure in 2017 and recently by a series of earthquakes — the government has built up a large supply of cash.

That's mainly because it has been sitting on the money it would have been paying to bondholders had it not defaulted in 2016. But the island has also benefited from a flurry of post-disaster rebuilding, which has led to more business-income tax revenue than expected.

The oversight board, which was set up in 2016, has also engaged in strong-arm negotiations, including challenging the supremacy of general-obligation creditors, who are accustomed to being paid first.

It also said general-obligation bonds brought to market starting in 2012 had exceeded the territory's debt limit and would have to be voided. That would have meant the investors holding them — mostly hedge funds and other financial institutions — would have to pay back any interest or principal they had received.

While angry bondholders threatened lawsuits, the board used that threat as leverage. It offered holders of pre-2012 bonds 64 cents on the dollar, and those holding later vintages either 45 cents or 35 cents on the dollar.

Holders of the later bonds were free to pursue their lawsuits, and the oversight board would set up a litigation trust to pay them up to 64 cents on the dollar if they won. But if they lost — if the court confirmed that their bonds were invalid — those bondholders would get nothing.

Those bondholders said the board's offer amounted to illegal discrimination and vowed to sue. Among them were Aurelius Capital Management, which has pursued aggressive litigation strategies in other debt meltdowns, most famously in Argentina, where the lawsuits took years to resolve.

Those suits were put on hold after the judge presiding over Puerto Rico's bankruptcy, Laura Taylor Swain, ordered both sides into mediation.

The agreement grew out of those talks, and it will give all three groups of general-obligation bondholders better recovery rates. Those who were initially promised 64 cents on the dollar would get 74.9 cents, those offered 45 cents would get 69.9 cents, and those offered 35 cents would get 65.4 cents.

The deal must still be incorporated into the overall debt-adjustment plan that requires Judge Swain's approval. She has scheduled hearings on the plan for October.

The New York Times

By Mary Williams Walsh

Feb. 10, 2020

Puerto Rico Oversight Board Eyes Bankruptcy Exit by Year-End.

SAN JUAN — Puerto Rico's long-running bankruptcy could cross the finish line by the end of the year under a schedule proposed by the U.S. commonwealth's federally created financial oversight board, according to a court filing on Monday.

A report filed by a mediation team said exiting bankruptcy prior to the end of 2020 is in "the best interests of all parties" and that it supports the board's schedule, which calls for a federal court confirmation hearing to begin Oct. 13 on a newly revised plan to restructure the Caribbean island's core government debt.

Puerto Rico commenced a form of municipal bankruptcy in May 2017 to restructure about $120 billion of debt and liabilities.

Mediators acknowledged that confirmation of the so-called plan of adjustment for $35 billion of bonds and claims and more than $50 billion of pension obligations will be contested by certain creditors.

Meanwhile, oversight board executive director Natalie Jaresko defended the deal announced on Sunday with an expanded group of investors who own about $8 billion of bonds as a “significant win” that would reduce the $35 billion to less than $11 billion.

“We are doing a great deal in this agreement to protect the people of Puerto Rico and bring us out of bankruptcy,” she told reporters.

Approval of the deal by the board was not unanimous, with board member David Skeel tweeting on Monday that he “concluded there still are too many loose ends and I needed to vote no.”

Municipal Market Analytics said the agreement “represents a doubling-down on aggressive bets on future growth, forcing future lenders to think of (Puerto Rico) as a permanently speculative credit profile.”

Puerto Rico Governor Wanda Vazquez remains opposed. The island’s fiscal agency released a statement on Monday reiterating her position that if bondholders get better treatment so should retired government workers.

Under the agreement, general obligation (GO) bondholders would face average value reductions of 29%, which is lower than haircuts of 36% to 65% that were included in a prior plan of adjustment announced in September. Some GO bonds issued in 2012 and 2014 traded at higher prices on Monday.

Jaresko said the treatment of pensions, which includes a maximum 8.5% cut for retirees who receive more than $1,200 in monthly benefits, would not be revisited.

By Reuters

Feb. 10, 2020

(Reporting by Luis Valentin Ortiz in San Juan and Karen Pierog in Chicago; Editing by Matthew Lewis)

Puerto Rico’s Debt Deal Has a $16 Billion Unknown.

General-obligation bondholders reached an agreement, but the bankruptcy may hinge on the treatment of other debt.

The seemingly never-ending saga of Puerto Rico’s unprecedented bankruptcy took another turn during the weekend. In what’s being hailed as a big step forward for the commonwealth, it reached a tentative agreement with Aurelius Capital Management, Autonomy Capital and other investors who own $8 billion of the island’s bonds.

The move is certainly significant. For one, it appears to end the push to invalidate entirely some of the island’s general-obligation bonds. Also, Aurelius is infamous on Wall Street for spending more than a decade in court fighting Argentina for repayment on its bonds, so the fact that it seems to see the limits of a hardball strategy is reason to believe the finish line could be in sight for Puerto Rico. Bloomberg News's Michelle Kaske reported the details:

Continue reading.

Bloomberg Markets

By Brian Chappatta

February 11, 2020, 7:30 AM PST

Bill Offers $400M for State, Local Government Cybersecurity.

The just-introduced bipartisan bill would send the money to state and local governments through the Department of Homeland Security, which would also create a new federal strategy for cybersecurity.

With state and local governments beset by a precipitous rise in cyberattacks, new federal legislation might provide some necessary cover where needed.

The State and Local Cybersecurity Improvement Act would create a grant program worth $400 million to finance cybersecurity efforts in communities across the country, according to a release. Eligible communities would be able to apply for funds, provided through the Department of Homeland Security, which would be allocated to assist in areas like vulnerability scanning and testing, cyberworkforce development and intelligence sharing, according to the bill text.

The bill would also require DHS' Cybersecurity and Infrastructure Security Agency (CISA) to develop an overall strategy to improve the cybersecurity posture of those communities. Communities would also be obligated to create their own cybersecurity plans, illustrating how monies would be spent in service of those goals.

The legislation, which was introduced by a group of bipartisan representatives associated with the House Committee on Homeland Security, offers a potential workaround for cash-strapped municipalities looking to bolster their security budgets.

One of the sponsors of the bill, Cedric Richmond, a Louisiana representative and chair of the Homeland Security Committee's Cybersecurity, Infrastructure Protection and Innovation Subcommittee, explained in a statement his support for the legislation.

"Louisiana has long been vulnerable to cyberattacks, and this bill offers the resources needed to ensure protection against potential threats," said Richmond. "I'm proud to introduce this comprehensive measure to give Louisiana and other states across the country the proper framework they need to implement vital cybersecurity plans."

GOVTECH.COM

BY LUCAS ROPEK / FEBRUARY 12, 2020

Fitch Rtgs: Puerto Rico ERS Ruling Consistent with Expectations

Fitch Ratings-New York-10 February 2020: The U.S. Court of Appeals for the First Circuit Jan. 30 ruling in the matter of the Employees Retirement System (ERS) of the Government of the Commonwealth of Puerto Rico is consistent with Fitch Ratings' approach to considering provisions of the U.S. Bankruptcy Code in local government ratings. The ruling affirmed the District Court's denial of the plaintiff bondholders' arguments on three distinct points. The bondholders argued that their security interests fit within exceptions under section 552 of the Code, which relates to the disposition of postpetition assets of a debtor in bankruptcy. They also argued that the revenues pledged to them were special revenues under section 902 of the Code, exempting them from the automatic stay in a municipal bankruptcy. Additionally, the bondholders argued that since the bonds were issued before PROMESA was enacted, applying section 552 to the ERS bonds to impair retroactively the bondholders' security interests would violate the Takings Clause of the U.S. Constitution. The First Circuit rejected all three arguments.

The First Circuit decision commented extensively on why the section 552 exceptions do not support the continuation of the lien on employer pension contributions following a bankruptcy petition. Among other factors, the First Circuit cited language in the Official Statement for the ERS bonds that makes clear that legislative appropriations for employer contributions could be reduced if funds were insufficient. In fact, as stated in the ruling, the Commonwealth twice amended the Enabling Act after the bonds were issued to address its financial crisis by altering the required contributions.

The bondholders argued that the pledged revenues for the ERS bonds are special revenues under definitions 902(2)(A) and (D) of the code. Since liens on special revenues continue postpetition, a ruling in favor of the bondholders on this point would have obviated the need for a ruling regarding section 552. Definition 902(2)(A) is generally understood to cover revenue bonds whose pledged revenues are derived from operations of entities such as transportation or utility systems. The First Circuit concluded that 902(2)(A) applies to "physical system[s] of providing services to third parties." Fitch believes it is something of a stretch to consider legislatively appropriated employer contributions to a pension system to be derived from a system, physical or otherwise, as the funds contribute to, but are not generated by, the operation of the system. The payment amount is derived from a percentage of employee payrolls but is paid with general commonwealth revenues. Similarly, definition 902(2)(D) describes revenues derived from a function of the debtor, which does not seem an apt description of pension contributions. In reaching its holding, the First Circuit cited a standard dictionary definition of "derive" to conclude employer contributions are not within the special revenue definitions in the Code.

Even if Fitch believed there was an argument to be made that employer contributions could fall under either definition in section 902(2), we would not rate such bonds as secured by pledged special revenues as there is no assurance that a bankruptcy judge would have the same interpretation. Fitch has a high bar for considering pledged revenues to be special revenues in its rating analysis, and if we believe there is any ambiguity we perform additional legal analysis.

The First Circuit's 2019 ruling on special revenues (in the Puerto Rico Highways and Transportation Authority case) challenged the municipal market's long-held views of the treatment of bonds secured by pledged special revenues in a bankruptcy, but did not alter the interpretation of the definitions of special revenues themselves. As such, Fitch revised its tax-supported rating criteria earlier this year to provide for a notching relationship between dedicated tax bonds and Issuer Default Ratings without changing its method of evaluating whether bonds are secured by pledged special revenues.

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Puerto Rico Strikes Debt Deal With Aurelius and Autonomy.

Aurelius Capital Management, Autonomy Capital and other investors who own $8 billion of Puerto Rico bonds struck a tentative pact with the island to reduce the nearly $18 billion of debt it owes, a major step in the commonwealth's record bankruptcy.

The potential deal with the commonwealth's financial oversight board brings together rival bondholder groups that had been divided in the past year over whether debt Puerto Rico sold in 2012 and 2014 is invalid. Aurelius and Autonomy, which hold securities sold in those years, joined the tentative agreement, which other bondholders signed in June, according to a securities filing.

While more creditors joined the agreement, Governor Wanda Vazquez said she can't support the deal in its current form because it doesn't ease proposed pension cuts to some retirees and public workers. A debt restructuring requires approval from island lawmakers.

Another group of investors, which includes BlackRock Financial Management Inc., and Brigade Capital Management, have also signed on to the pact, according to the filing. The potential deal would cut Puerto Rico general obligations and debt guaranteed by the commonwealth to $10.7 billion from $17.8 billion, about a 40% reduction. The overall plan slashes debt and non-bond claims to $11 billion from $35 billion, a $24 billion reduction.

"The new and more favorable agreement is a win for Puerto Rico," José Carrión, chairman of the island's financial oversight board, which manages the commonwealth's bankruptcy, said in a statement. "It lowers total debt payments relative to the agreement we reached last year, pays off Commonwealth debt sooner, and has significantly more support from bondholders, further facilitating Puerto Rico's exit from the bankruptcy that has stretched over three years."

As part of the plan, the board agreed to end its legal challenge to cancel $6 billion of debt sold in 2012 and 2014. In return, bondholders agreed to take 65.4 cents on the dollar for the 2014 debt — up from the board's earlier offer of 35 cents — and 69.9 cents for 2012 bonds, up from 45 cents. Investors would receive new bonds as well as a split of a $3.8 billion cash settlement, according to a new plan support agreement posted Sunday on the board's website.

Major Portion

The newly restructured bonds will include a blend of general obligations and sales-tax bonds with a junior lien. The debt will be repaid over 20 years rather than the 30-year schedule in an earlier plan. Puerto Rico would then pay a maximum $1.5 billion in annual debt service on the new securities and the island's $12 billion of outstanding sales-tax debt, down from $4.2 billion the island paid in 2017.

Puerto Rico owes nearly $18 billion of general obligations and commonwealth-backed bonds. It's the last major portion of debt that needs to be resolved in order for the island to exit from bankruptcy, the largest ever in the $3.8 trillion municipal-bond market. Puerto Rico must also fix a broke pension system that's promised $50 billion to current and future retirees.

It's those public workers that Governor Vazquez says she is trying to protect. If terms for bondholders improve, such as giving new sales-tax debt in exchange for general obligations, than retirees must receive better terms as well, Vazquez said in a statement Sunday.

"After carefully analyzing the terms of this new agreement and given that the fiscal oversight board refused to improve the treatment of pensioners in it, my government has determined to not join this new agreement," Vazquez said in the statement.

The commonwealth's financial oversight board in May 2017 sought bankruptcy for the island after more than a decade of economic decline, years of borrowing to pay for operating expenses and population loss. The board in January 2019 asked the bankruptcy court to invalidate 2012 and 2014 bonds, claiming the sales breached debt limits imposed in the island's constitution.

Prices on some Puerto Rico securities soared amid speculation that additional bondholders, including Aurelius, were about to sign on to the debt deal. General obligation bonds with an 8% coupon and maturing in 2035 traded Friday at 74 cents on the dollar, up from 69.6 cents on Tuesday, according to data complied by Bloomberg.

Bloomberg Markets

by Michelle Kaske

February 9, 2020

Hedge Fund Support For Puerto Rico Bond Deal Is Only Half The Fight.

The tentative agreement between Puerto Rico's financial oversight board and investors holding $8 billion of the bankrupt commonwealth's debt brings together rival bondholder groups that had been holding out for better terms. Still, that may not be enough to clinch the deal.

Puerto Rico Governor Wanda Vazquez has rejected the pact in its current form, bond insurers are in opposition, and it crimps payouts to other investors holding about $16 billion of debt with weaker claims who are sure to dispute it.

The deal, if enacted, would help Puerto Rico cut some of its general-obligation and commonwealth-guaranteed bond debt and interest almost in half to $10.7 billion from $18.7 billion. The decision by Aurelius Capital Management and Autonomy Capital to sign onto the agreement could help accelerate the island's case, with lead mediator Judge Barbara Houser anticipating much of Puerto

Rico’s government exiting bankruptcy by the end of the year.

“It’s a pretty good recovery for commonwealth bondholders and obviously it comes at the expense of other stakeholders,” said Matt Fabian, partner at Municipal Markets Analytics.

Aurelius, Autonomy and other bond investors would get between 65.4 cents to 77.6 cents on the dollar for central-government backed securities, up from an earlier offer of 23 cents to 73 cents. They would receive new bonds — a blend of general obligations and sales-tax bonds with a junior-lien pledge — as well as a split of a $3.8 billion cash settlement.

Holders of about $16 billion of other debt, such has highway bonds that are repaid with revenue that Puerto Rico can claw back and use for other spending and pension-obligation bonds, would get about three cents on the dollar. Although there is ongoing litigation that could affect that repayment.

Broader Plan

The tentative agreement is part of a broader plan to cut the island’s debt and non-bond bankruptcy claims to $11 billion from $35 billion, a $24 billion reduction. Puerto Rico’s congressionally mandated financial oversight board has until Feb. 28 to file a revision that includes fixing its broke pension system that owes current and future retirees $50 billion.

Getting Aurelius and Autonomy to sign on was key. The two firms have been at odds with other bondholders over who would be left holding the bag after the oversight board last year asked the bankruptcy court to cancel $6 billion of bonds sold in 2012 and 2014, claiming they breached the island’s constitutional debt limit. The proposed agreement would end that challenge.

The next test for the deal is to gain support from island lawmakers. Vazquez said Sunday after it was announced that she wants to see better terms for public workers given how favorably it treats Wall Street. Puerto Rico will hold general elections in November, with its legislators up for re-election and Vazquez seeking to remain in the governor’s mansion. This debt plan needs legislative approval unless the oversight board seeks a cramdown from the court.

Bond insurance companies Ambac Financial Group Inc., Assured Guaranty Ltd., National Public Finance Guarantee Corp. and Financial Guaranty Insurance Co. haven’t signed on to the deal, claiming the board didn’t “meaningfully engage” with them. The agreement is based on inaccurate and incomplete data on Puerto Rico’s economy, cash balances and debt capacity, the companies said Monday evening in a joint statement.

“The primary beneficiaries and architects of the plan support agreement are hedge funds, having shaken bonds from the hands of retail and long-term supporters and bondholders of Puerto Rico (many of which are on-island retirees) at pennies on the dollar,” the bond insurers said in the statement.

Cancellation Fear

Prices on Puerto Rico securities plummeted to record lows in the aftermath of Hurricane Maria. General obligations with an 8% coupon fell to an average low of 21.8 cents on the dollar on Dec. 18, 2017 and junior-lien sales-tax bonds known as Cofinas dropped to less than 10 cents at that time, according to data compiled by Bloomberg.

While some hedge funds and distressed buyers did scoop up the debt at those levels, others bought 8% general-obligation bonds in the primary market at 93 cents when Puerto Rico issued the debt in

2014.

Bloomberg Markets

by Michelle Kaske

February 12, 2020

[Chicago's Bonds Aren't Akin to Puerto Rico's.]

Chicago has been clear that the proceeds will repay higher-cost debt. That's not a con but the equivalent of refinancing a mortgage to help pay for a child's education.

Regarding your editorial "Chicago's Puerto Rican Bonds" (Feb. 1): Labeling Chicago's new issuance of sales-tax-backed bonds a "shell scheme" is a poor analogy. Chicago has been clear that the proceeds will repay higher-cost debt. That's not a con but the equivalent of refinancing a mortgage to help pay for a child's education. Rather than "diluting" other creditors, the city's move helps it achieve its goals. In positing that investors are so starved for yield that Chicago was able to essentially dupe them, the editorial overlooks key realities.

First, it's wrong to compare the yields on municipal bonds and Treasurys. Chicago's securitization bonds carry a 5% coupon and pay tax-free interest whereas Treasurys are taxable, thereby explaining the heightened demand for the former.

Second, the tax revenues backing the bonds are paid from the state of Illinois, which agreed to help securitize them and promised not to impair bondholders. The U.S. Constitution protects investors against states breaking such promises. And in bankruptcy, the Fifth Amendment would prohibit Chicago from taking property, which is determined under Illinois law.

The notion that a recession could prompt politicians to pick pensioners over bondholders is also a red herring. Investors know—and price in—that the Illinois Constitution prevents the diminishment or impairment of pensioners, as the state's Supreme Court held in 2015.

That Chicago, working with Illinois, lowered its borrowing costs should be applauded. Puerto Rico's sales-tax bonds faced unique challenges inapplicable to Chicago. They nevertheless delivered near-par recoveries for senior bondholders.

Wall Street Journal Letters

by Susheel Kirpalani

Quinn Emanuel Urquhart & Sullivan

New York

Feb. 12, 2020 4:56 pm ET

[San Francisco Tries to Rally Public to Buy Piece of PG&E.]

- **City creates website touting $2.5 billion offer for local gear**
- **Bankrupt company has rebuffed offers for bits of its grid**

Beset by fires, bankruptcy and blackouts, PG&E Corp. now faces a marketing campaign from government officials in its hometown bent on replacing the utility giant.

San Francisco has launched the "Our City, Our Power" campaign to rally public support for buying PG&E's local wires and taking over electricity service within the city. It includes a website asking residents to sign up in favor of the effort, arguing the city can provide better service.

"Local control of the entire San Francisco electric system will provide increased affordability, safety, reliability and accountability," Mayor London Breed said in a statement on the site.

PG&E, which filed for Chapter 11 last year facing $30 billion in liabilities from wildfires blamed on its equipment, has already turned down a $2.5 billion offer from San Francisco to buy the gear, saying it's worth more. Allowing communities to buy parts of the system could delay needed investments in California's aging electric grid, the company said in an emailed statement Monday.

"While recent proposals for state or municipal ownership of PG&E's infrastructure are not new concepts, we don't agree that the outcomes of this type of framework will benefit customers, taxpayers, local communities, the state or our economy," the company said.

The utility, founded in San Francisco more than a century ago, has also turned down offers from three other local public agencies in California interested in buying portions of its grid. As part of a proposed reorganization plan, PG&E has called for keeping itself intact and setting up regional divisions to address local concerns.

A San Francisco official, meanwhile, has raised the possibility of seizing PG&E's equipment through eminent domain if the company refuses to sell.

Bloomberg

By David R Baker

February 10, 2020, 2:14 PM PST Updated on February 10, 2020, 3:49 PM PST

[BDA Submits Testimony and Will Host Capitol Hill Briefing in Support of Infrastructure Proposal.]

Today, February 12, 2020, after consultation with the Municipal Bond Executive Committee, the BDA submitted testimony to the House Committee on Ways in Means in response to a recent hearing titled, *Paving the Way for Funding and Financing Infrastructure Investment* and in support of the House [infrastructure principles document].

The BDA Comments can be found [here].

The BDA also co-signed a letter from the Public Finance Network, along with 25 organizations, in support of the tax-exemption and other market priorities.

The letter can be viewed here.

Both the BDA comments and the PFN letter wrote in support of:

- Continued protection of the tax exemption;
- Reinstatement of tax exempt advance refundings;
- Expanding the cap and scope of qualified private activity bonds;
- Raising the limit on bank qualified debt; and
- Ensuring any federal direct pay bond legislation would be untethered from sequestration

Muni 101 and Infrastructure Hill Briefing

The BDA, along with member firm Hilltop Securities, has partnered with the Government Finance Officers Association, the American Public Power Association and the National Association of Counties for a March 3rd Capitol Hill briefing for Members of Congress and their staff.

The briefing will provide a "Muni Bonds 101" tutorial followed by a discussion on infrastructure and the need for municipal bonds to be a part of the solution.

The BDA will provide a recap following the event.

Bond Dealers of America

February 12, 2020

Fitch Rtgs: Growing US Infrastructure Deficit Necessitates a New Paradigm

Fitch Ratings-New York-14 February 2020: Any government plan for renewing and advancing essential US infrastructure requires a new paradigm to adequately address the infrastructure funding deficit, says Fitch Ratings. While a source of adequate and sustainable funding is a critical component, a results-oriented, objective and strategic approach to investment, along with responsible stewardship of the public purse, are paramount. Increased spending without a strategic, comprehensive approach to infrastructure investment based on national priorities will not go far in addressing the continued deterioration of critical economic assets.

Passage of a large-scale federal infrastructure spending bill stalled in 2019 due to a lack of consensus on a funding approach, despite bipartisan recognition of the need to address the country's aging infrastructure. Political disagreements partially reflect difficult budget decisions, which will need to be made in the context of a federal deficit that is projected to reach $1.0 trillion this fiscal year. Trying to tackle the issue in a presidential election year will be next to impossible.

Addressing US infrastructure needs will require a significant uptick in annual new investment. Prior government proposals have been rather tepid, suggesting up to $200 billion in new investment a year. While a good start, it is a drop in the bucket, as a multi-trillion dollar infrastructure deficit will require a glide-path to trillion dollar annual investments at 5% of US GDP and more than double recent historical levels to have a meaningful impact. Direct federal spending on nondefense infrastructure, as a percentage of GDP, declined marginally over the past two years and was less than 0.1% of GDP in 2018.

Investments in infrastructure have historically led to increased economic activity and growth. The risk of putting off investment is obvious: infrastructure assets, which are essential to the US economy, will continue to deteriorate, requiring even greater financial resources down the line and making the problem even more difficult to address. Slowing GDP growth will compound this risk, making increased investment less feasible. The irony is that the ability to invest is strongest when the economy is robust.

Such a large-scale undertaking requires a coordinated effort across multiple stakeholders and levels of government to prioritize and fund national needs and provide long-term support for infrastructure renewal. An independent, non-partisan infrastructure commission with the teeth to influence funding and spending may be a useful model to facilitate sustained planning and investment.

With no federal plan currently in place, states and local governments have made efforts to fill the funding gap, including raising gas taxes, using toll revenues for other unrelated projects, or entering into public-private partnerships. State and local spending on infrastructure was about 1.5% of GDP in 2018 but infrastructure needs are too great to address on their own. States and municipalities need funding visibility and assistance to begin work on necessary projects.

Costs associated with repairing and protecting infrastructure will only grow if the funding gap is not addressed systematically. The deficit could be exacerbated with the potential threats to infrastructure from environmental risks such as rising sea levels. Upfront investments to build resiliency would cost less than rebuilding following weather-related events.

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California 2020 Roadmap to Shared Prosperity.

View document.

[Dude, Where's My Infrastructure Funding?]

Ever since both 2016 presidential candidates made infrastructure investment a core component of each of their platforms, we have been waiting for a significant infusion of federal funds to modernize our aging bridges, highways, and transit systems. One of the few remaining bipartisan issues, members of both political parties had high hopes that a large infrastructure bill would be possible. While this has yet to materialize, the Senate, House, and Administration have all taken steps to advance the ball. But with the current transportation law—the Fixing America's Surface …

Continue reading.

Nossaman LLP

By Shant Boyajian on 02.14.2020

TAX - MARYLAND

Clear Channel Outdoor, Inc. v. Director, Department of Finance of Baltimore City

Court of Special Appeals of Maryland - January 29, 2020 - A.3d - 2020 WL 465762

Billboard owner appealed city's denial of its request for refund of excise taxes paid pursuant to city ordinance which imposed excise tax on privilege of exhibiting outdoor advertising displays, including the privilege of charging third parties a fee for their use of its billboard space.

The Tax Court affirmed, and billboard owner sought judicial review. The Circuit Court affirmed. Billboard owner appealed.

The Court of Special Appeals held that:

- Ordinance did not impermissibly burden billboard owner's right to freedom of speech, and
- Ordinance was constitutionally valid under rational basis review.

City outdoor advertising ordinance imposing excise tax on billboard owner's privilege to charge others a fee to use billboard space did not impermissibly burden owner's right to freedom of speech under the First Amendment and Maryland Constitution; billboard owner's economic activity was not expressive or communicative, and ordinance was content neutral, applicable whenever an outdoor advertiser such as billboard owner charged third parties to use its space, regardless of the content displayed on the billboards or who paid billboard owner to display it.

City outdoor advertising ordinance, imposing excise tax on billboard owner's privilege to charge others a fee to use billboard space, was constitutionally valid under rational basis review, where city had legitimate governmental interest in raising revenue, particularly for purpose of alleviating burden on city taxpayers, and ordinance was rationally related to that interest because tax imposed by the ordinance actually raised revenue, which was placed directly into city's general fund.

TAX - OHIO

Columbus City Schools Board of Education v. Franklin County Board of Revision

Supreme Court of Ohio - February 6, 2020 - N.E.3d - 2020 WL 573459 - 2020 -Ohio- 353

Limited liability company (LLC) appealed determination of the Board of Tax Appeals (BTA), No. 2016-2365, that sale price paid for transfer of LLC's ownership constituted the tax value of real estate owned by LLC.

The Supreme Court granted LLC's petition to transfer appeal.

The Supreme Court held that:

- Purchase and sale agreement were sufficiently authenticated;
- Conveyance-fee-exemption form and deed obtained from the public record were sufficiently authentic;
- Hearsay rule did not bar admissibility of documents; and
- Sale price paid for transfer of LLC's ownership was presumed to constitute value of real estate owned by LLC.

Limited liability company's production of purchase and sale agreement, documenting its transfer of ownership to purchaser, in discovery with school board was sufficient to regard the document was what it facially purported to be, and thus, document was sufficiently authenticated for admission in proceedings before the Board of Tax Appeals (BTA) concerning school board's complaint seeking increase in the tax value of real estate owned by LLC based on sale price for transfer of LLC's ownership.

Conveyance-fee-exemption form and deed obtained by school board from the public record were sufficiently authentic, for admissibility in proceedings before the Board of Tax Appeals (BTA) concerning school board's complaint seeking increase in the tax value of real estate owned by LLC based on sale price for transfer of LLC's ownership, where conveyance-fee-exemption from had notarized affidavit attached, and accompanying deed bore stamps showing the auditor's acceptance of fee-exempt status and receipt of deed by the county recorder.

Purchase and sale agreement, documenting transfer of ownership of taxpayer, a limited liability company (LLC) did not constitute inadmissible hearsay, in proceedings before the Board of Tax Appeals (BTA) concerning school board's complaint seeking increase in the tax value of real estate owned by LLC based on sale price of transfer of LLC's ownership, because agreement was documentary evidence of contract between the parties.

Board of Tax Appeals' (BTA) decision that sale price paid for transfer of limited liability company's (LLC) ownership constituted the tax value of real estate owned by that entity did not permit taxation of personal property in violation of state constitution provision providing that real property tax be based on value of land and improvements thereon, where BTA deducted an amount from the sale price relating to personal property based on appraisal evidence, and by law, BTA was justified in presuming the rest constituted real estate value.

Financial Accounting Foundation Board of Trustees Notice of Meeting.

Notice of Meeting.

[02/10/20]

[Everything Is Great in Muni-Bond Market. That's the Big Worry.]

- **If everyone is on same side, it topples over 'pretty easily'**
- **Money managers discuss outlook at Bloomberg News event**

In the municipal-bond market, everything's going strongly in the right direction: prices have been rising, mutual funds have received new cash from investors for the past 57 weeks, and new debt sales have been gobbled up.

But Guy Davidson, chief investment officer of the municipal-debt business for AllianceBernstein, is still preparing for the risk that his firm's outlook is wrong, given that he and other money-managers are largely in lockstep with expectations for another year of positive returns.

"When everyone's on one side, it gets toppled over pretty easily," he said at a panel hosted by Bloomberg News on Wednesday.

The $3.8 trillion municipal market returned 7.5% last year, the biggest annual gain since 2014, and in January posted its biggest monthly gain in six years. The run-up has pushed yields to the lowest in over six decades, leaving some analysts skeptical of how much more prices can rise.

Davidson said his firm expects "decent" economic growth and isn't anticipating any big moves in yields. But he said he has taken some steps to prepare for a surprise economic downturn, such as adding U.S. Treasuries to portfolios because they tend to outperform during a recession.

At the Wednesday panel, investors from Macquarie Investment Management, Parametric Portfolio Associates, and Columbia Threadneedle Investments expressed similar outlooks for the coming year.

Catherine Stienstra, head of municipal investments at Columbia Threadneedle, said 2020 may be more of a "coupon-clipping" year for investors, meaning returns will be driven more by interest payments than price gains. Still, she said the individual investors who flocked to the municipal market in record numbers last year will likely keep buying the securities to gain the tax breaks or avoid stock-market volatility.

She said she expects such demand to keep supporting the market, even if it isn't as strong as last year. "What drove the strong returns in 2019 are still in place," she said.

Nisha Patel, a director at Parametric, also said the weekly cash influx into mutual funds could slow if investors are deterred by the low yields. Municipal bonds maturing in 10 years yield just 1.2%, half what it was in late 2018, according to the Bloomberg BVAL index. The Bond Buyer's 20-year index is hovering near the lowest since the 1950s.

Patel said she noticed that some new municipal-bond deals this week weren't met with the overwhelming demand that's become routine and left deals far oversubscribed. A move higher in rates would likely lure investors who have been sitting on the sidelines, Patel said.

"The market staying stagnant, where it is, is probably something that we would be concerned about," she said.

Not all muni-bond investors are discouraged. Steve Czepiel, who leads municipal bond portfolio management for Macquarie, said he expects another strong year of returns, saying that rates have room to go lower and that credit spreads can tighten more.

Macquarie is still favorable on high-yield municipals — which last year rallied the most since 2014 — and is being "selective" in what it buys, Czepiel said. He said they prefer deals where there's a lot of issuance to choose from, like health care, so the firm can be choosy.

"The credit markets are in good shape and they will continue to perform due to that technical demand," he said.

Bloomberg Markets

By Mallika Mitra and Amanda Albright

February 13, 2020, 8:02 AM PST

Foreign Yield Seekers Buying Taxable Munis.

Catherine Stienstra, Senior Portfolio Manager and Head of Municipal Investments for Columbia Threadneedle Investments, discusses her current outlook for the muni market. Hosted by Lisa Abramowicz and Paul Sweeney.

Play Episode

Bloomberg Radio

February 13, 2020

Citigroup's New Place to Sell Its Mortgage Loans: Muni Market

- **Government agencies sell $1.4 billion of bonds to buy loans**
- **Bank sees 'new source of financing' for affordable housing**

The voracious appetite for riskier tax-exempt debt is allowing Citigroup Inc. to get affordable housing loans off its books and finance more apartments.

Starting last year, Citigroup, the biggest U.S. affordable housing lender, has underwritten four tax-exempt bond issues for state and local government agencies that used $1.4 billion of the proceeds to buy mortgages the bank made to finance 149 properties with 16,850 units nationwide. The deals gave Citigroup cash to make new home loans.

"We've tapped into a new source of financing for affordable housing by using demand in the muni market," said John Heppolette, Citigroup's head of municipal markets and finance. "More demand ultimately keeps the cost of financing affordable housing down."

The structure is allowing the bank to tap into booming demand for tax-exempt debt, which has driven yields to a more than six decade low and led investors to shift cash into lower-rated securities to generate higher returns.

At the same time, many state and local governments are eager for ways to pump more money into low-cost housing projects. As wages stagnate and real estate prices increase, families nationwide are spending a greater share of their incomes on housing. The U.S. has a shortage of seven million affordable rental homes available to extremely low-income renters, according to the National Low Income Housing Coalition. A household is "cost-burdened" when it spends more than 30% of its income on rent and utilities.

Historically banks and government sponsored entities like Fannie Mae and Freddie Mac have provided capital for multifamily affordable housing. While New York City and state issue bonds for multifamily housing developments, the debt is typically backed by large pools of properties that provide additional collateral, allowing the securities to get higher ratings.

By contrast, Citigroup's deals involve smaller portfolios with a limited cushion to absorb losses and have carried ratings from S&P Global Ratings of BBB and BBB+, two and three steps above junk, respectively. Municipal-bond investors have been eager to take on the risk: high-yield muni funds have drawn in more than $20 billion since the beginning of 2019, according to Refinitiv Lipper US Fund Flows data.

Citigroup sold its multifamily loans to municipal conduit bond issuers like the California Housing Finance Agency, the Arizona Industrial Development Authority and the National Finance Authority in New Hampshire. The conduits purchase the loans by issuing municipal bonds backed by mortgages on the properties, which are also subsidized by the U.S. Low Income Housing Tax Credit program.

The bonds don't directly raise cash for affordable housing projects, but they allow Citigroup to make new loans. Scott Helfman, a spokesperson for Citigroup, declined to comment on how much it made on the sale of the loans.

The bank took the top spot in Affordable Housing Finance magazine's annual lender ranking for the ninth consecutive year in 2019. Citi Community Capital, the firm's community-development arm, made more than $6 billion of loans to affordable rental projects in 2019.

"You start originating that much over a long period of time, it starts to build up significantly," said Heppolette, whose bank is planning more such securitization deals this year.

Last month, Citigroup managed an approximately $480 million bond issue backed by 39 mortgage loans on 43 affordable multifamily rental properties in 12 states. A $455 million series with a 4.125% coupon was priced to yield 2.28% to the 10.6 year average life of the loans, according to Citigroup. The yield was about 0.9 percentage point more than AAA bonds maturing in 11 years. The deal also had a $26.5 million subordinate series that absorbs losses before the senior bonds.

Citigroup's first deal last year was a $172 million issue by the California Housing Finance Authority. The securities yielded about 2.63% to an average life of 11 years, according to Helfman.

The debt was priced attractively because it wasn't a typical muni housing bond structure, said Robert Ellis, a vice president at Kore Private Wealth, which purchased some of the securities. Prices have gone up as investors become more familiar with the structure and money continues to flood into the muni-bond market.

"It's a new creature as far as we know in the muni space," said Margaret Hay, vice president at Kore in New York.

Bloomberg Markets

By Martin Z Braun

February 12, 2020, 10:30 AM PST

Chicago Lags Behind Other Big Cities in Opportunity Zones Projects.

Investors are looking to other metro areas where investment may be less risky and whose neighborhoods have already gentrified

Opportunity Zone investment in Chicago has lagged far behind other big cities.

The federal tax incentive program established 8,700 designated Opportunity Zones across the U.S. The program used 2010 census data so it includes formerly blighted neighborhoods that have since experienced gentrification, like Houston and Portland.

Meanwhile, most of Chicago's 135 Opportunity Zones are located in distressed areas on the South and West Sides, including Englewood and Auburn Gresham, according to Crain's. That has kept investors from plowing into projects despite recent updated federal regulations that that cleared up many questions.

Continue reading.

THE REAL DEAL CHICAGO

February 10, 2020 02:00 PM

Staff

A Graduate Tax Course in Opportunity Zones, with Jay Darby.

What are students learning in the nation's first LLM-level tax course on Opportunity Zones? Joseph "Jay" Darby is a partner in Sullivan & Worcester's tax group in Boston and has been a member of the adjunct faculty at Boston University School of Law since 2003. This semester, he is teaching an LLM course at BU Law titled, "No Gain No Pain? Opportunity Zones, Like Kind

Read More »

Opportunity Db

February 12, 2020

We're From the Government and We're Here to Build a Bike Path.

Municipal officials are using eminent domain to take private property for recreational uses.

A handful of farmers in Ohio's Mahoning County are getting an unpleasant lesson in government power at the hands of a local park district. Mill Creek MetroParks, a public agency governed by five unelected commissioners, wants to take over an abandoned railroad line running through about a dozen local farms for a recreational bike path. Last year, when landowners balked at the idea of strangers wandering across their properties, the park district decided to invoke eminent domain and gain right of way.

"I asked the park representatives if there was any way we could negotiate on this, and they told me, 'The time for talking is over. We're taking this property,' " says Ohio state Rep. Don Manning, who tried to intervene on the farmers' behalf. Rep. Manning, a Republican, has sponsored legislation that would limit the use of eminent domain in Ohio.

The practice of government taking land for recreational uses—typically bike lanes, hiking paths and fashionable "rail trails" and "greenways"—is spreading across the country, marking a sharp and troubling expansion of eminent domain. The Takings Clause of the Constitution's Fifth Amendment grants government the authority to seize property to be used for the public good, as long as government pays "just compensation" to the owner. Over the years, the Supreme Court has consistently expanded what is considered a "public good" to justify government seizures. In 2005, for instance, the high court upheld the taking of Susette Kelo's waterfront home by the city of New London, Conn., so that a local development corporation could build high-end condos and a hotel. The redevelopment was intended to boost property values and increase municipal tax revenues.

Meanwhile, cities and towns across America have in recent years developed an appetite for different types of lengthy, sometimes intrusive hiking and bike paths. Advocates contend that such recreational amenities are vital because they promote alternative forms of transportation. Bike trails "are increasingly being used as a nonrecreational means of transportation, particularly by lower-income residents without access to a motor vehicle," testified Jason Segedy, director of planning and urban development for Akron, Ohio, in opposition to Rep. Manning's bill.

Municipal land grabs often result in bitter confrontations. Officials in Sioux City, Iowa, sought to complete a riverfront recreation trail in 2017 by offering Brad Lepper half of what an independent county commission had ruled his property was worth. Rather than pay up in full, the city invoked eminent domain, prompting Mr. Lepper to wage a two-year legal battle. He represented himself for much of the time.

"It can be an intimidating process for a small-business owner to fight this, and many people probably wouldn't risk it," Mr. Lepper says. "I took this on myself because I couldn't afford to run up big legal bills, but I knew the property was worth much more." Hiring his own appraiser and planning expert, Mr. Lepper ultimately won an $82,500 settlement. Still, it was an uncomfortable experience. "I'm a local businessman. I have to do business here. I didn't want to fight the city."

Eminent domain also divides communities. A plan by the town of Swampscott, Mass., to construct a 2-mile trail through the North Shore Boston suburb sparked a yearslong battle pitting officials and some supportive residents against those whose property the path would cross. One property owner, Kim Nassar, published a letter in the local newspaper claiming that she and other opponents had been "vilified and maligned" and branded as "selfish" for lobbying against the project.

Since residents voted in a divisive June 2017 election to dedicate some $850,000 to the Swampscott trail, including an unspecified amount of money for eminent-domain seizures, the town has continued to work to design and fund the project. But an attorney hired by 28 homeowners says he has warned town officials that this battle may be more costly than they anticipate. "There are properties along this path whose value could be substantially diminished," says Peter E. Flynn.

"Juries tend to be sympathetic to property owners if they can afford to fight a case like this in court, and I have seen court awards that can bust the budget of a town."

The issue also divides elected officials. In 2017 Wisconsin ended the use of eminent domain for recreational projects in a bill signed by then- Gov. Scott Walker, a Republican, after objections from landowners. According to Wisconsin Active Communities Association, a recreational group, 17 bike- and walking-trail projects for which the use of eminent domain was planned have stalled since Mr. Walker's action. Current Gov. Tony Evers, a Democrat, has sought to re-establish government's authority to take property in these cases, but so far he's been blocked by Republicans in Madison. "Somebody else's recreational opportunity should not be forced on my property," argues state Rep. Rob Stafsholt, who helped push through the ban.

The Kelo decision provoked a backlash. Some states passed laws restricting eminent domain for economic development. But as local governments, park systems and state agencies become bolder about seizing property for recreational use, don't be surprised if the next eminent-domain case with national significance involves a bike path in your backyard.

The New York Times

By Steven Malanga

Feb. 14, 2020 5:19 pm ET

Mr. Malanga is senior editor of City Journal.

[Fitch Ratings: Florida HB 653 May Impact Local Government Credit Quality]

Fitch Ratings-New York-13 February 2020: Fitch Ratings does not expect Florida House Bill (HB) 653, if signed into law, to trigger a significant number of rating actions for local governments. The law would prohibit the use of electric enterprise fund revenues to support general governmental functions effective July 1, 2020. It could prove a political challenge to policy makers who have to allocate the cost of government among taxpayers and utility ratepayers, including utility, water and sewer customers, but is unlikely to create financial strain for most local governments. Electric utility transfers make up a small percentage of most local governments' budgets and these entities typically have offsetting core credit strengths including revenue-raising ability, expenditure flexibility and ample reserves relative to the potential impact of an economic stress.

Complying with the legislation could prove a greater challenge to those local governments that rely on utility transfers as an important general fund revenue source and whose offsetting budgetary flexibility is not as high. Municipal utility transfers range as high as 30% of general fund revenues, allowing for lower ad valorem tax rates than would otherwise be required given the services provided.

The adoption of HB 653 could necessitate immediate increases in those rates, cutting into existing margins within the statutory limit and potentially weakening revenue-raising powers and flexibility to respond to future economic stress. Independent revenue raising ability is a component of one of Fitch's four key rating drivers in its U.S. public finance tax-supported rating criteria and informs Fitch's view of overall financial resilience.

The credit impact of HB 653 on retail electric utilities would be mildly positive in Fitch's view.

Transfer payments typically approximate 6% of total system revenues, which Fitch does not consider financially burdensome. However, given their importance to the host government, Fitch views transfer payments as a fixed obligation for retail utilities, and as such includes them in the analysis of financial performance. Systems that elect to return excess cash flow to customers through lower utility rates would likely benefit from improved rate competitiveness, affordability and overall revenue defensibility; whereas systems that elect to use the excess free cash flow to build cash reserves or fund additional capital spending and/or pay-off existing debt would likely benefit from lower system leverage. Fitch views either scenario as positive for utilities.

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S&P Bulletin: Proposed Sales Tax Changes In Texas Would Transform Revenue Distribution

FARMERS BRANCH (S&P Global Ratings) Feb. 13, 2020– A proposed change to sales tax collections in Texas would likely lead to a modest increases in revenues for most cities. In limited cases where an entity issued debt secured by sales tax and has a concentration of online market places, warehouses, and distribution facilities, we would anticipate a degree of sales tax volatility which could weaken credit quality.

On Jan. 3, the Texas comptroller proposed changes to the tax code including a change to destination-based sales tax allocations for qualifying internet sales, eliminating origin-based distribution. Currently in Texas, sales taxes on internet purchases are allocated to the city where the online order is received. This favors municipalities with major online market places, warehouses, and distribution facilities that fulfill internet orders. With the proposed change, sales taxes would be credited to the purchase’s destination. S&P Global Ratings believes that given this broader geographic reach, a majority of Texas municipalities would benefit from the proposed change.

However, given the shift considered under the proposal, there could be a more significant impact to credit quality for issuers who stand to lose a reliable revenue source. The proposed rule change includes a grandfathering provision that would extend certain economic development agreements until Dec. 31, 2022, allowing affected entities some time to explore alternative forms of revenue and cost saving initiatives. However, any long-term bonds secured by sales taxes could see some impairment after that date.

A number of Texas cities entered into economic development agreements with the understanding that sales taxes derived from online purchases would be sourced from their respective city and assist in managing the total property tax rate. Several cities have publicly indicated the change in the distribution of sales tax collection would result in structural budget gaps due to the lost revenue. We understand, through discussions with city representatives, that sales tax collections derived from business-to-business (B2B) sales could also be negatively affected due to the proposed redefinition of "internet order." Essentially the proposed language defines internet orders as purchases by any method related to the internet regardless of the type of electronic device. As a large number of companies execute commercial transactions via the internet, Texas cities with a large commercial presence could see a loss in annual sales tax revenue derived from B2B sales.

While measuring the effect at this point is difficult given online transactions are not generally disaggregated from total sales tax collection with the continued shift of consumer spending towards e-commerce, we anticipate most Texas cities are likely to experience modest increases in sales tax collections. As noted by the U.S. Commerce Department e-commerce reports, U.S. e-commerce sales as a percentage of total retail sales increased to 11.2% in the third quarter of 2019 from 3.4% in 2009, representing a growing share of the retail market that Texas cities can capitalize on.

The state comptroller is also enacting provisions under precedent set by the United States Supreme Court in South Dakota v. Wayfair (2018) and recent Wayfair-related legislation passed during the 2019 Texas legislative session which overruled a longstanding physical-presence statute, allowing states to require remote sellers to collect and remit sales tax. The proposed rule changes is intended to provide guidance to Texas local governments' and to clarify sourcing from online sales tax collections. Regardless of the outcome of the proposed change, our analysis will continue to focus on entities' ability to maintain structural balance while mitigating the impact of lost revenue- sales tax or otherwise. We will continue to monitor the proposed change and its potential effect on Texas local governments' credit quality.

This report does not constitute a rating action.

[Wisconsin Could Be First State To Expand Opportunity Zone Tax Incentives.]

Federal Community Development Program Created To Spur Development In Urban, Rural Areas

President Donald Trump touted opportunity zones during the State of the Union Address on Tuesday to improve low-income rural and urban communities.

The community development program was established by Congress with bipartisan support in 2017 to encourage long-term investments in under-developed areas across the county.

In Wisconsin, a bill is working its way through the state Legislature to make the program more enticing to investors. But critics say tax incentives for the wealthy could lead to poorer people being displaced from their neighborhoods.

Wisconsin has 120 opportunity zones that were chosen by former Gov. Scott Walker and certified by the U.S. Department of the Treasury.

Under the federal program, people who invest in development projects happening in the zones can defer capital gains on a previous investment until the end of 2026.

And any taxes on capital gains from investments in the opportunity zones can be avoided if the investments are held for at least 10 years.

Under state Senate Bill 440, Wisconsin could become one of the first states to give even larger tax breaks to the investors who are the primary beneficiaries of this tax policy.

The proposal gives people an additional 10 percent state capital gains tax reduction if they hold an investment in a Wisconsin opportunity zone for at least five years, and an additional 15 percent after seven years.

Jon Peacock, project director with the Wisconsin Budget Project, spoke in opposition of the bill during a legislative hearing Wednesday, Jan. 29.

"Although investments in opportunity zones could theoretically help low-income parts of the state, including some communities of color, early indications are that the law is unlikely to have that effect, and it could contribute to gentrification, as well as further concentration of wealth," Peacock said.

Peacock gave the example of Madison's East Washington Avenue headed toward the state Capitol, which is an opportunity zone.

"It's not the kind of area where wealthy investors should be able to get substantial tax breaks for building new condominiums and apartment buildings," Peacock said.

Mayors and economic development officials from Stevens Point, Racine and Portage and the Wisconsin Economic Development Association (WEDA) registered letters of support during the public hearing last month.

Michael Welsh, the legislative affairs director for WEDA, said unlike other programs, opportunity zones don't use taxpayer dollars for economic development.

"The legislation will encourage Wisconsin investors to keep their investment dollars in Wisconsin, funneling much-needed capital to communities in both rural and urban parts of the state," Welsh said.

Racine Mayor Cory Mason said a targeted tax cut is the kind of tool municipalities need to accelerate growth in economically distressed areas. Racine has three opportunity zones.

"For the first time in decades, Racine has announced several high-quality economic development projects, including housing, hotels, and mixed-use commercial properties, which will generate construction jobs as well as ongoing employment, including for lower-income individuals living in the immediate area," Mason said.

Tracy Johnson, who heads the Commercial Association of Realtors for Wisconsin, said adding an incentive could get more people to participate in the program.

"They're reinvigorating the program," Johnson said. "You know I think anytime you can talk about the program and incentivize investors, that is going to be a positive thing. Especially in order to achieve the results for urban areas, which is really what this investment fund was created for."

Wisconsin Public Radio

By Corrinne Hess

Published: Thursday, February 6, 2020, 6:00am

BLX/Orrick 2020 Post-Issuance Compliance Updates Webinar.

10 am PDT / 1 pm EDT | 03/24/2020

Click here to learn more and to register.

CDFA // BNY Mellon Development Finance Webcast Series: To TIF or Not to TIF, is TIF the Right Tool For Your Project?

Tuesday, March 17, 2020 | 1:00 PM Eastern

Click here to learn more and to register.

GFOA Budgeting Best Practices in Albuquerque.

GFOA will be in Albuquerque, New Mexico, March 9-12, offering a number of training sessions.

Click here to learn more and to register.

Research & Commentary: Florida Considers Limiting Taxpayer Funding for Sports Palaces.

In this Research & Commentary, Matthew Glans examines a new bill in Florida that attempts to decrease the use of taxpayer dollars for stadiums.

In recent years, the trend in stadium financing has shifted from private funding to taxpayer subsidies for new stadium construction or renovation. Even more disturbing, nearly all new sports facilities are being built with government subsidies. The primary funding mechanisms for these stadiums are tax-exempt municipal bonds. According to a 2015 Bloomberg article, tax-free bonds used to finance stadiums costs the U.S. Treasury $146 million per year. From 1986 to 2015, $17 billion in tax-exempt debt was used to finance stadium projects at a cost of $4 billion to taxpayers.

Congress attempted to slow this trend with the Tax Reform Act of 1986, which prohibits direct stadium revenue from being used to secure public financing for more than 10 percent of the cost of a stadium. Ending the use of these bonds for stadium construction is one path states can follow to slow the proliferation of these projects.

Continue reading.

The Heartland Institute

By Matthew Glans

FEBRUARY 14, 2020

- GASB Issues Omnibus Statement Addressing Wide Range of Practice Issues.
- BDA Responds with Narrowly Tailored Parameters to Any Potential Exemptive Relief for Municipal Advisors.MSRB
- Sets Date for Compliance with Interpretive Guidance on Underwriting Activities.
- SEC Signals Heightened Scrutiny of Cybersecurity Practices.
- S&P: Cyber Risk Management For U.S. Municipal Utilities Should Be Routine And Requires Vigilance And Flexibility
- Ransomware Attack on Hospital Shows New Risk for Muni-Bond Issuers.
- And finally, When You're A Group A, You're A Group A For Life is brought to us this week by *Texas Department of Criminal Justice v. Rangel*, in which an altercation went down in the the Pam Lychner State Jail in Humble, Texas. "Uh, thanks for naming a jail in my memory?" The altercation involved rival gangs that were separated with tear gas. The court referred to the gangs as "Group A" and "Group B." Not quite the same ring to it as "The Sharks" and "The Jets," eh?

IMMUNITY - TEXAS

Texas Department of Criminal Justice v. Rangel

Supreme Court of Texas - February 7, 2020 - S.W.3d - 2020 WL 596876

Inmate brought suit against prison guard and Texas Department of Criminal Justice for injuries he sustained when prison guard used tear gas to disburse inmates who were threatening to fight and refused to return to bunks.

Department filed plea to the jurisdiction based on sovereign immunity under Texas Tort Claims Act (TTCA). The District Court denied plea, and Department took interlocutory appeal. The Court of Appeals affirmed. Department's petition for review was granted.

The Supreme Court held that:

- Department "used" tangible personal property within meaning of TTCA's immunity waiver by authorizing and instructing prison guard to use tear-gas gun and skat shell in prison dormitory to address inmates' refusal to "rack up";
- "Riot" within meaning of riot exception to sovereign immunity waiver under TTCA was disturbance of peace by assemblage of seven or more persons acting with common purpose in tumultuous manner that immediately threatened or terrorized public or institution;
- Riot exception applied to TTCA's immunity waiver.

PUBLIC EMPLOYMENT - CALIFORNIA

People ex rel. Lacey v. Robles

Court of Appeal, Second District, Division 5, California - January 29, 2020 - Cal.Rptr.3d - 2020 WL 467582 - 20 Cal. Daily Op. Serv. 757

County district attorney brought action in quo warranto against mayor, who also served as member of board of directors for Water Replenishment District, alleging that he was violating code provision that made it unlawful to simultaneously hold incompatible public offices.

The Superior Court removed mayor as director of District. Mayor appealed.

The Court of Appeal held that:

- Attorney General properly deputized county district attorney under quo warranto statute;
- Possibility of conflict in duties or loyalties when serving as mayor and as member rendered two offices incompatible;
- Exception for simultaneous holding of multiple public offices if compelled or expressly authorized by law did not apply;
- District attorney was not required to re-apply for leave to bring action in quo warranto after mayor began serving new terms upon his election to both offices; and
- Mayor was not entitled to depose county district attorney.

REFERENDA - FLORIDA

Dinerstein v. Bucher

District Court of Appeal of Florida, Fourth District - January 15, 2020 - So.3d - 2020 WL 218328

Taxpayer filed verified emergency petition for declaratory and injunctive relief against city alleging misuse of public funds for unlawful government advocacy and injunctive relief against a political action committee concerning dissemination of deceptive advertisements.

The Circuit Court entered final judgment in favor of city. Taxpayer appealed.

The District Court of Appeal held that:

- City's expenditure for payment to local political consulting company for execution of voter education campaign was not a political advertisement, and
- Ballot title and summary seeking to amend provisions of city charter were not misleading.

City's payment of $43,200 to local political consulting company for planning, management, and execution of voter education campaign before city election was not a political advertisement constituting the functional equivalent of express advocacy for passage of ballot measure, and, thus, did not violate statute barring the expenditure of public funds for a political advertisement or constitutional provision reserving political power in the people, where city provided literature indicating what citizens should know about ballot initiatives, created website where citizens could learn more information, disseminated a voter's guide, and generated robocalls providing website address and hotline number, none of which expressly advocated a position on ballot measure.

Ballot title and summary in city election, seeking to amend and modify provisions of city charter, were not misleading, as would have required ballot measure to be removed from ballot, where summary asked "to remove provisions that are outdated, unnecessary, or conflict with state law," listed various topics which were generally understandable, ended with reference to a separate document, and separate document contained a track-changes version of the charter indicating precise proposed additions and deletions.

EMINENT DOMAIN - FLORIDA

[TLC Properties, Inc. v. Department of Transportation]

District Court of Appeal of Florida, First District- January 21, 2020 - So.3d - 2020 WL 284031

Billboard owner brought an inverse condemnation action against Department of Transportation, claiming highway flyover project violated its rights under easement for an unobstructed view of and access to billboard.

The Circuit Court granted summary judgment in favor of Department. Billboard owner appealed.

The District Court of Appeal held that:

- Unobstructed view of billboard on private property was not a compensable property interest, and
- Flyover highway project would not deny billboard owner access from highway to property on which its billboard was located, such that no compensation was warranted for loss of access.

Unobstructed view of an advertising billboard on private property from public highway was not a compensable property interest, and thus loss of visibility of billboard to passers-by on highway due to highway flyover project was not compensable in inverse condemnation action, although restrictive covenant in easement deed that was provided to billboard owner prohibited property owner from restricting view of billboard from public highway; landowners could not contract to control or limit the government's ability to acquire lands for public purposes, and billboard owner had an appropriate remedy in breach of contract claim against landowner for highway construction's effect on easement.

Flyover highway project would not deny billboard owner access from highway to property on which its billboard was located, and thus billboard owner was not entitled to compensation for loss of access in inverse condemnation action against Department of Transportation, although flyover would result in diversion of traffic, where contractual easement for access to billboard did not specify where it was to be accomplished on landowner's property, neither billboard owner nor landowner ever applied for a curb cut or other permissible entry from highway, and flyover construction plans included construction of a service road running parallel to flyover with a curb cut on highway permitting access to landowner's property.

PUBLIC RECORDS - ILLINOIS

[Rushton v. Department of Corrections]

Supreme Court of Illinois - December 19, 2019 - N.E.3d - 2019 IL 124552 - 2019 WL 6907324

Journalist and newspaper brought action against Department of Corrections seeking unredacted copy of settlement agreement between contracted medical care provider for inmates at correctional center and estate of former inmate who died of cancer under Freedom of Information Act (FOIA).

The Circuit Court allowed provider to intervene in lawsuit, denied summary judgment for journalist and newspaper, and granted summary judgment for provider. Journalist and newspaper appealed. The Appellate Court reversed and remanded. Provider filed petition for leave to appeal, which was allowed.

The Supreme Court held that settlement agreement was directly related to governmental function that provider performed for Department and, thus, was public record under FOIA.

Settlement agreement between contracted medical care provider for inmates at correctional center and estate of former inmate who died of cancer was directly related to governmental function that provider performed for Department of Corrections and, thus, was public record under Freedom of Information Act (FOIA); governmental function that provider contracted to perform for Department was provision of medical care to inmates, settlement agreement directly related to performance of governmental function, as it was settlement of claim that provider's inadequate medical care, i.e., its alleged inadequate performance of its governmental function, led to death of inmate, and connection between settlement and governmental function was not indirect or tangential but was direct and obvious.

PARKS & REC - MINNESOTA

Hayden v. City of Minneapolis

Court of Appeals of Minnesota - January 21, 2020 - N.W.2d - 2020 WL 284102

City residents brought action for declaratory and injunctive relief against city, park board, and other parties responsible for developing a public park, seeking permanent injunction barring use of city funds for operation of park and declarations that use agreement and memorandum of understanding related to park were invalid.

The District Court granted city's motion for judgment on the pleadings on the declarations and residents' motion for summary judgment on the injunction. Both parties appealed.

The Court of Appeals held that:

- City charter prohibited city council from maintaining park;
- Charter provision delegating maintenance of parks to park board and prohibiting council from maintaining parks was not in conflict with state law;
- Partnerships between council and park board under previous city charter could not guide interpretation of new city charter; and
- Residents did not have standing to bring public interest action challenging use agreement.

City charter did not permit city council to accept delegation of authority to maintain parks from park board, and thus city charter prohibited council from maintaining park leased to city by park board; city charter unambiguously provided that council could act "except where" charter reserved action for "different board, commission, or committee," and charter expressly reserved authority to maintain parks to park board.

State law allowing city to expend funds on land and recreational facilities was permissive, stating that city "may" expend funds to maintain "land and recreational facilities," and thus city charter provision delegating maintenance of parks to park board and prohibiting council from maintaining parks did not forbid what state law expressly permitted, as would render charter provision in conflict with state law.

Any examples of partnerships between city council and park board under previous city charter could not guide interpretation of new city charter under new charter provision permitting use of “settled interpretation” of previous charter as guide in interpreting new charter, and thus examples of such partnerships did not affect interpretation of new charter prohibiting city council from maintaining parks; section of new charter prohibiting council from maintaining parks contained new language not present in previous charter.

Nothing in use agreement between developer and designer of public park required city to spend any public funds or required any public official to act illegally, and thus city taxpayers did not have standing to bring public interest action challenging agreement.

LICENSES - NEW HAMPSHIRE

Boyle v. City of Portsmouth

Supreme Court of New Hampshire - January 24, 2020 - A.3d - 2020 WL 407807

Landowner brought action against city, alleging trespass and nuisance arising from city’s sewer line on property.

The Superior Court entered judgment in favor of landowner and awarded damages. Landowner appealed as to damages, and city cross-appealed.

The Supreme Court held that:

- Landowner’s attorney’s letter to city’s attorney constituted a revocation of city’s license to keep sewer line on landowner’s property, and
- Landowner’s claim of inability to develop additional automobile dealership on property was too speculative to support award of lost profit damages.

Landowner’s attorney’s letter to city’s attorney constituted a revocation of city’s license to keep sewer line on landowner’s property, even though letter did not expressly use word “revoke,” where letter expressed attorney’s belief that there was “no justification for continued presence” of line and that city had no permission from current owner as it had in the past.

Landowner’s claim of inability to develop additional automobile dealership on property which contained one dealership was too speculative to support award of lost profit damages, in landowner’s action against city for trespass and nuisance arising out of city’s use of sewer line on property after revocation of license to do so; landowner’s expert offered no assessment of probability that landowner would obtain necessary regulatory approvals, and landowner’s own testimony highlighted uncertainty of obtaining a dealer franchise and securing financing to build a second building.

BANKRUPTCY - PUERTO RICO

In re Financial Oversight and Management Board for Puerto Rico

United States District Court, D. Puerto Rico - January 7, 2020 - F.Supp.3d - 2020 WL 114518

Bondholders moved for appointment of trustee pursuant to provision of Chapter 9 incorporated in the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA).

The District Court held that decision on part of the Financial Oversight and Management Board for Puerto Rico not to pursue cause of action to avoid transfers was neither unjustified nor unreasonable, and did not warrant appointment of trustee.

Decision on part of the Financial Oversight and Management Board for Puerto Rico not to pursue cause of action to avoid transfers effected pursuant to certain public pension-related legislation enacted by the Commonwealth of Puerto Rico was neither unjustified nor unreasonable, and did not warrant appointment of trustee pursuant to a provision of Chapter 9 incorporated in the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA); while pursuing returns for creditors was an important element of the Board's judgments, it is not the exclusive end point of the Board's task, which included consideration of needs, concerns and future of political entity that was home of millions of American citizens, as well as needs, concerns and rights of broad range of parties in interest.

BANKRUPTCY - PUERTO RICO

In re Financial Oversight and Management Board for Puerto Rico

United States District Court, D. Puerto Rico - February 5, 2019 - 361 F.Supp.3d 203

Financial Oversight and Management Board for Puerto Rico filed debt adjustment plan for Puerto Rico Sales Tax Financing Corporation (COFINA) as part of restructuring of debts of Commonwealth of Puerto Rico and its instrumentalities pursuant to Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA).

The District Court held that:

- COFINA's debt adjustment plan complied with applicable provisions of bankruptcy code and procedural rules;
- COFINA's debt adjustment plan was proposed in good faith with legitimate and honest purpose to provide method for Puerto Rico to achieve fiscal responsibility and access to capital markets;
- COFINA's debt adjustment plan sufficiently met requirement for acceptance by each class of claim holders;
- COFINA's debt adjustment plan did not contain any provisions which would require it to violate Puerto Rico or federal constitution or laws;
- COFINA's debt adjustment plan obtained all necessary legislative, regulatory, and electoral approvals;
- COFINA's debt adjustment plan was in best interests of its bondholders; and
- COFINA's debt adjustment plan was feasible.

TAX - VIRGINIA

Portsmouth 2175 Elmhurst, LLC v. City of Portsmouth

Supreme Court of Virginia - January 23, 2020 - S.E.2d - 2020 WL 370544

Taxpayer brought action against city, challenging real estate tax assessments for a former meat packing plant in city, and alleging that attorney fees charged to taxpayer to collect assessments were not reasonable.

The Circuit Court upheld assessments. Taxpayer appealed.

The Supreme Court held that:

- Taxpayer presented a prima facie case that real property was valued in excess of fair market value;
- Taxpayer failed to prove that mass appraisal or subsequent revised assessment failed to conform to professional standards;
- Taxpayer failed to prove that under applicable Virginia law the distinctive characteristics of property rendered a falsified result under mass appraisal that deviated significantly from fair market value;
- Trial court was well within its discretion in concluding that attorney fees were reasonable.

Taxpayer presented a prima facie case that real property, a former meat packing facility, was valued in excess of fair market value in determining whether mass appraisal for real estate tax assessment conformed to generally accepted appraisal practices, procedures, rules, and standards or applicable Virginia law relating to valuation of property; taxpayer offered testimony of highly qualified expert to that effect, an exhaustive report, and evidence that property had sold recently on two occasions, each time well below city's assessed value, and taxpayer showed that the most recent purchaser demolished building on property providing compelling evidence that building had outlived its useful life and was, consequently, overvalued in city's assessment.

Taxpayer failed to prove that mass appraisal or subsequent revised assessment failed to conform to professional standards in taxpayer's action challenging city's tax assessments on real property, a former meat packing facility, absent specific testimony explaining how standards were, in fact, violated by mass appraisal and lowered subsequent assessment; taxpayer's expert's written report faulted assessment for failing to comply with professional standards, whereas city's expert testified that his assessment did comply with mass appraisal standards, and trial court carefully weighed this contrasting testimony and found in favor of city.

Taxpayer failed to prove that under applicable Virginia law the distinctive characteristics of real property, a former meat packing facility, rendered a falsified result under mass appraisal that deviated significantly from fair market value, as would support finding that in challenging city's real estate tax assessment taxpayer failed to establish that mass appraisal and subsequently lowered assessment did not conform to generally accepted appraisal practices, procedures, rules, and standards or applicable Virginia law relating to valuation of property.

Trial court was well within its discretion in concluding that contingency fee based attorney fees of $24,000 were reasonable for recovery of delinquent real estate taxes, even though counsel did not meticulously document expenditure of time to the same extent as under an hourly fee arrangement; contingency fee was standard for recovery of delinquent taxes, fees did not exceed statutory cap of 20 percent, court reduced fees to well below cap, and trial court carefully considered the evidence.

BDA Responds with Narrowly Tailored Parameters to Any Potential Exemptive Relief for Municipal Advisors.

After multiple meetings at the SEC including with the Chair, all Commissioners, and staff leadership at the Office of Municipal Securities and Trading and Markets, **today (1/28/20) the BDA submitted comments to the SEC that would narrowly tailor the proposed exemptive order**. Following extensive work with the BDA working group and outside counsel Davis Polk and Nixon

Peabody, comments were developed that create distinct parameters, limiting instances where non-dealer MA's can place securities.

The comments can be viewed here.

While the BDA remains in opposition to the SEC issuing any form of the requested relief, the BDA is taking proactive steps in response to requests in order to ensure municipal market structure is not altered by the misguided proposed action.

The BDA is currently assessing next steps and continuing to monitor actions taken at the SEC. The BDA will provide updates when they become available.

Bond Dealers of America

February 4, 2020

S&P: Cyber Risk Management For U.S. Municipal Utilities Should Be Routine And Requires Vigilance And Flexibility

Key Takeaways

- Developing a cyber defense framework should now be an essential part of risk management planning for U.S. municipal water and wastewater utilities.
- By preparing plans in advance, utilities can ensure continuity of delivery if a cyber incident occurs.
- During a cyber incident, utilities must maintain clear communication with their customers and the general public explaining what is happening and what they are doing about it.
- Recovery planning could generate liquidity problems if not addressed in advance.

S&P Global Ratings believes that cyber risk is an important factor to consider when evaluating credit and has become a key credit focus of risk management for many U.S. municipal utilities. The threat to organizations and the credit impact could get worse before it gets better with the prevalence of cyber breaches and the growing sophistication of cyber criminals. Municipal water and wastewater utilities must develop cyber defense frameworks to prepare themselves for such incidents to ensure continuity of delivery, maintain clear communication with their customers, and have recovery plans in place.

Like other local government counterparts, municipal water and wastewater utilities require trust and transparency with their users: trust that the services will be there and transparency to support decisions about rate increases. Improved technology at the plants can aid in strengthening that trust and transparency and has enhanced data collection, streamlined operations, and improved the user and customer experience. Ironically, however, these benefits also make utilities more vulnerable to cyber crime.

These days, it is easy to become a cyber criminal. On the dark web, there are more ready-made tools and programs available to crack passwords or launch malware, some even with money-back guarantees. In our conversations with utility management teams, we regularly discuss preventative measures, but given the accessibility of technological crime tools, we still find that many utilities are reactive, forced to face these issues as they happen with only miminal advance planning on how to respond.

Cyber breaches pose several risks to municipal utilities. These include the loss of financial assets, personally identifiable information being compromised, and infrastructural and organizational disruptions, not to mention the long-term erosion of public trust. Cyber-preparedness is perhaps even more serious for municipal water and wastewater providers due to the critical nature of this resource: Water is an essential service, and the public has an implicit trust and expectation that such critical infrastructure will be protected and the resource will available when needed.

As we noted in "When U.S. Public Finance Ratings Change, ESG Factors Are Often the Reason" (published March 28, 2019 on RatingsDirect), governance and management issues are the most likely factor behind a rating action across U.S. public finance. Even if a particular disruption is not so serious as to genuinely affect credit quality, headline risk can create different but equally challenging headwinds. The effects of controversies such as a cyber breach and the resultant adverse publicity can weaken citizens' faith in local elected and administrative leadership should the attack be handled poorly or multiple attacks occur. Scrutiny of decision-makers and their risk management practices is likely to increase.

If a utility needs to increase operating revenues, its only option is generally to raise rates. An erosion of public trust could make that more difficult. If the management team scales back or delays rate adjustments–regardless of the reason–the financial profile could weaken, thereby reducing capital commitments or pushing them out to later years, ironically creating vulnerability to even more operating risks. Part of our ratings analysis has always included an assessment of the management team's preparedness and resilience in the face of such events and the relative exposure to observable event risks, in addition to ensuring continuity of operations and maintaining financial performance. If, in our view, that becomes diminished after a cyber breach, it very well could be the case that headline risk has a measurable effect on the utility's credit.

To date, losses from cyber breaches have generally been absorbed by the rated entities' available liquidity and have not resulted in a material decline in credit quality. However, as cyber risk evolves so rapidly, it may only be a matter of time before more serious repercussions arise. Negative rating actions have occurred in other sectors due to cyber breaches. Clearly, every dollar stolen is a dollar than could have been reinvested as a capital investment or other system improvement. If a successful cyber attack on a rated entity significantly affected the expenses, revenue collections, and liquidity position or caused an entity to require the need for further debt to recover from the cyber event, there would clearly be downward pressure on the rating.

Preventive Measures Can Feel Like Catch-Up Actions, But Are Critical

Cyber criminals can be more adaptive and flexible in their approach than the existing countermeasures against them. Thus, in many cases, security technology is playing catch-up. Therefore, cyber risk mitigation is actually more of a management and governance challenge than a purely technological issue. Identifying the organizational workings, risks, and needs of a utility is the most important step in developing a cyber defense framework. Management's in-depth understanding of the assets in terms of personnel, data, and the operational aspects of the system is key to identifying areas of risk within the overall utility.

While a number of best practices exist for not only cybersecurity, but also risk management in general, the America's Water Infrastructure Act of 2018 (AWIA) and subsequent Environmental Protection Agency (EPA) rulemaking now compel all utilities serving at least 3,300 people to create–or for some, to update–a vulnerability self-assessment. "Vulnerabilities" include natural disasters but also "malevolent acts" to demonstrate that management has identified risks and how to be resilient when they occur. These plans should address all facets of the utility, from operations to the back office, and are required to be updated every five years. Finally, management must also establish an emergency response plan to show preparedness for identified risks, then certify or attest to the assessment and emergency response plan once submitted to EPA. We believe this is supportive of long-term credit stability, as risk management in general–and cybersecurity specifically–will become a more explicit part of business as usual for nearly all utilities.

Since the nature of cyber crime is constantly evolving, employee training, preparedness, and awareness must also adapt and evolve. The aging of the workforce across the municipal utilities sector and the looming associated retirements pose risks to new managers, who will have work harder to acquaint themselves with the unique challenges of their utility systems and thus create appropriate security countermeasures for their system and their employees. Obsolete or outdated technology and systems also create cyber vulnerabilities for utilities. Therefore, constant monitoring and updating of systems and isolating and maintaining critical operational systems such as SCADA are generally common but essential starting points of a utility's preparedness planning. Backing up crucial and confidential operational and user data in secure rapid access data storage mediums is another necessary measure. Since the nature of cyber risk is constantly changing, any utility's preparedness plan should also be flexible and ready to adapt.

Detection of intrusions or anomalous activities is another component in the formulation and maintenance of a utility's cyber protection protocols. While managers can use technology tools to detect attempted intrusions, these efforts must be coordinated with robust management plans. These tools, coupled with the vigilance of utility operators toward anomalous activities, can make it more difficult for nefarious actors to gain access to utility systems. Detection and blocking of cyber criminals in a utility's network is extremely important to the organization's brand and maintenance of its public trust. In our current world of ever-evolving cyber criminals, terrorist organizations, and hostile nation-state actors, municipal utilities pose a tempting target for cyber-crime, cyber warfare and cyber terrorism, where risks are low and rewards are high. The protection of critical water and wastewater utilities is therefore not just a local challenge but also a regional or national security concern.

Response Planning Is Key To Credit Stability

Water and wastewater utilities, being essential service providers, must ensure continuity of delivery in the event of a cyber incident. Thus, response planning is critical for them to be able to operate and maintain the trust of their customers. The implementation of previously well-thought-out action plans and stopgap measures is key to the successful navigation of a cyber incident. Examples of such actions that we have seen include the implementation of emergency supply, preparedness for manual system operations, table-top exercises replicating an attack, and the activation of well-maintained back-up data.

Communication and transparency are also key when responding to cyber incidents. Even during severe cyber incidents, the served citizens' implicit trust in their governments is underlined by their expectation that critical components (such as water) continue to function. Despite disruptions, cyber attacks should not affect the accountability of utilities to their customers to provide essential services and doing their upmost to maintain the public's trust and protect personal information. Thus, a robust response plan should include how the breach is represented, how quickly to alert the public, and what management is doing to mitigate the problem. It is also critical for response plans to be regularly reviewed and analyzed to include new approaches and revise procedures in the constantly evolving world of cyber risk.

Recovery Is Easiest When Planned For Before An Actual Attack

Recovery planning is another important component of maintaining public trust in a utility system. It is generally the recovery phase of a cyber incident that poses the greatest credit risk to municipal utilities. The first and foremost credit concern is the cost in terms of damages and resources needed for recovery. The unforeseen costs due to loss of data, compromised systems, recovery consultants(you mean paying them to help after the event?), or deterioration of the affected entities' liquidity position could pose liabilities, which, in some cases, may pressure credit quality and create uncertainty in the municipal market. So we normally ask utilities about the adequacy of their reserves, liquidity, or rainy day funds when considering their exposure to cyber risk.

The loss of constituent trust is another factor as weak public support may weaken the ability of the affected entity to raise the funds needed to rebalance the system. There may also be calls for the removal in the utility's management. Therefore, thoughtful response planning is also key to the maintenance of credit quality and public trust for municipal utilities. Response activities must be well coordinated with local and federal authorities and the response plan should include steps regarding communications with them. The lack of response preparedness and transparency in cyber incidents not only erodes public confidence but also makes it more difficult for local and federal law enforcement to track and combat future risks and breaches.

Ultimately, the heightened speed of communication and the rapid globalization of the cyber realm mean that state and local government entities, which previously were only concerned with their local service areas and thus somewhat insulated, are now part of the global risk environment. The importance of these public systems in the fabric of our critical infrastructure, coupled with their limited resources, makes them tempting targets for cyber criminals and other hostile global actors. These factors, coupled with the localized nature of utilities in the U.S., make cyber security a unique operational and credit challenge for water and sewer utilities.

This report does not constitute a rating action.

Primary Credit Analyst: Omid Rahmani

Secondary Contacts: Theodore A Chapman, Geoffrey E Buswick

Ransomware Attack on Hospital Shows New Risk for Muni-Bond Issuers.

- **The attack in part led to a breach of a covenant agreement**
- **The hospital spent $1 million in response to the attack**

Hackers have finally done what bond issuers may have feared most from cyber criminals.

A ransomware attack on Pleasant Valley Hospital in West Virginia was partly responsible for the hospital's breach of its covenant agreement, according to a notice to the hospital's bondholders from the trustee, WesBanco Bank. It appears to be the first time a cyber attack triggered a formal covenant violation, according to research firm Municipal Market Analytics.

The virus entered the hospital's system via emails sent 10 months before the cyber criminals asked the hospital for money, said Craig Gilliland, the hospital's chief financial officer. The information the criminals held for ransom did not contain patient data or confidential data, so it was "more of an annoyance," he added.

Because of the attack, the hospital was forced to spend about $1 million on new computer equipment and infrastructure improvements, Gilliland said. That cost, along with declining patient volume, caused the hospital's debt service coverage for the fiscal year that ended on Sept. 30 to fall to 78%, below the 120% the loan agreement requires, according to the material notice to bondholders.

Continue reading.

Bloomberg

By Mallika Mitra

February 5, 2020, 7:11 AM PST

SEC Signals Heightened Scrutiny of Cybersecurity Practices.

On January 7, 2020, the U.S. Securities and Exchange Commission's (SEC) Office of Compliance Inspections and Examinations (OCIE) announced its 2020 Examination Priorities that included cybersecurity practices. Soon after the publication of the OCIE Examination Priorities, on January 27, 2020, OCIE followed-up with a report entitled Cybersecurity and Resiliency Observations. These two OCIE releases, along with prior SEC alerts and actions, provide strong indications that the SEC, in 2020, will be ramping up its focus on cybersecurity practices in the financial services industry. We expect increased examination and enforcement activities concerning cybersecurity practices, including vendor management and controls.

2020 Examination Priorities: Information Security

OCIE's 2020 Examination Priorities include information security practices for investment advisers, broker dealers, municipal advisers, and other registered entities that fall within the scope of OCIE's programs. As in previous years, OCIE is prioritizing information security practices in the industry to bolster investor and financial market confidence given the potential risk if massive data breaches were to occur. Information security examinations for 2020 will, therefore, include the following:

- Proper configuration of network storage devices
- Information security governance
- Retail trading information security
- Protection of registered investment advisers (including robo-advisers) clients' personal financial information, including: governance and risk management, access controls, data loss prevention, vendor management, training and incident response and resiliency
- Oversight practices of certain service providers and network solution, including firms leveraging cloud-based storage
- Compliance with Regulations S-P and S-ID
- Controls surrounding online access and mobile application to customer brokerage account information
- Safeguards regarding proper disposal of retired hardware possibly containing client or network information

OCIE also encourages market participants to engage with regulators and law enforcement to identify and address security risks like cyber-related attacks.

OCIE Cybersecurity and Resiliency Observations

This OCIE report, issued within the same month as the OCIE Priorities, discussed industry practices to manage and combat cybersecurity risk and to maintain operational resiliency that OCIE has observed through "thousands of examinations of broker-dealers, investment advisers, clearing agencies, national securities exchanges and other SEC registrants…" Here's our take:

- The observed industry practices covered areas of governance and risk management, access rights and controls, data loss prevention, mobile security, incident response and resiliency, vendor management, and training and awareness.
- By putting all financial industry participants on notice regarding the availability of such practices, we believe the SEC is setting the stage to bring enforcement actions against financial industry participants that fail to adopt practices that are the equivalent to or reasonably meet the goals of the currently observed industry practices.
- Further, the report is yet another step toward creating a basis for future SEC enforcement cases related to deficient practices and controls of third party vendors that have access to client and customer data. The OCIE report devotes a separate section to vendor management, including cyber and privacy related due diligence, as well as robust contract language providing clear rights of the registrant to address a cyber incident arising out of a vendor relationship, monitoring and training. The SEC has historically not been shy about holding companies responsible for violations facilitated (or caused) by their third parties, and this would seem to be a logical extension of that approach.
- In 2015, the SEC brought its first ever enforcement action against an investment adviser in connection with a cyber breach. The action involved a breach of a third party-hosted web server that held personally identifiable information (PII) of the investment adviser's clients. The SEC faulted the investment adviser for failing to have any written policies to safeguard client PII. At the time, the SEC did not set forth any requirements to assess outside vendor's ability to safeguard client data.
- In May 23, 2019, OCIE issued a Risk Alert regarding the need to safeguard customers and information in network storage including the use of third party security features and cloud-based storage. Among other things, OCIE expressed concerns with inadequate oversight of vendor-provided network storage solutions.
- In the recent Report, OCIE specifically identified industry practices on vendor management that includes vendor monitoring and testing.

Recommended action

Given the prominence of information security in OCIE's 2020 Examination Priorities, registered firms should ensure that their policies and procedures appropriately account for risks to customer records and to IT systems in accordance with Regulation S-P Rule 30. With regard to broker-dealers specifically, FINRA will play an important part in this trend toward greater regulatory oversight. Indeed, FINRA expects all firms to implement policies and procedures related to cybersecurity, but expects that firms will approach these challenges in accordance with their scale and model.

Finally, in light of OCIE's report on industry practices, registered firms also should review their current procedures and processes to determine whether they are equivalent to or reasonably meet the goals of the practices described in the Report, and whether further enhancements are appropriate or necessary.

Baker McKenzie – Bernard (Brian) L. Hengesbaugh, Harry Valetk, Amy J. Greer, Jennifer L. Klass, A. Valerie Mirko, Peter K.M. Chan and Jerome Tomas

February 4 2020

GASB Issues Omnibus Statement Addressing Wide Range of Practice Issues.

Norwalk, CT, February 5, 2020 — The Governmental Accounting Standards Board (GASB) today issued guidance addressing various accounting and financial reporting issues identified during the implementation and application of certain GASB pronouncements.

The issues covered by GASB Statement No. 92, *Omnibus 2020*, include:

- Modifying the effective date of Statement No. 87, *Leases*, as well as associated implementation guidance, to *fiscal years* beginning after December 15, 2019, to address concerns regarding interim financial reports
- Reporting of intra-entity transfers of assets between a primary government employer and a component unit defined benefit pension plan or defined benefit other postemployment benefit (OPEB) plan
- The applicability of Statement No. 73, *Accounting and Financial Reporting for Pensions and Related Assets That Are Not within the Scope of GASB Statement 68, and Amendments to Certain Provisions of GASB Statements 67 and 68*, as amended, and Statement No. 74, *Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans*, as amended, to reporting assets accumulated for pensions and OPEB
- The applicability of certain requirements of Statement No. 84, Fiduciary Activities, to pension and OPEB arrangements
  Measurement of liabilities and assets, if any, related to asset retirement obligations in a government acquisition.

The requirements of Statement 92 that relate to the effective date of Statement 87 and its associated implementation guidance are effective upon issuance. Provisions related to the application of Statement 84 are effective for periods beginning after June 15, 2020. Provisions related to intra-entity transfers of assets and applicability of Statements 73 and 74 are effective for *fiscal years* beginning after June 15, 2020. The remaining requirements related to asset retirement obligations are effective for government acquisitions occurring in reporting periods beginning after June 15, 2020. Earlier application is encouraged and is permitted by topic.

GASB Outlook E-Newsletter Winter 2020.

Read the Newsletter.

02/04/20

MSRB Sets Date for Compliance with Interpretive Guidance on Underwriting Activities.

The MSRB set November 30, 2020 as the date for compliance with revised interpretive guidance concerning the conduct of municipal securities underwriting activities.

As previously covered, the MSRB updated the interpretive notice on MSRB Rule G-17 (“Conduct of

Municipal Securities and Municipal Advisory Activities") to codify underwriters' disclosures and focus on the risks and conflicts associated with their transactions. The MSRB stated that the interpretive notice is intended to reduce disclosure burdens on underwriters, as well as the burden on issuers to acknowledge and review disclosures of risks that are (i) unlikely to materialize, (ii) not unique to a particular transaction or underwriter where a syndicate is formed, or (iii) otherwise duplicative.

Cadwalader Wickersham & Taft LLP

February 3 2020

Fitch Rtgs: Medicaid Changes Will Affect States, NFP Healthcare Providers

Fitch Ratings-New York-06 February 2020: Recent regulatory actions from the US federal Centers for Medicare and Medicaid Services (CMS) could have fiscal and credit repercussions for state governments and those reliant on state funding, particularly not-for-profit (NFP) healthcare providers, Fitch Ratings says. The proposals illustrate the Trump administration's efforts to make notable changes to Medicaid, even without legislative approval given the divided control of Congress. Collectively, Medicaid's expenditures account for approximately 20% of states' non-federal funds spending, according to the National Association of State Budget Officers. Medicaid covers nearly 1 in 5 Americans, though commercial payers are more significant in terms of patient net revenues for providers.

CMS recently issued two regulatory notices opening the door to potentially significant changes to Medicaid. The Healthy Adult Opportunity initiative (HAO) allows states to transition to block grants or per capita cap grants for certain beneficiaries, effective immediately. The Medicaid Fiscal Accountability Regulation (MFAR), which is in the midst of the rulemaking process and at least several months from implementation, could upend how states finance their Medicaid costs.

HAO is optional for states and provides guidance on applying for Section 1115 Waivers to extend coverage to adults under 65 not otherwise eligible for Medicaid, with a per capita or block grant cap on federal contributions. Under current law, the federal government matches state Medicaid spending at varying percentages on an open-ended basis. An HAO per capita or block grant shifts cost risk to states. In return, states receive flexibility including cost-sharing requirements with beneficiaries, work requirements or limiting prescription drug coverage.

Capping federal Medicaid contributions, even for a subset of beneficiaries, poses risks to state budgets and those entities reliant on state funding, including local governments and providers. States would need to find revenue or cost savings, either in Medicaid or elsewhere, to offset reduced federal contributions. Since CMS notes the flexibility available under HAO is already available via separate waivers, the fiscal benefits to states are unclear.

Fitch considers CMS's proposed MFAR as potentially more disruptive than HAO to credit quality. MFAR affects how states finance their share of the Medicaid program. Various state organizations including the National Governors Association and the National Association of Medicaid Directors have suggested MFAR represents a material change to current CMS policy, creating uncertainty for states and providers.

Among other changes, MFAR revises standards for approving healthcare-related taxes in ways that could limit states' ability to use this important Medicaid funding source. The Medicaid and CHIP

Payment Access Commission (MACPAC) reports 49 states and the District of Columbia use such taxes, and the General Accounting Office reported in 2014 that provider taxes made up at least 10% of states' Medicaid contributions. MACPAC reports states spent $230 billion on Medicaid in federal fiscal year 2018.

The American Hospital Association, in an analysis conducted with Mannatt Health, estimated MFAR could reduce total Medicaid spending nationally by $37 billion and $44 billion annually, or 5.8% to 7.6%, and by $23 billion to $30 billion for hospitals alone. States and, to some extent providers, would respond to MFAR's implementation with measures to mitigate the negative fiscal implications. For both HAO and MFAR, Fitch anticipates states' credit quality would be less directly affected, given their broad ability to manage spending and revenues, although short transition times could complicate budget effects. Credit quality for those providers reliant on state funding could be more at risk, as they have relatively less fiscal flexibility. This is particularly true for NFP healthcare providers that have higher Medicaid exposure.

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Satellites Are Helping the Municipal-Bond Market Assess Climate Risk.

Investment firms are using spatial data mining to visualize dangers.

The $3.8 trillion municipal-bond market has found a new tool in its effort to understand the impact of climate change: the array of satellites orbiting high above Earth.

Assessing climate risks is a particularly vexing problem given that U.S. state and local governments tend to give investors information that's often too little or just too late. But the use of geospatial data and information from sources like Google Earth could help municipal-bond investors evaluate and price the risks posed from a warming climate, rising sea levels and natural disasters.

The deployment of spatial technology in the municipal market advanced in January when credit-ratings company S&P Global Ratings completed an analysis of U.S. water utilities using data from National Aeronautics and Space Administration satellite missions. Other investment firms say they're starting to focus on geospatial information as a way to evaluate climate risks as well.

Continue reading.

Bloomberg Green

By Amanda Albright and Mallika Mitra

February 6, 2020, 2:00 AM PST

S&P U.S. Higher Education Rating Actions, 2019

S&P Global Ratings affirmed 88% of college and university ratings reviewed in 2019. We lowered 17 ratings and raised 14. Notably, of the schools upgraded, three are rated in the speculative grade category (Western Illinois University, Eastern Illinois University, and Sweet Briar College), and three moved from one rating category to another: Boston University, Villanova University, and the University of Alabama Huntsville were all upgraded to 'AA-' from 'A+', due to strengthening credit profiles, exemplifying the intensifying bifurcation within the sector. Additionally, the sector saw over twice as many negative outlook revisions (20) as it did positive outlook revisions (7).

View the Rating Actions.

5 Feb, 2020 | 18:25

Fitch Ratings: JEA's Ratings Unaffected by Recent Resignation of Board of Directors

Fitch Ratings-Chicago-06 February 2020: Fitch Ratings believes the recent resignation of JEA's entire board of directors, culminating from a string of events dating back to 2018, is a distraction for the utility but is unlikely to present near-term credit risks. However, the utility's credit quality could be influenced over the intermediate term by significant changes in the strategic direction of the utility following the appointment of a new board and the hiring of new senior staff, according to Fitch.

Fitch believes the recent management changes, lawsuits challenging the validity of certain purchased power obligations, and the recently abandoned proposal to sell the utility, are all currently credit neutral to JEA. However, the resignation of JEA's board chairperson early last week, followed by notification from the City of Jacksonville's Mayor's office later that same day that the remaining six JEA board members intend to continue in their roles only until Feb. 28, 2020, leaves the utility with the possibility a governing quorum will not be in place starting next month as well as some uncertainty regarding the utility's longer-term strategic direction.

Jacksonville's Mayor and City Council have begun the process to fill all seven board vacancies, with the potential for new board members to be appointed (by the Mayor), and potentially confirmed (by city council) before the current remaining board members leave their posts at month's end. Fitch believes the prospect of appointing and approving a brand new seven-member board to be challenging. However, several key senior managers (including the interim CEO) have been retained, providing JEA some degree of continuity with respect to daily operations during this transition.

The new board will be charged with hiring a new CEO and setting the course for JEA going forward. Fitch will closely monitor the process over the coming weeks and months, with particular interest in the city's timetable for approving an acting board, as well as the board's ultimate composition, level of experience in utility operations and strategic objectives. While Fitch believes the changes in JEA's governance and leadership are unlikely to result in a change in the expected course of operations, any shifts in policy that compromise JEA's financial profile, including a reduction in electric rates (or reticence to increase rates, as needed) or a change in resources that leads to significant stranded costs, could impact future credit quality in Fitch's view.

Fitch recently affirmed JEA's Issuer Default Rating (IDR) and its outstanding ratings on a variety of electric system revenue bonds at 'AA'/Stable Outlook. The electric system's ratings are based on JEA's very strong revenue defensibility, aided by its delivery of monopolistic service to a sound service territory, independent rate setting and consistently solid financial performance.

Also considered in the rating is a steadily declining leverage profile led by the strategic use of excess cash flows to lower fixed costs through early retirement of outstanding bonds over the past several years. There are currently no asymmetric risks affecting JEA's ratings at this time. However, the quality of governance and management is an important consideration when assessing the potential performance of an entity over the life of its debt, where weak attributes could constrain the overall rating.

Fitch further views the litigation with MEAG Power over the validity of JEA's purchase power agreement (PPA) for Plant Vogtle energy and capacity to be neutral to the rating. Fitch believes JEA's Vogtle-related obligations as currently known are manageable given the strong annual cash flows and rate flexibility coupled with rapidly amortizing debt obligations. JEA has publicly indicated it will continue to honor its obligations under the contract during the litigation process and thereafter as long as the PPA is not determined to be invalid. Any change in JEA's current intention to continue paying its obligations under the PPA absent a court ruling striking down its validity would cause Fitch to reevaluate all relevant ratings.

For more information on JEA's electric system ratings please see Fitch's press release affirming JEA's electric system revenue bonds dated Nov. 22, 2019 at www.fitchratings.com. For more information on how Fitch views asymmetric risks such as governance and management, please see the public power sector criteria dated April 4, 2019.

High-Tax States' Bonds Are So in Demand That Ratings Don't Matter.

- **'To boil it down, it's 99.999% because of the SALT cap'**
- **California, New York yields holding below the AAA benchmark**

There's so much money chasing after the bonds sold by America's high-tax states that buyers don't seem to care too much about what credit-rating companies think.

The heavy demand overall has driven municipal yields to their lowest in more than six-decades. And with rates so low, the yield penalties that would typically differentiate a deeply indebted state from a thrifty one have become little more than rounding errors that in some cases contrast with their standing in the ratings pecking order.

California's general-obligation debt, for example, is yielding about 1 basis points less than the AAA benchmark, even though the state is rated as many as four steps below that, according to data compiled by Bloomberg. New York, one step below AAA, is paying about 8 basis points less than top-rated borrowers. Over the past year, New Jersey's yield premium has been cut nearly in half even though its rating hasn't changed. Connecticut's is roughly a third of what it was.

By contrast, bonds issued by AAA rated Texas and Florida, where there's no state income tax, pay above-benchmark yields.

This dynamic shows how dramatic the demand has become for tax-exempt securities since President Donald Trump's 2017 tax law limited state and local deductions. That change drove investors in high tax-states like California, New York and New Jersey into municipal bonds as an alternative way to drive down what they owe.

"To boil it down, it's 99.999% because of the SALT cap," said James Iselin, portfolio manager at Neuberger Berman Group LLC in New York. "Because there's is so much demand in the market — there is less of a credit differentiation that the market is making."

Bloomberg Markets

By Danielle Moran

February 6, 2020, 10:56 AM PST

[States Take the Reins in Resilience Planning.]

Governors say states are taking steps to assure their long-term resiliency in the face of worsening climate change—and in the absence of sweeping federal action.

In the absence of strong federal actions to address climate change, states are beginning to implement their own measures to ensure long-term resiliency, governors said Sunday at the National Governors Association winter meeting in Washington, D.C.

"Everyone says, 'It can't happen here,' until it does happen here. And it can happen in any one of our states," Janet Mills, the governor of Maine, said during a panel discussion on state-level resilience planning. "I think we all sat back for years and said, 'If something happens, FEMA will help us out.' We need to start this at home."

Maine has seen firsthand evidence of climate change, including extensive flooding and the looming loss of what Mills called "working waterfront." To prepare for future events, Mills said, the state has undertaken a host of "decisive actions" aimed at mitigation, including the implementation of an electric vehicle rebate program, a goal to achieve statewide carbon neutrality by 2045. The state has also launched a "100,000 heat pump initiative" designed to help residents ease their dependence on fossil fuels.

[Continue reading.]

Next City

By Kate Elizabeth Queram,

FEBRUARY 9, 2020 02:57 PM ET

The Trillion Dollar Question: Can Cities Safely Navigate the World of Private Investment?

In 2008, then-Chicago Mayor Richard M. Daley, famous for privatizing public infrastructure in order to secure short-term revenue sources, made the worst deal of his career. He leased 75 years of parking meter revenues to an investor group that included Morgan Stanley and the Abu Dhabi Investment Authority in exchange for a $1.15 billion upfront payment.

The Windy City spent that money in just three years as it sought to plug municipal budget holes during the throes of the Great Recession. However, under the terms of the deal, the city is on the hook for the “full value” of the parking revenue. If the parking authority doesn’t increase street parking rates in line with inflation or if the city suspends meters for a Cubs victory parade, then the city owes the difference to that investor group.

By squandering so much long-term revenue and handcuffing the city to onerous contractual terms, Chicago’s parking arrangement earned the dubious distinction of a “worst practice” from an Illinois government watchdog.

Continue reading.

NEXT CITY

by GREGORY SCRUGGS

FEBRUARY 8, 2020

Muni Bonds Go Wild. Could 1% 10-Year Yields Be Far Behind?

The insatiable demand for U.S. state and local government debt may face a big hurdle.

The $3.8 trillion U.S. municipal bond market, sometimes called a sleepy asset class, has been partying awfully hard lately.

Consider that investors poured $1.8 billion into muni mutual funds in the week through Jan. 29, the 56th consecutive week of inflows, according to Refinitiv Lipper US Fund Flows data. Then, on Jan. 31, the biggest high-yield muni exchange-traded fund, the VanEck Vectors High-Yield Municipal Index ETF, drew in $150.2 million, the largest one-day increase in assets since inception in 2009. The amount of state and local debt on the books of Wall Street banks has dwindled to the least since late 2014. Overall, the market returned 1.8% in January, its strongest month in six years.

Continue reading.

Bloomberg Markets

By Brian Chappatta

February 5, 2020, 4:00 AM PST

Citigroup Bucks Herd in Call for 'Intense, Prolonged Rally' in Muni Market.

- **The investment bank says munis may return more than 8% in 2020**
- **Tax-exempt municipal bonds gained more than 7% last year**

Citigroup Inc. analysts are standing apart from the Wall Street pack by predicting that the municipal-bond rally may be gaining steam.

Vikram Rai, Jack Muller and Vedanta Goenka, who track the state and local government debt market for the bank, said in a note to clients that the securities may return more than 8% in 2020 as cash continues surging into the market. That would come after tax-exempt bonds gained more than 7% last year, their biggest annual jump in five years.

"The ongoing intense, prolonged rally, has led to gluttonous demand for tax-exempt paper, which has engendered strong performance, and is leading to more gluttonous demand," the analysts wrote.

The bullish forecast from Citigroup, the second biggest underwriter, stands in contrast to widespread expectations on Wall Street. Late last year, analysts at firms including Barclays Capital, UBS AG and Morgan Stanley predicted that the market was poised for more muted gains, given how low yields had become.

Since then, however, prices continued to rally as the amount of cash being invested outstripped the volume of new tax-exempt bonds being sold and the coronavirus outbreak increased demand for the safest assets. That drove the securities to a 1.8% gain in January, the biggest one-month advance in six years, according to the Bloomberg Barclays index. Yields are at their lowest in over six decades.

Price gains slash yields to lowest in over six decades

Citigroup's forecast is based in part on the behavior of individual investors who are by far the biggest buyers of municipal debt. As long as the market continues to gain, they tend to keep sending in their cash, creating a self-reinforcing cycle. While that can also exaggerate the impact of a downturn, the bank's analysts said they "do not see a sell-off on the horizon."

Other forecasts are more muted. Even after January's gains, Barclays analyst Mikhail Foux said he still expects investment-grade state and local government bonds to return 2% to 2.5% this year. BlackRock Inc.'s Sean Carney is forecasting similar sized gains, saying that other months "are not as friendly as January has been."

But based on its expectation for inflows to municipal bond funds, Citigroup anticipates average gains of about 8.2% across various maturities, with nearly 11% returns on 30-year bonds.

Rai said in an interview that he expects prices will inch up as the year goes on. "It's simple supply and demand fundamentals," he said.

Bloomberg Markets

By Danielle Moran

February 4, 2020, 10:38 AM PST

Virus Outbreak Not Impacting Muni Credit Yet, Hilltop's Kozlik Says.

Tom Kozlik, Hilltop Securities head of municipal strategy, discusses the potential impact of the coronavirus outbreak and the proposed infrastructure legislation currently before Congress on the municipal bond market. He speaks with Bloomberg's Taylor Riggs on "Bloomberg Markets."

Watch video.

Bloomberg MarketsTV Shows

February 5th, 2020, 10:20 AM PST

Winds Driving Muni-Bond Rally Are Blowing Hardest in Illinois.

- **No state but Texas faces as big a supply gap over next month**
- **With bonds near junk, Illinois also gains from hunt for yield**

The forces that are driving the municipal-bond market rally are especially strong in Illinois.

Over the next 30 days, agencies in the state will pay off about $1.3 billion of debt, more than eight times as much as is currently scheduled to be sold, according to data compiled by Bloomberg. While that gap may narrow as more bond offerings are announced, nowhere except Texas currently faces as large a mismatch between supply and demand. That's a positive sign for Illinois debt, which this year has already outperformed every other U.S. state tracked by Bloomberg as rock-bottom interest rates cause investors to snap up higher-yielding bonds.

The wide gulf between the cash sloshing around — from debt payments, new investments into mutual funds, and those seeking havens from stock market volatility — pushed the municipal-securities market in January to the biggest one-month gain in six years. Those same dynamics appear poised to continue in February, when bondholders will receive even more in principal and interest payments than they did last month.

"The technicals are way, way overwhelming," said George Huang, an analyst who follows state and local government debt for Wells Fargo & Co. That "would point to further tightening of spreads and yields across all munis and also for comparatively yieldier Illinois bonds."

The broader rally has cut municipal-debt yields to the lowest in more than six decades, fueling interest in bonds with higher payouts. That has helped fuel the outperformance for Illinois, whose rating three years ago was at risk of being cut to junk because of the government's large debt to employee pension funds and the gridlock the former Republican governor encountered in the Democrat-controlled legislature.

The end to the political divide since Democratic Governor J.B. Pritzker took office last year has also contributed to the state's outsize gains. The difference between the yields on Illinois's 10-year bonds and those with the highest credit ratings — a key measure of the perceived risk — has narrowed to a little over one percentage point, the smallest since at least 2013 and down from more than three percentage points in 2017 at the height of a long-running impasse over the budget, according to data compiled by Bloomberg. The yield-penalty on Illinois bonds is still the highest of the 20 states tracked by Bloomberg.

Even so, Illinois's returns have been driven more by the broader dearth of new bonds than by the government's fiscal health, said Dan Solender, head of municipal securities investments at Lord Abbett & Co.

"There is very limited supply," Solender said.

Bloomberg Markets

By Shruti Singh

February 5, 2020, 10:30 AM PST

New ETF Created to Tap Demand for Muni Debt With Social Investing.

- **Fund appears to be first of its kind aimed at the two markets**
- **Will focus on muni debt that finances sustainable development**

VanEck plans to wade deeper into sustainable investing with the launch of what appears to be the first-of-its-kind municipal-bond exchange traded fund.

The asset-management company on Feb. 5 filed to register an actively-run Sustainable Muni ETF that will focus on investment-grade state and local government debt from "issuers with operations or projects helping to promote progress towards sustainable development." The fund will use the United Nations' Sustainable Development Goals, which aim to encourage sustainable cities and promote responsible consumption, to help make investment decisions, the filing says. No other muni ETF of that profile has so far been set up, according to data compiled by Bloomberg.

The plans for the fund come amid growing interest in both the $52 billion municipal ETF industry and investment strategies that promote the public good. The $3.8 trillion municipal-bond market, which finances things like public transit systems and green-energy start-ups, has seen firms like Brown Advisory and Neuberger Berman add mutual-fund products focused on investments that are perceived to have a positive impact on society.

The VanEck fund would also take a rules-based approach to choosing its investments, the filing says. It will incorporate ratings from independent research firm HIP Investor Inc., which measures investments' impact on society. Those investments could include bonds for affordable housing, hospitals and green spaces, the filing says.

VanEck municipal portfolio manager Jim Colby will manage the fund, the filing says.

Bloomberg Markets

By Amanda Albright

February 6, 2020, 7:53 AM PST

Tough-to-Disrupt Municipal Market Attracts Blockchain Developer.

- **ConsenSys buys Heritage Financial Systems; Terms undisclosed**
- **Firm seeks to ease issuance of tokenized bond offerings**

The municipal-bond market, with roots dating back to an 1800's New York City canal project, has a reputation for being stuck in a different century.

The $400-billion-a-year market, used by some 50,000 U.S. issuers, is known for small-sized deals that sometimes don't trade again for years after they're sold. Financial filings are often late and outdated. And hiccups with technology and human error can sometimes cause officials to forget to make bond payments on time.

That's why ConsenSys, a blockchain-application developer started by Ethereum co-founder Joseph Lubin, sees an opportunity to expand into the $3.8 trillion state and local debt market. The Brooklyn-based firm said on Tuesday that it acquired the broker-dealer Heritage Financial Systems, betting that governments can more efficiently raise funds and gain local investors by tokenizing municipal bonds on its Codefi platform.

Continue reading.

Bloomberg Cryptocurrencies

By Amanda Albright

February 4, 2020, 6:00 AM PST

ConsenSys Tokenizing $3.8T Municipal Bond Market.

Improving finance one bond at a time.

ConsenSys announced the acquisition of Heritage Financial Systems, an American broker-dealer, in a bid to tokenize the $3.8 trillion municipal bond market and improve one of the most tradition-bound assets in finance.

Is There a Blockchain for That?

Emma Channing, a coordinator of the deal, told Bloomberg that implementing blockchain technology for the municipal bonds sector "is a great use case." The thesis follows that blockchain technology, along with a host of other incoming technologies, will help digitize critical infrastructure. From finance, real estate, gaming, and so on, every industry looks ripe for renovation. This is especially true in the traditional debt market.

Municipal bonds move slowly and tend to be outfitted with inefficient tools which are prone to human error. Defined as debt securities, state institutions sell municipal bonds to investors. The capital raised is used to build roads, support schools, and other public projects.

ConsenSys' Attempt at "Mini-Bonds"

Channing may be correct, blockchain technology could shine in this environment. Clearly, ConsenSys sees real promise in combining the two businesses too. The specific implementation would tokenize the municipal bonds on ConsenSys' Codefi platform. This would allegedly make it easier to sell so-called "mini bonds."

Such mini bonds would be no different than what can be seen in the wider securities space. By tokenizing bonds, stocks, and equity, crypto entrepreneurs claim that inefficient markets could be made much quicker. Fintech outfit Securitize is doing exactly this, for example. And, as the name suggests, these digital assets could be parceled into even smaller pieces.

There is also an opportunity for further innovation once such assets are placed on a blockchain. In the bond sector, ConsenSys said that portions of how bonds are bought, sold, tracked, and distributed could be executed automatically.

The global fintech lead of ConsenSys, Patrick Beraducci, also pointed out that mini bonds may improve engagement between community members and their local government. Still, traction in this space has been unimpressive.

Neighborly, a non-crypto startup that worked to crowdsource bond underwriting, told its employees last year that it had run out of money. The bad news came two years after they had underwrote a massive debt sale for the city of Cambridge, Massachusetts.

Only time will tell if Neighborly failed in substance or in execution. With the latest ConsenSys acquisition, however, onlookers may have their answer soon enough.

Crypto Briefing

by Liam Kelly

Feb. 4, 2020

Understanding the New Wave of Green Debt.

Municipal debt markets can cater to everyone from a conservative investor looking for principal protection while earning enough to keep up with inflation to a moderate risk-taker who might be looking for high returns.

The new wave of green municipal debt instruments has many investors talking and potentially looking to make them part of their portfolio. The Municipal Securities Rulemaking Board (MSRB) states that green bonds are fixed-income debt instruments like any other bond. They offer a stated return and a promise to use the proceeds to finance or refinance, in part or fully, new or existing sustainable projects.

Generally, green bonds fund environmental, social and governance improvements or projects, and are issued by the public, private or multilateral entities to finance projects related to a more sustainable economy and that generate identifiable climate, environmental or other benefits. These projects may include renewable energy and energy efficiency projects, clean public transportation, pollution prevention and control, conservation, sustainable water and wastewater management, and green buildings that meet internationally recognized standards and certifications.

In this article, we will take a closer look at the rise of green debt issuance by public agencies and how an investor can meet his/her long-term investment goals while staying environmentally responsible and aligning with their social values.

Continue reading.

municipalbonds.com

by Jayden Sangha

Feb 05, 2020

Muni Bond Deals Continue to Help Global Green Issuance.

(Bloomberg) — American cities borrowing to fund environmentally-friendly projects continue to help drive green bond issuance, data compiled by Bloomberg show.

Green muni bond sales — including deals from San Francisco's Public Utilities Commission, New York City's Metropolitan Transportation Authority and Maine's Governmental Facilities Authority — were about $1 billion in January 2020, up from $972 million in December. Issuance reached approximately $9.8 billion in 2019, the second-biggest annual issuance total in data going back to 2013.

That helped push the global tally of corporate and government green bonds issued during the month to about $18.8 billion, in line with the $18.4 billion raised in January last year, according to Bloomberg compiled data.

Companies — mostly European power utilities — issued about $4.5 billion in green debt, a drop from about $9.7 billion raised in the first month of 2019, according to data compiled by BloombergNEF. Germany's E.ON SE sold $1.1 billion in green bonds to help fund sustainable infrastructure and energy efficiency projects. Portugal's EDP, which aims to slash emissions by 40% by 2030, raised about $800 million.

Bringing More Buyers

For New York's MTA, which issued $924.8 million in green bonds in January, adding a green label brought more buyers to the table, said Patrick McCoy, the issuer's director of finance. "Strong interest resulted in great results for the MTA," he said in a telephone interview Monday.

While companies in the U.S. didn't issue green bonds in January, high-profile deals like Verizon Communications Inc.'s $1 billion 2019 sale will encourage others, according to Moody's Investors Service. The bond grader expects issuance to hit $300 billion in 2020.

"There's growing demand for responsible investment strategies broadly speaking and for a lot of them green bonds fit in," James Rich, senior portfolio manager and chair of the sustainable investment committee at Aegon Asset Management, said in an interview Monday. "They are kind of a natural place for investors to look."

More sovereign issuers are expected to issue green bonds in the wake of and Chile, which sold debt in euros and U.S. dollar last month. Insight Investment, with about $900 billion in assets, is contacting governments in both emerging and developed markets directly to express an interest in buying more green bonds, said Josh Kendall, senior environmental, social and governance analyst at the firm.

Bloomberg

by Caleb Mutua and Mallika Mitra

February 7, 2020

New MSRB Analysis Finds that Retail Investors Tend to Purchase Municipal Bonds with Lower Coupons More Often Than Institutional Investors.

Read the report.

Swanky Austin Tower Pits Teachers Against a Texas Public Pension Fund.

(Bloomberg) — The biggest public pension fund in Texas plans to move into what is billed as Austin's tallest office tower. It's turning into an enormous quarrel.

The $160 billion Teacher Retirement System of Texas is taking heat from all sides — the lieutenant governor's office, lawmakers and retired teachers. The focus of their ire: a $3.9 million-a-year lease to occupy three floors in the gleaming downtown building set to open next year.

"The people who are paying the bills, they're the ones who are saying: 'Hey I taught in the hallway and you aren't able to make this work at a lower price?,'" said Tim Lee, executive director of the Texas Retired Teachers Association.

Both houses of the state legislature have set up hearings to examine the lease. Leaders of the fund, which manages benefits for 1.6 million current and former teachers and school employees, also plan to address the issue at a public meeting.

U.S. pensions have boosted riskier investments while contending with lackluster returns, which has put pressure on their spending decisions. They are also always under the microscope because they operate within government agencies, said Ashby Monk, who consults with institutional investors as executive director of Stanford University's Global Projects Center.

"It's dismaying to all of us that they would commit that kind of money," said Dan Flynn, a Republican in the Texas House of Representatives. "You're talking about public money." The house hearing may occur early next month.

Texas Teachers has built a world-class investment operation, with a satellite office in London and plans for a similar setup in Singapore. In its home state, though, it has occupied a building between the Texas Capitol and Interstate 35 for the last 11 years.

The agency signed up for the new 100,000-square-foot space to accommodate its expansion. It expects to have 230 employees in the next three years up from about 180 today. Those staffers will be treated to amenities including a fitness center, outdoor terraces, and restaurants and stores that will comprise what developers say will be Austin's biggest downtown office complex.

The rent row began last year when the Texas Teachers declined to disclose the lease terms to the Austin American-Statesman newspaper, sparking a months-long standoff. Last month it finally offered some details — the base lease rate — but excluded some costs like maintenance.

That led to public fallout. Last week, Lieutenant Governor Dan Patrick directed lawmakers to examine the total rental costs, including furnishings. The Senate finance committee will take up the matter during a Feb. 25 hearing, according to spokeswoman Katie Greer. The retirement system's board will also discuss it at a two-day meeting starting Feb. 20, spokesman Rob Maxwell said.

Fund executive director Brian Guthrie said in a statement last month that the Texas Teachers got favorable rates by committing early. The rent, which rises to $4.6 million by the end of the 10-year contract, is "well below current rates for comparable space in Austin's tight rental market," he said.

"We are aware of member and legislative concerns," Guthrie said in an emailed statement. "I and the board give our fiduciary responsibilities the highest priority."

That assurance is little consolation to retirees who rely on the fund.

"I never believed you need a fancy downtown building to attract people to Austin," Lee said of the Texas Retired Teachers.

Bloomberg

by Michael McDonald

February 7, 2020

Regulator Warns of Interest-Rate Risk Retail Investors Take With Low-Coupon Munis.

MSRB study shows retail investors purchase more 3-3.5% coupon bonds, institutional buy 5%

Retail investors purchase more municipal bonds with lower coupons than institutional investors do, setting themselves up to take a hit if interest rates rise, a regulatory organization found in a recent study.

Earlier this week, the Municipal Securities Rulemaking Board released a study showing that more than half of retail investor purchases involved bonds with a coupon of 3% to 3.5%. Most institutional investors bought bonds with a 5% coupon. The analysis was based on sales of bonds with maturities of 15 years or longer between May 1 and Oct. 1 last year.

In the report, the MSRB highlights the interest-rate gamble that retail investors are taking if they sell their bonds before they mature. If rates rise, bond prices fall. The smaller the coupon, the more vulnerable the bond is to rate volatility.

"In particular, a potential future rise in interest rates could have a material impact on investors' ability to sell the bonds at market price, should they want to sell the bonds prior to maturity," the report states.

In addition, the market discount is more likely to fall outside a de minimis threshold and be taxed at the ordinary income tax rate rather than at the capital gains rate, which would likely drive the bond price lower.

The report is a way for the MSRB — a self-regulatory organization that focuses on rule-making, education and transparency — to help investors navigate the muni bond market, said John Bagley, chief market structure officer for the MSRB.

“We want to make sure investors have all the information available at the time they’re making these decisions,” Mr. Bagley said. “If you’re looking at [low-coupon] bonds, recognize that this is a unique risk to this type of structure.”

Ronald Bernardi, chief executive of Bernardi Securities, endorsed the MSRB report because it highlights the risks surrounding low-coupon bonds.

“I like that the MSRB puts these pieces out,” Mr. Bernardi said. “Bonds are complicated. The report is good. It’s basic. That’s the audience the MSRB is addressing. There are a lot of sophisticated investors out there who are buying bonds themselves.”

But he hopes the MSRB study doesn’t stigmatize low-coupon bonds.

“My one concern with this is don’t conclude from it that a bond with a 3% to 3.5% coupon, within the context of the entire portfolio, is necessarily a bad thing,” he said.

Mr. Bagley said the report is not meant to indicate that investors are being harmed by purchasing low-coupon bonds or that they should avoid them. The report notes that buyers may want to take advantage of lower premiums and potentially higher yields.

But financial advisers who recommend discounted bonds also need to know the risk, Mr. Bagley said. “They should be aware of it and telling their clients about this risk when their clients buy bonds.”

Financial advisers already have a good grasp of the ups and downs of the bond market, said Dennis Nolte, vice president at Seacoast Investment Services. He recently attended a Financial Planning Association of Central Florida meeting about tax-free income, where municipal bonds were a topic of discussion.

“There aren’t too many folks who have just fallen off the turnip truck,” Mr. Nolte said. “The garden-variety financial adviser has a grasp of the risks in the market when you’re buying an investment with a long duration.”

INVESTMENT NEWS

BY MARK SCHOEFF JR.

February 5, 2020

New ETF Created to Tap Demand for Muni Debt With Social Investing.

(Bloomberg) — VanEck plans to wade deeper into sustainable investing with the launch of what appears to be the first-of-its-kind municipal-bond exchange traded fund.

The asset-management company on Feb. 5 filed to register an actively-run Sustainable Muni ETF that will focus on investment-grade state and local government debt from "issuers with operations or projects helping to promote progress towards sustainable development." The fund will use the United Nations' Sustainable Development Goals, which aim to encourage sustainable cities and promote responsible consumption, to help make investment decisions, the filing says. No other muni ETF of that profile has so far been set up, according to data compiled by Bloomberg.

The plans for the fund come amid growing interest in both the $52 billion municipal ETF industry and investment strategies that promote the public good. The $3.8 trillion municipal-bond market, which finances things like public transit systems and green-energy start-ups, has seen firms like Brown Advisory and Neuberger Berman add mutual-fund products focused on investments that are perceived to have a positive impact on society.

The VanEck fund would also take a rules-based approach to choosing its investments, the filing says. It will incorporate ratings from independent research firm HIP Investor Inc., which measures investments' impact on society. Those investments could include bonds for affordable housing, hospitals and green spaces, the filing says.

VanEck municipal portfolio manager Jim Colby will manage the fund, the filing says.

Bloomberg

Amanda Albright

February 6, 2020

EPA Announces First WIFIA Annual Report Highlighting $3.5 Billion in Infrastructure Funding.

WASHINGTON (February 6, 2020) — Today, as part of the U.S. Environmental Protection Agency's (EPA) 50th anniversary celebration, the agency released its first-ever Water Infrastructure Finance and Innovation Act (WIFIA) program annual report. Through 2019, the WIFIA program has financed more than $3.5 billion in loans, which has saved borrowers $1.2 billion dollars and has helped improve water quality for more than 20 million Americans.

"The WIFIA program's success is a key component of President Trump's efforts to modernize our nation's aging infrastructure, strengthen public health protections, and create jobs," said EPA Administrator Andrew Wheeler. "I have seen first-hand the impact this program has had on local communities in just a short amount of time. The WIFIA program has proven to be a tremendous tool in achieving environmental protections and fostering economic growth in communities across the country."

Established by Congress in 2014, the WIFIA program is an EPA federal loan and guarantee program focused on helping meet the growing water infrastructure needs in communities across the country. The program provides long-term, low-cost supplemental credit assistance to creditworthy drinking water and wastewater projects of national and regional significance.

WIFIA loans can finance a wide range of drinking water and wastewater projects, including traditional drinking water and wastewater treatment plants and conveyance systems, water recycling and desalination plants, drought prevention and mitigation projects, stormwater management, green infrastructure, non-point source pollution control and source-water protection. Eligible WIFIA borrowers include local, state, tribal, and federal government entities; partnerships and joint ventures; corporations and trusts; and State Revolving Fund programs.
Through 2019, the WIFIA program has closed 14 loans ranging in size from $20.7 million to $699 million. Together, WIFIA has provided $3.5 billion in loans to help finance more than $8 billion for water infrastructure projects while creating more than 15,000 jobs. Of those projects, 57 percent directly support Clean Water Act and Safe Drinking Water Act compliance.

In 2019, EPA invited 38 new projects to apply for WIFIA loans, totaling approximately $6 billion to help finance over $12 billion in water infrastructure investments. These projects will help support key agency priorities, including reducing lead and emergent contaminants and developing water reuse and recycling capacity. Together, the selected projects will improve water quality for 24 million people in 18 states.

For more information on the WIFIA program and to read the WIFIA annual report, visit: https://www.epa.gov/wifia.

02/06/2020

Contact Information:
EPA Press Office (press@epa.gov)

Mass. Appeals Court Broadly Construes Two-Year Bar on Repetitive Zoning Amendments.

In one of its noteworthy zoning decisions of late 2019, the Massachusetts Appeals Court interpreted the “two-year bar” for zoning amendments contained in M.G.L. c. 40A, § 5, sixth par. In *Penn v. Town of Barnstable*, the Appeals Court affirmed a summary judgment entered by the Land Court and concluded that the Town of Barnstable’s adoption of a zoning amendment calling for the creation of the Hyannis Parking Overlay District (HPOD) violated the two-year bar because the town had rejected a similar proposal just a few months earlier.

In an effort to create uniformity and resolve discrepancies in the management of parking spaces in and around Hyannis Harbor, a subcommittee of the Barnstable Town Council proposed in December, 2015 to amend the town’s zoning ordinance to create the HPOD. The proposed amendment, identified as Item No. 2016-54, sought to authorize as-of-right certain parking lot operations, with site-development standards governing operation of the lots within the HPOD. After a public hearing on the proposal, the Barnstable Planning Bboard voted not to recommend adoption of Item No. 2016-54. The Town Council then rejected the proposed amendment in a split vote in March, 2016.

A few weeks later the Town Council docketed a new zoning proposal concerning parking, Item No. 2016-166, and scheduled it for a public hearing on July 21, 2016. Item No. 2016-166 differed from Item No. 2016-54 in three ways, but the new proposal also dealt with the management of commercial parking. After this public hearing the Planning Board voted to recommend approval of

Item No. 2016-166. The Town Council then voted that Item No. 2016-166 was "not a proposed zoning ordinance . . . previously acted upon unfavorably" as Item No. 2016-54, and voted to adopt Item No. 2016-166. Neighboring homeowners challenged the Town Council's adoption of Item No. 2016-166, arguing, among other things, that the vote was invalid under M.G.L. c. 40A, § 5, sixth par., because it came within two years of the council's rejection of Item No. 2016-54.

The statute states:

> No proposed zoning ordinance or by-law which has been unfavorably acted upon by a city council or town meeting shall be considered by the city council or town meeting within two years after the date of such unfavorable action unless the adoption of such proposed ordinance or by-law is recommended in the final report of the planning board.

Citing the 1961 Supreme Judicial Court (SJC) decision *Kitty v. Springfield*, the Appeals Court noted that the purpose of the two-year bar is to "give some measure of finality to unfavorable action taken by a municipal legislative body." In *Kitty*, the SJC construed the two-year bar to apply to "any new action of the same character" as a previously defeated proposal. Because no reported decision had addressed what it means for proposals to be "of the same character" for these purposes, the Appeals Court examined cases decided in two analogous contexts. The court concluded that proposed ordinances and bylaws are sufficiently identical "if they share the same fundamental or essential character, with little substantive difference." Applying that standard, the Appeals Court concluded that Item No. 2016-166 was essentially the same as Item No. 2016-54 because the new proposal "did not change the fundamental and essential character of the item – to allow for as-of-right operation of commercial parking lots through creation of the HPOD."

Unlike the situation presented by M.G.L. c. 40A, § 16 (barring reconsideration within two years of a rejected application for a variance or special permit), where the bar does not apply if the permit-granting authority finds there are "specific and material changes" in the new proposal, M.G.L. c. 40A, § 5, sixth par., gives the municipal legislative body no role in deciding whether a proposed ordinance is the same as one previously rejected. If the two proposals are fundamentally and essentially the same, a proposed zoning bylaw or ordinance cannot be enacted within two years of being rejected by the municipal body.

On December 23, 2019 the SJC denied the Town of Barnstable's petition for further appellate review, so the Appeals Court's decision in *Penn* is now final.

Pierce Atwood LLP – Michelle N. O'Brien

February 7 2020

Rhode Island Driving for a Different Outcome in Federal Truck Toll Lawsuit: Nossaman

Rhode Island is trying to put the brakes on a federal lawsuit brought by the trucking industry that could steer the state's truck toll system into a ditch. The outcome could create speed bumps for transportation agencies considering deployment of innovative congestion management tools.

In 2016 the Rhode Island General Assembly passed the Rhode Island Bridge Replacement, Reconstruction, and Maintenance Fund Act of 2016 ("RhodeWorks Act") to fill a funding gap between revenue needed to maintain the state's bridges in sound condition and the state's revenue sources. The … Continue

Nossaman LLP

By Donna Brady on 02.05.2020

Jim Sorenson & Patrick McKenna: Investing for Impact in Opportunity Zones.

Can Catalyst Opportunity Funds serve as both a counterexample to the wave of negative OZ publicity and a model for OZ fund investing? Impact investing pioneer Jim Sorenson and tech entrepreneur Patrick McKenna are co-founders of Catalyst. Jim is also founder of the Sorenson Impact Foundation, and funding partner at the University of Utah's Sorenson Impact Center. Click the play button below to listen to…

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Opportunity Db

February 5, 2020

Erie, OPAL, SoLa, Four Points Win Forbes OZ 20 Grand Prizes.

The Opportunity Zone Catalyst Grand Prize Winners of the Forbes OZ 20 were announced earlier today at Sorenson Impact Center's Winter Innovation Summit in Salt Lake City, UT. The City of Erie and Opportunity Alabama emerged as the top two Community Organizations. The SoLa Impact Fund and Four Points Funding were named the top two Opportunity Zone Funds. Last year, Forbes partnered with the Sorenson…

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Opportunity Db

February 5, 2020

Puerto Rico Bondholders Reach Tentative Deal With Oversight Board.

Pact raises recovery for newer general obligation bonds, moving the U.S. territory closer to bankruptcy exit

Competing bondholder groups and the oversight board supervising Puerto Rico's debt restructuring have reached a tentative compromise that moves the U.S. territory closer to leaving bankruptcy, people familiar with the matter said.

The deal settles a dispute between holders of Puerto Rico general obligation bonds that were issued before 2012 and owners of general obligation bonds issued more recently. The oversight board has previously contested the validity of the newer debt and proposed owners of those bonds receive lower recoveries.

The agreement, which requires court approval, is expected to be announced next week. The board and the competing factions worked out the rough terms of their bargain during court-mandated mediation in recent months but are still discussing some legal points of disagreement, people familiar with the matter said.

Hedge funds including Monarch Alternative Capital LP, GoldenTree Asset Management LP and Whitebox Advisors LLC were part of a committee advocating for owners of the older—or legacy—bonds while a group including Aurelius Capital Management LP and Autonomy Capital negotiated on behalf of investors in the newer bonds. Together, the older and newer bonds total more than $18 billion in debt.

Spokesmen for the oversight board, and both bondholder groups declined to comment.

An early agreement between the legacy group and the oversight board contemplated paying about 64 cents on the dollar for the older bonds and between 45 and 35 cents on the newer bonds. The new deal involves a higher payment on the more recently issued bonds, the people familiar with the matter said.

The price of the U.S. territory's $3.5 billion bond issued in 2014 has climbed about 11% this year to around 70 cents on the dollar in recent days, its highest valuation since the bankruptcy case began in 2017, according to data from Electronic Municipal Market Access.

Aurelius has waged a legal battle against Puerto Rico and its oversight board that has gone all the way to the U.S. Supreme Court in an effort to increase payouts on their debt.

The Wall Street Journal

By Matt Wirz and Andrew Scurria

Updated Feb. 5, 2020 3:52 pm ET

TAX - OHIO

Willacy v. Cleveland Board of Income Tax Review

Supreme Court of Ohio - February 4, 2020 - N.E.3d - 2020 WL 535714 - 2020 -Ohio- 314

Taxpayer appealed determination of the Board of Tax Appeals affirming city board of income tax review's denial of her claim for refunds of income tax on value of stock options she exercised as a nonresident but received as compensation during her prior employment in city.

The Supreme Court granted taxpayer's petition to transfer appeal.

The Supreme Court held that:

- Taxpayer's exercise of stock options generated taxable "qualifying wages" under municipal law, and

- City's taxation of income from exercise of stock options did not violate due process.

Nonresident taxpayer's exercise of stock options generated taxable "qualifying wages," within the meaning of the municipal ordinances defining "qualifying wages" to include "compensation arising from the…exercise of a stock option," and levying municipal income tax on "all qualifying wages, earned and/or received…by nonresidents of the City for work done or services performed or rendered within the City," and was not nontaxable "intangible income" exempt from taxation under state and municipal law, notwithstanding fact that taxpayer was nonresident retiree at time she exercised stock options, where taxpayer received the stock options as compensation for employment services she provided to former employer in city.

City's taxation of nonresident taxpayer's income from exercise of stock options earned during prior employment in city did not violate due process, though there was time gap between income-producing activity and imposition of tax on compensation for that activity, and taxpayer exercised options as nonresident; income came from worked she performed in city, and thus satisfied minimum-connection requirement, and because all the stock-option income was compensation for that work, all the stock-option income was fairly attributable to her activity in city, and while income was not received until some period after income-producing work was performed, and exercise of stock options occurred after taxpayer became nonresident, that income arose from income-producing work in city.

- Special Assessment Debt: S&P Criteria Implementation Summary
- New Form 8038-CP Just Released: Hawkins Advisory
- SEC Proposes Amendments to the Advertising and Solicitation Rules: Dechert
- Issuers Oppose Broad Interim Disclosure.
- GFOA Releases New Report on Cyber Security.
- Climate Risk Disclosure is Both a Challenge and Opportunity for Issuers.
- NFMA Annual Conference in New Orleans.
- Substantive Puerto Rico bankruptcy bondholder case here, for those of you into that kind of thing.
- And finally, Such A Modern Way To Die is brought to us this week by *Hedayatzadeh v. City of Del Mar*, in which, "On the night at issue, Javad and his friends walked around the guardrail at the end of 13th Street, down an unimproved dirt embankment, and crossed the train tracks. The group then walked northbound on the west side of the tracks to a spot where they sat and smoked marijuana." So far, all in good fun. But then, "Javad noticed a freight train coming from the south and told his friends that he was going to use his phone to take a video 'selfie' of himself next to the train. As Javad was near the train tracks taking the selfie, he was struck by the train and killed." Although his final one, you gotta admit that that's one hell of an Instagram post.

MUNICIPAL CORPORATIONS - CALIFORNIA

City of Huntington Beach v. Becerra

Court of Appeal, Fourth District, Division 3, California - January 10, 2020 - Cal.Rptr.3d - 2020 WL 113677 - 20 Cal. Daily Op. Serv. 290 - 2020 Daily Journal D.A.R. 190

Charter city brought petition for writ of mandamus and declaratory relief, challenging provision of California Values Act (CVA) which restricted ability of local law enforcement agencies to inquire into immigration status, place individuals on an immigration hold, and use personnel or resources to participate in certain immigration enforcement activities.

The Superior Court granted petition. Attorney General appealed.

The Court of Appeal held that:

- Home rule provision of state constitution, setting out list of core areas that are municipal affairs, is properly read as an identification of areas that are at least presumptively deemed to be municipal affairs for purposes of preceding provision setting out general rule of municipal self-governance;
- No actual conflict existed between charter city's municipal code provision, making it the duty of police department members to impartially enforce all federal and state laws and local ordinances, and CVA, and thus enforcement of CVA against city did not infringe city's home rule authority;
- Conflict existed between provision of city charter, granting city its full constitutional power to make and enforce laws regarding municipal affairs, and CVA;
- CVA addressed matters of statewide concern; and
- CVA was narrowly tailored to addressing those matters.

IMMUNITY - CALIFORNIA

Hedayatzadeh v. City of Del Mar

Court of Appeal, Fourth District, Division 1, California - January 22, 2020 - Cal.Rptr.3d - 2020 WL 370443 - 20 Cal. Daily Op. Serv. 557 - 2020 Daily Journal D.A.R. 528

Deceased pedestrian's father brought action against city, railroad, and train operator after pedestrian was struck and killed by train near ocean bluff.

City filed motion for summary judgment on claim for dangerous condition of public property. The Superior Court granted city's motion, and father appealed.

The Court of Appeal held that lack of barrier to prevent pedestrians from going around guardrail toward railroad tracks did not constitute a dangerous condition of public property.

Lack of barrier at end of street, which terminated at ocean bluff, to prevent pedestrians from going around guardrail and entering hazardous area on railroad's right of way on bluff was not a dangerous condition of public property; persons who traveled to the end of the street were not required to walk toward the train tracks and encounter any hazard on the right-of-way, but rather had to decide to walk around the guardrail, down an embankment and toward the train tracks before encountering any hazard, and nothing about the city's property enticed or encouraged members of the public to put themselves in danger by entering a hazardous area on adjacent property.

ZONING & PLANNING - MAINE

Town of Gorham v. Duchaine

Supreme Judicial Court of Maine - January 21, 2020 - A.3d - 2020 WL 284098 - 2020 ME 7

Town brought land-use-enforcement action against landowner, alleging multiple violations of town's land use and development code. Parties settled dispute by agreeing to terms set forth in consent decree, which included compliance plan, and the Portland District Court entered consent decree as judgment.

Town thereafter moved to enforce consent decree, alleging that landowner had failed to comply with plan and was liable for full $10,000 suspended penalty, $45,000 in per-day penalties, and town's costs of enforcement. The District Court, Jed J. French, J., granted motion. Landowner appealed.

The Supreme Judicial Court held that trial court's conclusion that landowner was noncompliant with consent decree, thereby triggering imposition of prospective penalties described in decree, was not supported by competent evidence.

Trial court's conclusion that landowner was noncompliant with consent decree between landowner and town concerning land-use violations, thereby triggering imposition of prospective penalties described in decree, was not supported by competent evidence, although town attached affidavits of its engineer and code enforcement officer to its motion to enforce decree, and rule concerning taking of testimony allowed trial court to hear matter on affidavits, where trial court did not hold hearing, did not inform parties it would decide motion on affidavits, and did not give landowner opportunity to submit affidavits in opposition to town's affidavits, and, further, simply attaching documents to motion was not equivalent of properly introducing or admitting them as evidence.

PREEMPTION - MINNESOTA

Graco, Inc. v. City of Minneapolis

Supreme Court of Minnesota - January 22, 2020 - N.W.2d - 2020 WL 356249

Employer brought action against city for declaratory and injunctive relief, alleging that Minnesota Fair Labor Standards Act (MFLSA) preempted city's minimum wage ordinance.

The District Court entered judgment in favor of city. Employer appealed. The Court of Appeal affirmed. Employer petitioned for review, which was granted.

The Supreme Court held that:

- Ordinance did not conflict with MFLSA, and
- MFLSA did not occupy field of minimum wage rates and thus did not preempt municipal regulation in that field.

Municipal ordinance setting minimum wages rates did not conflict with Minnesota Fair Labor Standards Act (MFLSA), supporting finding that ordinance was not preempted, even though ordinance's rates were higher than those set forth in MFLSA; MFLSA only required that employers pay "at least" the statutory rate, which clearly contemplated possibility of higher hourly rates.

Minnesota Fair Labor Standards Act (MFLSA), providing minimum wage rates which varied depending on size of employer, did not occupy field of minimum wage rates and thus did not preempt municipal regulation in that field; statute merely set a minimum-wage floor, leaving room for municipalities to regulate above, nothing in text of statute indicated that preemption was Legislature's intent, and varied local regulation of wages would not have unreasonably adverse effect on state.

MUNICIPAL ORDINANCE - MISSOURI (entirely different state than Kansas)

City of Bellefontaine Neighbors v. Carroll

Missouri Court of Appeals, Eastern District, Division Two - January 14, 2020 - S.W.3d - 2020 WL 202097

After a bench trial, landowner was found guilty in the Circuit Court of violating two municipal property and zoning ordinances by allowing bare dirt in his rear yard and by having enclosure for chickens closer than 150 feet from his property's lot line. Landowner appealed.

The Court of Appeals held that:

- Judgment finding landowner guilty of charge city had abandoned during trial was reversed and amended;
- Landowner failed to show prejudice based on defects in information and violation notice that charged him with violating zoning ordinances;
- Information charging landowner with municipal zoning ordinance violation set forth the elements of the offense and adequately apprised landowner of the charge against him;
- City building inspector had authority under city zoning ordinance to enforce landowner's alleged violation of ordinance; and
- City legitimately exercised its police power and did not act outside the scope of authority delegated to it in enacting zoning ordinance.

TRANSPORTATION - MONTANA

Montana Independent Living Project v. Department of Transportation

Supreme Court of Montana - December 31, 2019 - 454 P.3d 1216 - 2019 MT 298

Nonprofit provider of transportation services to elderly and disabled residents appealed the decision of the Department of Transportation (DOT) to award state and federal transportation funds to city that served as the lead agency in provider's geographic area, which had distributed the entire amount to the city council instead of allocating a portion of the funds to provider as recommended by area's transportation advisory committee.

The District Court to DOT. Provider appealed.

The Supreme Court held that:

- Statute governing DOT's award of funds was a proper delegation of legislative authority;
- DOT did not engage in unauthorized rulemaking by adopting State Management Plan and applying it to its awards;
- Adoption of State Management Plan did not violate provision of Montana constitution entitling citizens to a reasonable opportunity to participate; and
- DOT did not violate provision of Montana constitution requiring legislature to "insure strict accountability of all revenue received and money spent" by state and local government by making its awards to lead agencies.

PUBLIC UTILITIES - OHIO

In re Ohio Power Company

Supreme Court of Ohio - January 22, 2020 - N.E.3d - 2020 WL 354954 - 2020 -Ohio- 143

Office of Ohio Consumers' Counsel sought judicial review of a decision of the Public Utilities Commission approving and modifying a previously approved electric-security plan.

The Supreme Court held that:

- Commission had subject matter jurisdiction to approve a cost-recovery rider to the plan;
- Commission did not act unlawfully in approving rider that allowed for recovery of costs associated with technology-demonstration projects; and
- No prejudice to ratepayers resulted from approval of rider, on placeholder basis, allowing recovery of costs from future renewable-generation projects.

Public Utilities Commission had subject matter jurisdiction to approve a cost-recovery rider to an electric utility's electric-security plan, and thus the failure of the Office of Ohio Consumers' Counsel to raise before the Commission its contention that the rider intruded on the Federal Regulatory Commission's (FERC) exclusive jurisdiction under the Federal Power Act over wholesale sales of electricity in the interstate market deprived the Ohio Supreme Court of jurisdiction to consider the issue; the Act did not deprive state tribunals of the power to adjudicate claims that the Act preempted state law, and utility's application for extension of the rider did not depend on federal law.

Public Utilities Commission did not act unreasonably or unlawfully in approving a rider to electric utility's electric-security plan allowing for recovery of costs associated with technology-demonstration projects to encourage construction of electric-vehicle charging stations and development of microgrids; no evidence showed that the projects had no relation to distribution service, infrastructure, or modernization, within meaning of statute governing electric-security plans, no authority held that statute governing standard service offers limited provisions in an electric-security plan to those necessary to maintain essential electric service, and statute governing electric-security plans authorized certain plan provisions even if another public utilities statute prohibited them.

Office of Ohio Consumers' Counsel failed to show harm or prejudice to ratepayers, as required for reversal of a decision of the Public Utilities Commission authorizing electric utility's implementation on a placeholder basis, i.e., with a zero rate, of a rider to an electric-security plan permitting utility to recover costs from future renewable-generation projects to be approved by Commission at a later date; costs and inefficiencies associated with Office's strategy to litigate an issue prematurely were not harm or prejudice caused by or resulting from the Commission's order.

SCHOOL - PENNSYLVANIA

Ambler v. Board of School Directors of the Hatboro-Horsham School District

Commonwealth Court of Pennsylvania - December 12, 2019 - A.3d - 2019 WL 6754781

Property owners brought action against board of school directors objecting to sale of property under provisions of Donated or Dedicated Property Act (DDPA).

The Court of Common Pleas granted that part of owners' complaint requiring that any sale of district property proceed in accordance with DDPA and precluded proposed sale. Board appealed.

The Commonwealth Court held that as matter of first impression, Code, not DDPA provided substantive authority for school district to dispose of donated property and how to use sale proceeds.

Public School Code, not Donated or Dedicated Property Act (DDPA) provided substantive authority for school district to dispose of donated property and how to use sale proceeds, although neither statute provided that it was the exclusive law governing the disposal of school lands, since differences between statutes processes, notice provisions, rights to object, options for disposing of land and buildings, and disposition of proceeds were irreconcilable, and there was no indication that it was the manifest intention of General Assembly that later enacted DDPA prevail over Code.

BANKRUPTCY - PUERTO RICO

In re Financial Oversight and Management Board for Puerto Rico

United States Court of Appeals, First Circuit - January 30, 2020 - F.3d - 2020 WL 486163

In the debt adjustment cases of the Commonwealth of Puerto Rico and related governmental entities, including the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (ERS), under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), the Financial Oversight and Management Board for Puerto Rico (FOMB), as representative of ERS, filed adversary complaint against entities that held bonds issued by ERS prior to PROMESA's enactment, seeking declaratory relief on the "validity, priority, extent and enforceability" of bondholders' asserted security interests in postpetition assets, including employer contributions that were made postpetition.

Parties cross-moved for summary judgment. The United States District Court for the District of Puerto Rico granted FOMB's motion and denied bondholders' cross-motion. Bondholders appealed.

The Court of Appeals held that:

- The section of the Bankruptcy Code governing the postpetition effect of security interests, as incorporated by PROMESA, prevented bondholders' security interest from attaching to postpetition employers' contributions;
- Bondholders did not have "special revenue" bonds; and
- The section of the Code governing the postpetition effect of security interests applied retroactively to the parties' security agreement.

With respect to entities holding bonds issued by the Puerto Rico Employees Retirement System (ERS) prior to enactment of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), the section of the Bankruptcy Code governing the postpetition effect of security interests, as incorporated by PROMESA, prevented bondholders' security interest in "pledged property" from attaching to employer contributions that were made postpetition; under applicable Bond Resolution, ERS did not have a prepetition property right, and bondholders did not have a security interest, but a mere expectancy, in any right to receive postpetition employer contributions, such that those contributions were not "proceeds" of any prepetition property right, bondholders did not have liens on "obligations" of employers to solve deficiency in pension system, and amendment to Article 9 of Puerto Rico Uniform Commercial Code (UCC) did not render employer contributions as secured "proceeds."

Entities holding bonds issued by the Puerto Rico Employees Retirement System (ERS) prior to enactment of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) did not have "special revenue" bonds as would have remained subject to any prepetition lien held by bondholders; the Bankruptcy Code, as incorporated by PROMESA, defined "special revenues" as any receipts derived from the ownership, operation, or disposition of systems primarily used or intended to be used primarily to provide transportation, utility, or other services, and, under the plain language of the statute, the postpetition employer contributions in which bondholders allegedly held a security interest originated in neither ERS' "particular functions" nor its "ownership, operation, or disposition of" a system of "other services," but in the work of employees that generated the contributions and the statutory obligation of employers to contribute, via annual appropriations of the Commonwealth.

In enacting the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) to address Puerto Rico's financial crises, Congress plainly intended to apply the section of the Bankruptcy Code governing the postpetition effect of security interests, as incorporated by PROMESA, retroactively, to security interests agreements created before the enactment of PROMESA; Congress provided an explicit command within PROMESA to apply the provision retroactively.

[For Many California Cities, New Year Brings Higher Pension Bills.]

- **Cost of some public safety pensions more than 70% of payroll**
- **Calpers flags concern that rising rates will stress cities**

Cities across California are beginning to draft their fiscal blueprints for the next year — and for many of them, that means paying more to the California Public Employees' Retirement System.

The percentage of payroll that the average police and fire department shells out for pension costs is expected to reach 56% by 2024, with the number of local governments paying more than 70% doubling to 59 by then. That means that for every dollar those cities spend on salaries, they'll need to contribute at least another 70 cents to Calpers, the largest public pension in the U.S.

[Continue reading.]

Bloomberg Markets

By Romy Varghese

January 29, 2020, 6:00 AM PST

[Fitch Rtgs: Coronavirus Places Limited Pressure on Airport Revenues]

Fitch Ratings-New York-31 January 2020: Most US, EMEA and LATAM airports are able to absorb the effects of air traffic interruptions due to the Wuhan coronavirus, says Fitch Ratings, although a prolonged suspension of Chinese air travel will depress passenger volumes and may pressure airport revenues. While Fitch believes airports are well positioned to handle such event risks, the situation is rapidly evolving, as a growing number of countries with exposure to this latest outbreak are causing additional flight cancellations and border closures. The duration of the health crisis and associated travel restrictions will determine if the virus will have longer-lasting effects on business and leisure air traffic.

Travel bans will primarily affect large hub and international gateway airports but these airports should be able to absorb a short-lived reduction in air traffic as they have strong cash reserves and can adjust rates to recover costs. As more companies suspend Chinese operations and airlines cancel and reduce flights, air traffic reductions may take longer to recover to pre-epidemic levels. A stall in overall traffic growth or a sustained dip in volumes could pressure airports to take defensive actions to protect their cash flows or reserves.

Flight cancellations by carriers, due to reduced passenger demand because of government imposed travel restrictions or negative travel sentiment, will slow traffic growth. However, the effects on costs and operations of most airports are expected to be minimal because of the stronger financial profiles of international airports, as air traffic is generally geographically diversified at these airports.US airports with non-stop service to China, namely San Francisco, Los Angeles, Seattle, Chicago O'Hare, and JFK, currently do not have a high dependence on this market segment, typically less than 10%, and China is not a major market pair for any US airport. A prolonged service interruption could certainly constrain growth compared with expectations and some airport revenue streams could face pressure such as terminal concessions.

Currently we expect the effect on European airport traffic to be temporary and limited due to low exposure to Asia. Direct flights to China constitute a small share of EMEA airport traffic, ranging from 0.2% to around 6.0%. The APAC region in general represents from 1.5% to 14.0% of total traffic. Some airlines such as British Airways and Lufthansa have suspended all flights to and from China, whereas others such as Hainan Airlines and Air France-KLM plan to cut the frequency of flights.

As a developing market, China's air traffic has grown faster than most markets, although growth slowed slightly in 2019 due to trade tensions with the US. Given the number of Chinese travellers increased dramatically since the SARS outbreak in 2003, the effect of travel bans and flight suspensions on air traffic to and from the country will have a greater effect than past outbreaks. Nevertheless, based on past event risks, including viral outbreaks, air travel should rebound, but at this point the timing remains uncertain.

Fitch Ratings: Driverless Cars Largely a Plus for Toll Roads; Managed Lanes Vulnerable

Link to Fitch Ratings' Report(s): The Effect of Automated Vehicles on Toll Roads (Automated Vehicles Are Likely Positive but Congestion Reliever Toll Roads Are Most Vulnerable)

Fitch Ratings-New York-03 February 2020: Though likely over a decade away from widespread usage, automated vehicles (AVs) will have a transformative effect on travel and traffic patterns for toll roads, according to Fitch Ratings.

While the effect on ratings is still too early to gauge, toll roads will likely benefit over time for numerous reasons. Perhaps chief among them will be an increase in vehicle miles traveled. "Commuters will now be able to complete other tasks en route if they don't have to drive, which makes longer journeys more tenable," said Scott Monroe, Director at Fitch Ratings. "More trips are also expected since empty cars can reposition themselves and individuals who cannot drive a conventional vehicle will have improved mobility."

However, the advent of AVs could be potentially disruptive and make forecasting future toll revenues more difficult since there are also competing factors that could decrease vehicle miles traveled. AVs could encourage more carpooling, resulting in fewer individual trips.

Toll roads with no viable competing routes, such as monopolistic bridge systems and large expressways, are difficult to avoid, making them the least susceptible to revenue loss from AVs. Conversely, congestion relievers like managed lanes are the most vulnerable. A driver will choose to use a toll road if the driver's value of time (VOT) saved is greater than the cost to pay a toll. AVs reduce VOT because a passenger's time is freed up to complete other tasks instead of driving. Even with an increase in the number of trips, "Since AVs decrease the value of time the willingness to pay tolls for a faster trip declines," said Monroe.

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Fitch Rtgs: US Healthcare Policy Proposals Will Weigh on NFP Hospitals

Fitch Ratings-New York-03 February 2020: Healthcare is a major 2020 US presidential election issue, and some leading proposals, if implemented, would have considerable credit implications for not-for-profit (NFP) hospitals, says Fitch Ratings. The outcome of the election will likely have significant ramifications for healthcare regulation and spending, although the success of any plan is dependent upon a party's control of both the White House and Congress.

Federal policy could take very different paths due to deep political polarization. In addition to bipartisan views, there are philosophical differences regarding healthcare policy among Democratic presidential candidates. Democratic proposals including "Medicare For All", "Medicare For All Who Want It", and "The Public Option" are top of mind as Iowans caucus today.

We believe the chances of a "Medicare For All" plan becoming the law of the land during the next presidential term are remote due in part to these divisions. Not only is private health insurance popular among many Americans but the costs of "Medicare For All" would be huge, making it difficult to garner support in Congress. Focus on the costs of any federal healthcare proposal will be intense, given projections of an increasing federal budget deficit reaching $1.0 trillion this fiscal year, according to the Congressional Budget Office.

Healthcare is a considerable portion of the economy, representing nearly 18% of GDP in 2018, according to the US Centers for Medicare and Medicaid. The federal government shoulders much of this cost, spending nearly $1.1 trillion on Medicare, Medicaid, the Children's Health Insurance

Program, and veterans' medical costs, out of a total federal outlay of $4.1 trillion in federal fiscal year 2018.

The "Medicare For All" proposal essentially replaces commercial insurance payments with Medicare rates and would be an unambiguous credit negative for NFP hospitals. Only the most efficiently operated hospitals reportedly break even on Medicare rates. Effectively all profit margin is earned from commercial/managed care insurers. If the private insurance market were downsized significantly or eliminated altogether, hospital operating margins would be slashed, and unless Medicare reimbursement rates were revised upward, most hospitals would begin to run deficits.

A proposal being offered by more centrist Democrats is to keep the Affordable Care Act (ACA) and reintroduce the public option, which was part of the initial ACA proposals. The credit effect on NFP hospitals would depend on how any potential public option is structured. If set up to add competition to the health insurance market without meaningfully crowding out existing commercial payors, the number of uninsured could drop considerably, while providing stability in insurance markets in regions that currently have limited access. Alternatively, if a public option had structural price advantages over commercial payors, private health insurance might be dropped by employers and relegated to a small segment of the market.

Probably the best outcome in terms of hospital credit quality is if the ACA were left intact, particularly if states that have not expanded Medicaid under the ACA reversed position. We observed a notable reduction in bad debt and an uptick in cash flow margins, which ultimately bolstered balance sheet strength, during the initial Medicaid expansion when the ACA became law. This supported an uplift in overall NFP hospital ratings in those states that expanded Medicaid.

Concurrent with these policy debates are on-going challenges to the ACA. Elimination of the ACA, through either the courts or administrative mandates, would be a clear credit negative for NFP hospitals. Millions of people would lose insurance coverage through a significant cutback in Medicaid eligibility and elimination of subsidized health marketplaces. Uninsured individuals would continue to seek care, resulting in an increase in hospital bad debt and charity care, leading to a reduction in hospital profitability.

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California Governor's Budget Proposal: Steady Sailing For Now; Potential Vulnerability To Stormy Weather

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- Education Spending Could See Relief Due To A Drop In Enrollment
- Health And Human Services Gets A Boost
- While Corrections Spending Remains Stable, Climate Change Spending Heats Up
- A Climate Resilience Bond Could Potentially Raise Debt Ratios
- What Lies Ahead For The Golden State?
- Related Research

Key Takeaways

- California's economic assumptions for fiscal 2021 appear reasonable, with 3.4% general fund revenue growth proposed, adjusted to exclude transfers to the budget stabilization fund.
- The state currently runs a structural operating surplus; however, revenue remains very vulnerable to future cyclical economic or stock market decline due to a high dependence on capital gains tax and a small number of top taxpayers.
- The governor proposes large ongoing increases in health and human services, while other key spending areas would remain largely flat. Combined with a drop in one-time spending and almost $20 billion of proposed new general obligation debt authorizations, this may reduce future state spending flexibility.
- Overall financial reserves would remain strong and comparable with last year as a percent of budget, but California needs these high reserves to cover potentially above average revenue cyclicality.

Continue reading.

Special Assessment Debt: S&P Criteria Implementation Summary

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- Observation On Criteria Implementation
- California's High Revenue Flexibility Puts It Ahead Of Florida In Positive Rating Actions
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Key Takeaways

- We've reviewed all credits under our revised special assessment criteria since its publication in April 2018.
- Overall, the direction of rating actions to date has met our expectations, though the magnitude of positive rating actions has slightly exceeded our expectations.
- In particular, the frequency of upgrades for credits in California was more than double that of

other states.
- Rated issuers consist almost entirely of fully or highly developed districts with minimal developer exposure, supporting credit quality.
- Although property value appreciation has begun to slow in most major real estate markets and distress metrics have increased slightly, real estate demand remains robust, and we believe that assessment areas with mature development will maintain strong credit characteristics.

Continue reading.

S&P USPF 2020 Outlooks.

All sector outlooks are stable with the exception of Higher Education which continues with a negative outlook for the third year. The record economic expansion has translated to overall credit stability in U.S. Public Finance and we expect this to continue in 2020. Despite favorable economic and fiscal trends we do see a precarious balance for 2020 as key credit risks such as retirement liabilities, event risk disruptions, global aging, and pressing infrastructure needs present budget and policy challenges in 2020 and beyond. We will continue to highlight Environmental, Social and Governance issues, which could lead to both positive and negative credit influences.

Download Report.

New Form 8038-CP Just Released: Hawkins Advisory

The Internal Revenue Service just released an updated Form 8038-CP to be used by issuers claiming interest subsidy payments in respect of their outstanding tax-advantaged bonds; please see the attached Hawkins Advisory.

State Legislation Prompts San Diego to Explore Creating a City-Owned ‘Public Bank’

Proposal could generate revenue, boost community investment; but critics say there are risks

SAN DIEGO — New state legislation allowing cities to establish government-run “public banks” has prompted San Diego officials to begin exploring the idea, including four City Council members who want to spend $250,000 on a feasibility study.
San Diego would join Los Angeles, Oakland and several other cities that have begun analyzing the pros and cons of public banks, which aim to boost city revenue and direct more capital to priorities like affordable housing.

If approved, San Diego would launch its public bank, which could happen as soon as next year, using hundreds of millions of dollars from city reserves that it now keeps at Bank of America.

By cutting out a commercial bank as the middle man, the city could replace the small interest payments it receives from B of A — currently about 1 percent — with interest revenue as high as 20 percent from loans it would make, supporters say.

Just like a traditional bank, the city's public bank could lend money in the form of property mortgages, capital needed for housing developments or loans to nonprofits and other businesses.

Supporters say a public bank would strengthen the local economy by making it easier for small businesses to get capital and by directing loans toward projects that address pressing needs, like bike lanes, solar panels and other "green" infrastructure.

In addition, a public bank could provide crucial start-up capital to local credit unions and neighborhood banks. That would make loans and other financial services more widely available, especially in low-income neighborhoods, supporters say.

"There's really something for everyone in this," said Jeff Olson, a North Park resident spearheading the effort as head of a new organization called PublicBankSD. "We're going to make a ton of money out of thin air."

Critics say previous efforts to launch public banks across the nation have been plagued by large start-up costs, profits that don't materialize for decades and even complete failures in some cases.

They also say public banks get mired in politics, with decisions on loans becoming political debates instead of sound financial evaluations.

Such concerns prompted the state Legislature to treat the creation of public banks as a pilot project in September when it approved AB 857, which was signed into law by Gov. Gavin Newsom in October.

Only 10 cities will be allowed to establish public banks under the pilot legislation, with a maximum of two banks opening per year until that total is reached.

Olson said Los Angeles officials, who placed an unsuccessful city public banking measure on the ballot in 2018, are further ahead in establishing a city-owned bank than other cities in California.

But San Diego has a chance to join L.A. in the first duo of cities to have public banks approved by the state, he said. If not, Olson said he is hopeful San Diego will be in the second wave, probably with Oakland or San Francisco.

Other cities that have begun exploring the idea include San Jose, Long Beach and Truckee, he said.

Olson said the state limit of two new public banks per year helped motivate four San Diego Councilmembers – Georgette Gómez, Dr. Jennifer Campbell, Chris Ward and Monica Montgomery — to request Mayor Kevin Faulconer include $250,000 in his new budget for a feasibility study.

"It's another case where we run the risk of procrastinating so long that the team moves to L.A., and I think that has lit a fire underneath some of the folks at City Hall," Olson said.

Councilman Ward said he supports the study and plans to have the council's economic development committee, which he chairs, help make a public bank happen.

"Public banking offers many potential benefits to San Diego, and the committee should explore the necessary steps for identifying these opportunities going forward," Ward said in his proposed priority list for the committee this year.

Councilwoman Barbara Bry also has agreed to let Olson make a detailed presentation on public banking in March to the council's budget committee, which she chairs.

None of the council's Republican members have endorsed the idea, but Republican Mayor Kevin Faulconer sent the city's lobbyist to Sacramento to advocate for AB 857.

In a letter to the state Assembly, lobbyist Moira Topp said a public bank could be "an innovative municipal finance tool that could allow cities like San Diego to truly invest in its citizens."

Topp said the state legislation includes many benefits for cities, but it's also carefully written to avoid financial pitfalls.

"The city could potentially reduce costs and provide access to capital for its residents, businesses and nonprofit organizations," she said. "The bill includes safeguards and fiduciary requirements to be met before the city could establish a public bank and would require this bank generally comply with requirements in state law for commercial banks."

San Diego's first step is hiring a financial firm to determine the estimated start-up costs of a public bank, create a business plan and analyze the potential long-term cost savings and revenue for the city.

AB 857 requires cities to complete such an analysis and submit it to the California Department of Business Oversight, which could then give San Diego permission to open a public bank.

Olson said he's optimistic about the results of such an analysis, which could be complete by late 2020 if the city makes the $250,000 available in the new budget it's scheduled to adopt in June.

"My group paid an economist to do a preliminary business plan where he pulled all the numbers from the city's comprehensive annual financial report into a banking model, and it shows an immediate 15 percent return on our investments, and in the second year it looks like we get a 24 percent return on our money," Olson said.

By comparison, the city now gets between half a percent and one and a half percent in interest on its money at Bank of America.

In addition, the city would get a much better deal when it borrows money, Olson said.

For example, a $900 million housing bond proposed for the November ballot would only generate about half that amount for housing projects because of interest and financing fees, he said.

But if a city-owned bank handled the bond sales, a much larger share of the money would go toward actual housing construction, he said.

Public bank proponents often tout the Bank of North Dakota, a state-owned public bank that has generated $464 million since 2000, as a shining example.

But a feasibility analysis by San Francisco last March yielded discouraging results.

It analyzed three models and found that the one providing the most services would require $119 million in start-up capital and $2.2 billion in public subsidies — and the bank wouldn't break even for 56 years.

"It's possible the numbers come back and it doesn't work out," said Olson, noting that Washington state postponed plans for a public bank after a similarly discouraging analysis.

But it’s worth the cost and effort to conduct a study to see the results, he said.

The city’s first public debate on the subject will be Olson’s presentation to the council’s budget committee, which is scheduled for 9 a.m. on March 11.

SAN DIEGO TRIBUNE

By DAVID GARRICK

FEB. 2, 2020 5 AM

California State Senator Writes Bill to Take Over PG&E.

(Bloomberg) — California Governor Gavin Newsom has threatened a state takeover of PG&E Corp. if the bankrupt utility giant doesn’t shape up. Now he has a framework to do it.

State Senator Scott Wiener will introduce a bill as early as Monday that would kick off a process by which the state assumes control over PG&E by buying its stock, according to his staff.

The utility would be run by a municipal board — enabling access to cheap tax-free financing — but operated by a public benefit corporation, a private entity that would allow PG&E workers to avoid being subject to government employment rules. Municipal bonds paid back over time by ratepayers would finance the transaction.

“PG&E operates a monopoly as a privilege granted by the state of California, and that privilege can be revoked,” Wiener, a San Francisco Democrat, said in an interview. “I support public ownership of PG&E.”

In a statement, PG&E said it opposes the bill. “Changing the structure of the company would not create a safer or cleaner operation,” the utility said. “We remain focused on fairly resolving wildfire claims and exiting the Chapter 11 process as quickly as possible.”

PG&E shares rose 14% Monday in New York after the company outlined plans late Friday to overhaul its board of directors as part of a broad reorganization proposal aimed at winning state approval for its bankruptcy exit.

As recently as Jan. 29, Newsom reiterated that if needed he would take over PG&E, whose equipment has ignited devastating wildfires in the state. Lawmakers and municipal leaders have grown impatient with the San Francisco-based company, which plunged millions of Californians into darkness during mass power outages last year in a bid to prevent more wildfires.

The state Senate last week passed Wiener’s bill forcing power companies to compensate residents, businesses and local governments for costs from intentional blackouts. The measure now goes to the state assembly.

It’s not yet clear how much Wiener’s takeover proposal would cost or what it would mean for PG&E bondholders. The company’s market capitalization is about $9 billion.

There are also time pressures: PG&E has a June deadline to exit bankruptcy to be able to tap a state fund for wildfire damages.

Wiener's legislation envisions revival of a state power authority, run by gubernatorial appointees, to temporarily take control of the utility.

Ultimately, control would be turned over to a seven-member board, representing the service area in districts divided equally by population. Local governments in each district would elect the board members. A private entity would operate the utility, similar to the way New York's Long Island Power Authority is run. Liabilities for future fires would fall on the regional board and its ratepayers, not the state.

San Francisco's Bid

The governor is aware of the legislation, Wiener said. Newsom hasn't yet taken a position on it, the state senator said.

Wiener said customers won't pay more under his proposal. "The utility would have more of an incentive to take care of its infrastructure than to pay profits to Wall Street," he said.

The government of San Francisco has already made a $2.5 billion bid for the wires that PG&E runs within the city's limits. It and other localities that want to buy pieces of the system would be allowed to do so under Wiener's proposal.

A group of 190 city and county officials, meanwhile, has proposed turning PG&E into a giant customer-owned cooperative.

Bloomberg

by Romy Varghese

February 3, 2020

Climate Risk Disclosure is Both a Challenge and Opportunity for Issuers.

Climate change risks are becoming clearer for municipal issuers and market participants are counting on more disclosure about how those risks affect credit and global investor perceptions of the market.

The very way issuers disclose — or don't disclose — those risks to the broader public finance industry is under scrutiny, market participants have recently said, including panelists at The Bond Buyer's National Outlook Conference this week.

Nearly every panel touched on climate. Industry participants — from investors to data providers to ratings agencies to the issuers themselves — are beginning to speak more aggressively about the need for improved disclosure and increased spending.

Fifty-two percent of attendees who responded to a live survey thought that spending on climate change and cybersecurity will increase by 5% above overall budget spending and 68% of respondents said that issuers will incorporate environmental, social and governance (ESG) practices into their disclosure practices this year.

“We would like a little more detail than what is currently out there,” Kurt Forsgren, managing director and head of sustainable finance at S&P Global (SPGI), said on a climate panel. While rating agencies, investors and bond insurers do their own due diligence on potential credit risks due to climate, essentially “we are still dependent on issuers for information,” he said.

Forsgren said that sometimes current disclosures in official statements can seem a bit “couched” and there is an opportunity to give climate risks relevance and importance in ways that investors can understand.

Build America Mutual Chief Credit Officer Suzanne Finnegan, also speaking on the panel, said BAM considers climate factors when deciding whether it will insure a deal, and takes a “conservative” approach to viewing the potential risks versus the revenue pledges on those deals.

The risks municipal issuers face from climate change are not simply environmental — there are potential increased costs of paying for the infrastructure needs to preemptively deal with climate events and clean up after them. There is a need to assure investors through disclosures that governments are prepared to repay them if the costs become larger than expected. These factors are being discussed across trading floors, board rooms and through letters to investors from the world’s largest asset managers.

“Will cities, for example, be able to afford their infrastructure needs as climate risk reshapes the market for municipal bonds?” Larry Fink, CEO of BlackRock (BLK), wrote in a letter earlier this month.

The issue could be looked at as a potential carrot and stick relationship for issuers.

William Glasgall, senior vice president and director of state and local initiatives at the Volcker Alliance, said that disclosure of climate risks is “inconsistent and incomplete.” During a panel discussion, Glasgall said that while the Securities and Exchange Commission cannot tell issuers what they have to disclose, there is a potential that it could focus on climate risk and potential defrauding investors similar to how it focused on pension risks that were not disclosed in the past. “If the SEC decides that environmental, climate change is material, we could see enforcement and then we will see disclosure.”

Some issuers are moving in that direction, whether by seeking third-party sustainability designations, focusing on ESG, green and marketing their bonds to investors that have mandates to invest in those types of bonds.

James McIntyre, director of capital markets at NYS Homes and Community Renewal, New York’s state affordable housing agency, said that when issuers are planning their deals, “climate cannot sit over here and well, credit sits over there. All the projects we are doing — we are building resiliency into them.”

McIntyre, speaking on an outlook and opportunities panel, noted that he and other issuers, such as the San Francisco Public Utilities Commission, are exploring ways to show their projects are sustainable, most recently by using the Sustainable Bond Network, a global online platform designed to improve transparency in the market for green, social and sustainability bonds.

And with the taxable bond boom that has drawn international investors, issuers can lure new investors.

“Issuers have a strong opportunity in 2020 to tell the story of the municipal market to a much broader investor pool through disclosures on climate risk, ESG factors and green bonds,” said Will

MacPherson, managing director at IHS Markit (INFO). "An international audience is growing for such disclosures and given the trend in taxable supply and interest in long-dated investments, tools are available to seamlessly expand the conversation into these new pockets of interest. The data is there; it simply needs to be articulated."

MacPherson said that while the additional disclosure requirements may be viewed as a burden by some, through steady repetition they could become a new standard over time.

"Having more eyes on munis is better for the market as a whole," he added.

McIntyre also said that international investors in particular are looking to munis as investments in their portfolios, pointing to Dutch and Canadian pension funds as examples, but they have certain mandates to invest in sustainable projects. He said there needs to be an educational effort with international investors and that issuers should "leverage our leverage" in that area.

Daniel Tomson, co-head of public finance at Citi, noted that because of the influx of taxable debt, Citi is deploying its bankers to educate international investors because demand there is a large part of why taxable munis have been well absorbed. Tomson said 2020 could be a bellwether year for the market.

Bob Spangler, co-head of municipal finance at RBC Capital Markets, said that large issuers such as California and New York are focusing more on ESG in their deals and that investors interested in ESG will begin to change issuer behavior, but he cautioned "it's going to be very slow."

As the current administration rolls back Obama-era environmental protections, it will leave it to the cities and states to take the lead on addressing climate risks.

What's needed is "a robust federal partner" in dealing with climate change and "right now, that's not what we have," said Dan Zarrilli, chief climate policy advisor and OneNYC director in the New York City mayor's office. Zarrilli said that given that reality, the risks New York City faces in particular require the help of the financial markets and his office has plans to "fundamentally reshape this city over the new few decades."

Zarrilli said that climate change is an "all society" problem which all participants need to take seriously.

"Investors are increasingly … recognizing that climate risk is investment risk," Fink wrote. "Indeed, climate change is almost invariably the top issue that clients around the world raise with BlackRock."

By Lynne Funk

BY SOURCEMEDIA | MUNICIPAL | 01/30/20 02:42 PM EST

[GFOA Releases New Report on Cyber Security.]

A Byte of Prevention: Best Practices in Cybersecurity

All local governments are potential targets for cybercrime, a risk that intensifies as victims increasingly pay ransoms to regain access to their hijacked technologies. It can be tempting to pay up because hacks are disruptive, damaging, and embarrassing – and expensive.

As stewards of (often sensitive) public data, finance officers must understand the significance of this threat, including the large costs governments face in recovering lost data, restoring public trust, and otherwise recovering from a breach.

This report identifies simple simple and inexpensive strategies that address people, process, and technology to protect their organizations from cyber threats without conducting a costly cybersecurity assessment. Many of the recommendations on the following pages address the weakest link in cybersecurity: the human factor.

Download Report

How the Fed, Negative Rates Impact the Municipal Bond Market.

Chris Brigati, head of municipal trading at Advisors Asset Management, discusses expectations for lower-for-longer-rate policy for the Federal Reserve, the impact of negative interest rates on the municipal bond market, and market supply and demand. He speaks with Bloomberg's Taylor Riggs on "Bloomberg Markets."

Watch video.

Bloomberg MarketsTV Shows

January 29th, 2020, 9:36 AM PST

Goldman's Unusually Small Client: This $61,920-a-Year Prep School

- **Bank underwrites $8 million muni-bond deal for Milton Academy**
- **Boarding schools among issuers taking advantage of low rates**

Goldman Sachs Group Inc. is one of the biggest underwriters in the $3.8 trillion municipal-debt market because it chases big deals. But this week, it stepped back from that strategy to handle an unusually small sale for an elite Massachusetts boarding school.

The Milton Academy, whose alumni include billionaire Illinois Governor J.B. Pritzker, Robert and Ted Kennedy, and Nobel Prize-winning poet T.S. Eliot, sold $8 million in bonds this week to refinance older, higher interest-rate debt. The 1,000-student school, started in 1798, charges as much as $61,920 a year in tuition for high schoolers.

It's rare for Goldman to underwrite a deal that small. It hasn't managed a long-term municipal-bond offering under $10 million since at least 2013, according to data compiled by Bloomberg. Goldman held its slot as the sixth-biggest underwriter last year by managing just 86 deals. But because they were so large, that put it ahead of rivals like Wells Fargo & Co., Stifel Financial Corp. and Raymond James Financial Inc., all of which worked on far more transactions.

Elite boarding schools like the Taft School in Connecticut have been among those tapping the muni market to capture low interest rates, armed with huge endowments, strong credit ratings and high-society cachet. Milton Academy, which has a $329 million endowment, will also sell bonds for campus projects through a private placement next month, according to offering documents.

This week's bonds, which are rated AA by S&P Global Ratings, priced for yields as little as 0.03 percentage points above top-rated municipal debt.

While Milton Academy may not have the size of Goldman Sach's other muni-bond issuing clients, it has a roster of elite graduates and a curriculum that includes Latin, nuclear physics, ceramics and molecular genetics. The school has a five-to-one student-faculty ratio and allows its high school students to study abroad in China, France and Italy.

The school is in the midst of a $175 million fundraising campaign that's been supported by donors like hedge fund executive David Abrams and Boston Partners Chief Executive Officer Jay Feeney. Pritzker, who spoke at the school's graduation ceremony in 2019, also donated through his foundation.

Esten Perez, a spokeswoman for Milton Academy, declined to comment, as did Goldman spokeswoman Nicole Sharp.

Bloomberg Markets

By Amanda Albright and Danielle Moran

January 31, 2020, 6:15 AM PST

Issuers Oppose Broad Interim Disclosure.

Issuers are pushing back against analysts and regulators seeking more frequent financial disclosures and say they want to know what specifically investors and analysts are looking for in their finances.

At a Government Finance Officers Association debt committee meeting Monday, issuers aired concerns about being asked to provide financial documents on a more frequent basis. Some said groups like the National Federation of Municipal Analysts are asking for too much. The NFMA wants interim financials from municipalities in order to get a good idea of their fiscal direction.

"NFMA has asked for the moon with quarterly filings," said Richard Li, a public debt specialist for the city of Milwaukee. "That's a nonstarter for the industry as a whole."

Securities and Exchange Commission Chair Jay Clayton has said he is focused on both more timely annual financial reporting and interim unaudited financial information to improve municipal disclosure. Some analysts also say issuers take too long to get out their audited financial information and want information on a more frequent basis.

Li believes the municipal market needs to start interim disclosure with "low hanging fruit" such as certain parts of an issuer's budget that have volatile revenues such as sales tax and toll revenues.

"We need to have that discussion on how can we report it in a way that's meaningful, which is why I'm thinking if you just isolate the volatile revenues or volatile expenditures, maybe that gives analysts most of what they need to know," Li said.

If NFMA can agree that volatile revenue is something to report on a regular basis, then that would be helpful, Li said.

“Then I think we’re getting to the place where they’re getting useful information that the issuer should be tracking, but then you’re not requiring all issuers to be tracking those numbers for the sake of producing numbers,” Li said.

For some issuers that don’t enter into the market often, they wonder if they will have to construct their interim financials, meaning more staff to help them do that.

“If you are an infrequent issuer, you’re likely to have a smaller staff,” said LaShea Lofton, finance director for Dayton, Ohio. “So you’re trying to figure out, how do you balance the provision of additional information in existing staff capacities as well?”

The city posts on its website its budgeted to actual statements for its general fund on a monthly basis. Lofton stressed even with that disclosure that investors would need to look at overall trends to get the bigger picture of the city’s financials.

Finding a solution to interim disclosures cannot be one size fits all, issuers said at the GFOA meeting.

Some issuers believe that quarterly financial statements are not going to address what analysts or investors are looking for.

“Quarterly financial statements are thrown out there generically,” said Dave Erdman, capital finance director for the state of Wisconsin. “What’s needed is everyone stepping back and identifying what is needed.”

Quarterly financial statements take “significant time” for issuers to prepare, Erdman added and disclosure should be narrowed to specific information. Erdman is also concerned that audited financial statements will now take longer to produce if issuers also have to do interim financials.

“As it’s often said, governments hire police officers and firefighters,” Erdman said. “Governments don’t employ an army of accountants.”

GFOA formed a disclosure working group last year to explore solutions around the subject of timely disclosure. The group has a variety of muni market participants including NFMA, municipal advisors and bond lawyers among others.

Erdman hopes that in discussions stemming from the disclosure working group market participants can come to a solution without regulatory interaction. That could be through best practices and guidance from the working group and the SEC.

“I don’t think we have a broken problem here,” Erdman said. “It’s just a matter of polishing what we do have.”

The Bond Buyer

By Sarah Wynn

January 28 2020, 1:27pm EST

Illinois's Mounting Pension Debt Looms Over Pritzker's Plans.

- **Governor set to deliver 'State of the State' address Wednesday**
- **Stakeholders seek multiyear plan to improve finances: Loop**

Illinois Governor J.B. Pritzker, whose state faces a mountain of pension debt and unpaid bills, may give some clues during his "State of the State" speech Wednesday to how he will deal with those challenges during his second year in office.

- The billionaire Democrat, whose command of a political majority in the legislature has put an end to the political gridlock over the budget that dominated the state under his predecessor and nearly caused Illinois's bonds to be downgraded to junk, will deliver his speech at noon in the state capital of Springfield.
- Pritzker is expected to discuss his bipartisan efforts, balancing the budget, infrastructure investments and consolidation of suburban and downstate first responder pension funds, according to the governor's office. He may also address the need to build on investments in education and comprehensive ethics reform.
- He will give his more detailed budget address on Feb. 19.

Continue reading.

Bloomberg Politics

By Shruti Singh

January 29, 2020, 7:16 AM PST

SEC Proposes Amendments to the Advertising and Solicitation Rules: Dechert

View pdf.

Dechert LLP – Mark D. Perlow, Russel G. Perkins, Michael L. Sherman, David A. Vaughan, Christine Ayako Schleppegrell, Aaron D. Withrow, Ashley N. Rodriguez and Teresa Jung

January 31 2020

MacKay Municipal Managers Announces Top Five Municipal Market Insights For 2020.

PRINCETON, N.J., Jan. 21, 2020 /PRNewswire/ — MacKay Municipal Managers™, the municipal bond team of fixed income and equity investment management firm MacKay Shields LLC, today published its top five insights for the municipal bond market in 2020.

John Loffredo and Robert DiMella, co-heads of MacKay Shields Municipal Managers, commented on the firm's outlook: "While we do not believe that 2019's municipal performance will repeat, we do expect that active management has the potential to enhance performance in 2020. We believe the most prudent strategy for 2020 is security selection based on the key qualities of prospective investments. Whether evaluating investment grade or high yield municipal bonds, we look beyond a stated rating to further assess each bond's structure, liquidity profile, rate sensitivity, and credit fundamentals. Anticipating the potential for periods of higher volatility, we also place a premium on maintaining liquidity as an essential strategy for capitalizing on the resulting opportunities that may arise."

MacKay Municipal Managers – Top Five Municipal Market Insights for 2020

1. **Security selection and bond structure drive performance.** Municipal credit spreads are tight, the yield curve is relatively flat, and absolute yields are low. We believe the tax-exempt municipal market will maintain its strong technical and fundamental characteristics versus other fixed income asset classes. However, successful municipal investing requires that investors plan how to generate strong relative returns, not hope for another year of outsized absolute returns. We believe that a relative-value based security selection strategy that incorporates rebalancing credit, reducing exposure to the long end of the market and favoring 4% and higher coupon structures will likely lead to outperformance.
2. **Tactically positioning portfolios when volatility rises can reward investors.** We believe that an ongoing low rate environment, monetary policy on hold and a mixed economic outlook point to coupon-dominant performance in 2020. However, the 2020 U.S. Presidential Election, foreign trade and the potential for weaker equity returns may create periods of notable volatility. Given the backdrop of strong technical conditions in the tax-exempt municipal market, prudent professional managers will seek to reward their investors by 'buying the dips.' However, it is essential to maintain adequate liquidity in preparation for seizing those opportunities coupled with an active trading strategy to monetize those positions.
3. **Strategic underweight exposures likely to drive outperformance in the high yield municipal market.** Quality high yield investments will be key as signs of distress appearing in certain pockets of the high yield municipal market suggest that poor security selection can lead to underperformance. Therefore, we believe a prudent focus on avoiding losers rather than stretching for winners will be the more successful strategy to investing in high yield municipal bonds by avoiding leveraged or speculative income.
4. **Taxable municipal refunding trend leaves the weak behind.** Although interest rate dependent, we expect that the 2019 surge in taxable municipal issuance to re-finance higher coupon tax-exempt debt will continue in 2020. A continuation of this issuance pattern would result in smaller, less sophisticated issuers being denied access to this re-financing activity, as the taxable market favors larger issuers of generally higher credit quality. We expect that taxable refunding activity will support supply-related technical conditions in the tax-exempt market, which will contribute to the overall market's relative performance strength. The combination of reduced supply pressure, ongoing strong demand for tax-exempt income and a shift in those credit sensitive sectors dictates even more need for sophisticated, credit research driven investment management and prudent security selection.
5. **Beware of fleeting income.** Coupon will likely be king this year but only when the quality of the income source is high. We believe that assertion will hold true in both the investment grade and high yield segments of the municipal market. Investors should verify that their portfolio income is not reliant on strategies employing hidden leverage, excessive duration, speculative project bets or short call bonds on the verge of retirement. While market conditions in the last number of years were very forgiving with respect to such tactics, a turnaround would bring to light the fragility of those investment approaches.

To view the full outlook, please click here. For additional insights from MacKay Municipal Managers, please visit www.mackayshields.com.

SIFMA Makes Late Push to Limit SEC's Muni Advisor Order.

The Securities Industry and Financial Markets Association is making its own last push to limit or kill a Securities and Exchange Commission order that would grant non-dealer municipal advisors more latitude to facilitate private placements for their issuer clients.

SIFMA made its case in a letter to the commission dated Jan. 31 and provided to The Bond Buyer on Monday. It follows close behind a similar Bond Dealers of America letter, as dealers seek to restrict or potentially even completely kill the SEC's proposal to allow non-dealer MAs to facilitate at least some private placements of municipal bonds. Dealers view such activity as properly performed by a registered broker-dealer acting as a placement agent, while MAs view it as consistent with their fiduciary duty under federal law.

"We believe the law is pretty clear on this issue," Leslie Norwood, SIFMA's head of municipals, said in an interview.

To qualify for an exemption from dealer registration under the SEC proposal, the MA would have to make written disclosures to an investor saying that it represents the interests of the issuer, not the investor. In return, the MA would have to get written acknowledgment of that disclosure from the investor.

The SEC opened a comment period on the proposal in October 2019. To qualify for an exemption from dealer registration under that proposal, the MA would also need to get written representation from the investor that they are capable of independently evaluating the investment risks of the transaction. Also the entire issuance would have to be placed with a single investor and the MA would have to continue to comply with regulations governing municipal advisors.

SIFMA's nine-page letter is consistent with SIFMA's previous comments, arguing that allowing muni advisors with a fiduciary duty to issuers but no duty to investors to sell securities on behalf of their clients would negatively impact market transparency and put investors at risk.

"If approved in its current form, the proposed exemptive order would allow municipal advisors to place municipal securities with a broad audience of purchasers, including state-registered investment advisers," SIFMA told the SEC. "As discussed above, these placements could be made without the municipal advisors making even minimal disclosures or engaging in basic due diligence regarding the municipal securities being sold. A municipal advisor's fiduciary duty to its issuer client would not undo or somehow cure these lapses in municipal securities market transparency and information disclosure."

Norwood said she believes the SEC is looking for ways to narrow the proposal, and while SIFMA believes the order is not appropriate it provided several suggestions along those lines in an effort to be productive in its discussions with the commission.

The suggestions, made in an appendix, include among other things a requirement that the bonds be investment-grade or are on parity with outstanding bonds of the issuer that are investment grade. They would need to be subject to continuing disclosure requirements and be sold in one tranche to one investor.

SIFMA also wants the offerings to be capped at $1 million, made only to certain "qualified providers" such as a bank, and for the municipal advisor to have to receive a statement from the buyer that the investor intends to hold the bonds until maturity or redemption.

SIFMA further believes that all applicable Municipal Securities Rulemaking Board rules be appropriately amended prior to the effective date of any exemptive order. Such an undertaking would almost certainly take years.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 02/03/20 01:14 PM EST

Dealer Groups Want the SEC to Approve FIMSAC Recommendation.

Both major securities dealer groups have asked the Securities and Exchange Commission to approve a recommendation to allow investment advisers affiliated with broker-dealers to offer and sell negotiated new issue muni bonds during the order period that the dealer also participates in as a syndicate manager or syndicate member.

The Fixed Income Market Structure Advisory Committee's Municipal Securities Transparency Subcommittee recommended last year to change its rule under section 206(3) of the Investment Advisers Act of 1940, amid what broker-dealers say is a sustained trend toward an increase in advisory accounts.

"The effect of these changed circumstances will be an increased demand for relief from Section 206(3)'s disclosure and consent requirements, particularly during times of market stress," said the Securities Industry and Financial Markets Association in its letter released on Thursday.

FIMSAC is recommending the SEC consider a rule that permits a broker-dealer that negotiates and underwrites a new-issue muni bond or is a co-manager or member of a syndicate to meet the requirements under section 206(3) of the Advisers Act when acting in a principal capacity to sell new-issue muni bonds during the negotiated order period.

Under current rules, a broker-dealer that negotiates and underwrites a new issue muni bond or is a co-manager or member of a selling group can't sell bonds in the offering to its advisory clients without meeting the disclosure and consent requirements of the Advisers Act.

Dealer groups say advisers have to make certain written disclosures and obtain consent from a client each time the adviser and client want to engage in a principal transaction.

"The process of making disclosures and obtaining consent for each covered principal transaction is cumbersome and impractical," Mike Nicholas, Bond Dealers of America CEO, said in his June 2019 letter. "Consequently, many RIAs (registered investment advisers) simply refrain from engaging in covered principal transactions with advisory clients."

Current rules are causing clients to lack access to the bonds that meet their investment criteria or only have access to the bonds in the secondary market at potentially higher prices, FIMSAC said.

According to FIMSAC, this has resulted in few or none of the underwriting dealer's advisory clients buying bonds in initial offerings.

"Advisory clients that wish to buy these bonds will buy them after the deal is closed and the bonds are free to trade — typically at a price higher than the original offer price," FIMSAC wrote.

"The goal here is to provide retail investors with access to as broad a swath of the municipal new issue market as possible," said Michael Decker, consultant to BDA.

Decker said there has been a shortage of bonds available to retail, without much tax-exempt inventory and a portion of the market moving to private placements.

The SEC did have a temporary rule in 2007, Rule 206(3)-3T, that permitted advisers who were also registered as broker-dealers and who offered non-discretionary advisory accounts to engage in certain principal transactions with their advisory customers without requiring transaction-b--transaction, written disclosure and consent.

Clients make trading decisions in a non-discretionary account, while discretionary accounts give dealers freedom to make decisions for their clients.

Rule 206(3)-3T was extended several times before it sunsetted in December 2016.

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 01/10/20 11:28 AM EST

OMB Releases Proposed Changes to the Uniform Guidance Covering Grants and Agreements.

The U.S. Office of Management and Budget has published for comment changes to sections of Title 2 of the Code of Federal Regulations (CFR) Subtitle A – OMB Guidance for Grants and Agreements, commonly referred to as the Uniform Guidance. The changes are in a number of areas but are geared toward aligning with the work already underway as part of the President's Management Agenda to standardize the grants management business processes and data, build shared IT infrastructure, manage risk, and achieve program goals and objectives.

NASACT is requesting comments on these important proposed changes no later than March 11.

There are a number of changes that could affect state government, however, below are a few areas of specific interest.

Government Quality Audit Project
J. Changes to Performing the Governmentwide Audit Quality Project – Proposed revisions to 2 CFR §200.513 include a change in the date for the requirement for a governmentwide audit data quality project that must be performed once every 6 years beginning with audits submitted in 2018. This date has been changed to 2021, given the significant changes to the 2019 Compliance Supplement in support of the Grants CAP Goal.

Aligning Federal Assistance with Federal Acquisitions
To further align implementation of FFATA, as amended by DATA Act, between the Federal financial assistance and acquisition communities, OMB proposes revisions to Federal awarding agency and pass-through entity reporting thresholds. For Federal awarding agencies, OMB proposes revisions to 2 CFR Part 170 to require agencies to report Federal awards that equal or exceed the micro-purchase threshold as set by the FAR at 48 CFR Subpart 2.1. Consistent with the FAR threshold for subcontract reporting, OMB is proposing to raise the reporting threshold for subawards that equal

or exceed $30,000. OMB seeks comments that includes an analysis on the advantages and disadvantages of raising this threshold.

Addressing Pension Costs
E. Aligning 2 CFR with Authoritative Sources – OMB proposes a revision to 2 CFR Section 200.431 Compensation—fringe benefits to allow states to conform with Generally Accepted Accounting Principles (GAAP), specifically Governmental Accounting Standards Board (GASB) Statement 68, and to continue to claim pension costs that are both actual and funded. OMB proposes this revision because GASB issued Statement 68, Accounting and Financial Reporting for Pensions which amends GASB Statement 27 and allows non-Federal entities (NFE) to claim only estimated pension costs in their financial statements. OMB's revision will allow non-Federal entities to continue to claim pension costs that are both actual and funded."

Using System for Award Management (SAM)/Unique Identifier
OMB's proposal to expand the applicability of Federal financial assistance in 2 CFR Part 25 beyond grants and cooperative agreements so that it includes other types of financial assistance that Federal agencies receive or administer such as loans and insurance will impact small entities, but it will not have a significant impact on a substantial number of small entities. Currently, 2 CFR Part 25 requires all non-Federal entities that apply for grants and cooperative agreements to register in the System for Award Management (SAM). OMB proposes to require all entities that apply for Federal financial assistance such as loans and insurance to register in SAM, which requires the establishment of a unique entity identifier. In practice, some Federal awarding agencies already require SAM registration for all types of Federal financial assistance and the proposed change would make this practice consistent among agencies.

There are many other areas to highlight including but not limited to:

- Domestic preferences for procurement. OMB is proposing to add 2 CFR 200.321 (Domestic preferences for procurement), encouraging Federal award recipients, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States when procuring goods and services under Federal awards. This Part will apply to procurements under a grant or cooperative agreement.
- A Proposal to standardize terms across 2 CFR part 200 to support efforts under the Grants CAP Goal to standardize the grants management business process and data.
- Proposing to clarify areas of misinterpretation such as the responsibilities of the pass-through entity to address only a subrecipient's audit findings related to their subaward.

RESOURCES TO ASSIST IN REVIEW

OMB is also providing a few resources to assist in review of the proposal, including a redlined version of the proposed changes.

Additionally, OMB will be hosting a listening session on the proposed revisions at 3:30 PM ET on February 4.

Comments on the proposal are due directly to OMB by March 23. To include your comments in NASACT's response, please send them to Cornelia Chebinou by Marcy 11.

For those filing direct comments to OMB, please visit Regulations.gov and search for the reference ID "OMB-2019-0005." OMB is also requesting commenters include the section of the guidance that their comment is referencing by beginning each comment with the section number.

Indoor Vertical Farming in Opportunity Zones, with Zale Tabakman.

Why might indoor vertical farming be ideally suited for Opportunity Zones? Zale Tabakman is founder and president of Baltimore-based Local Grown Salads, an indoor vertical farming company that has its own Opportunity Zone fund. Click the play button below to listen to my conversation with Zale. Episode Highlights The benefits of locally grown indoor vertical farming versus traditional farming. Why Local Grown Salads believes Baltimore…

Read More »

January 29, 2020

Municipal Bond Perspective: Approach High Yield With Caution In 2020.

Summary

- The municipal bond market presents a number of unique features and characteristics that set it apart from traditional asset classes.
- Only around 10% of the municipal market would be considered below investment grade, based on the traditional breakdown of credit ratings (i.e., bonds rated BB and below).
- Historically, wider spread levels have provided opportunities for credit selection to drive incremental upside results, given the potential for spread compression amid improving fundamentals.

As we head into 2020, municipal bonds will likely remain attractive for many tax-sensitive investors, but their performance potential could prove to be relatively muted compared to 2019, according to Sheila Amoroso, director of our Municipal Bond Department. She and her team say this is due to the general level of interest rates and tighter yield spreads, particularly for lower-rated segments of the municipal market. They believe that while now may be a good time to consider a more cautious approach, they still see potential for high levels of tax-exempt income.

Continue reading.

Franklin Templeton Investments

By Sheila Amoroso, Senior Vice President, Director, Municipal Bond Department, Franklin Templeton Fixed Income Group; Daniel Workman, CFA, Vice President, Portfolio Manager, Franklin Templeton Fixed Income Group; Francisco Rivera, Vice President, Municipal Bond Department, Franklin Templeton Fixed Income.

Jan. 28, 2020

Muni Bond Investors Beware: 'Staged' Bond Defaults Are Back.

At first it seemed like we were starting off the new year on a happy note. Five bond defaults as of the first day of the year that were immediately remedied by a bond call at full value, plus 1%, payable on the last day of the month.

Having been around the horn, however, it seems more to me that "staged defaults" in municipal bonds are back. Such defaults are the bane of the municipal bond market since they are generally motivated by a desire to get out of a high coupon bond that has no early call provision. We saw a wave of such defaults in the 1980s as we came down from the high rates back then and I suppose, with the benefit of 20/20 hindsight, we can expect quite a few in 2020.

I was struck by the January 10, 2020 announcement by the Huntington National Bank that five of the bond issues it is trustee for, had not made their interest payments to the bank and therefore, the January 2 interest payment to bondholders would not be made. The bonds were thus declared in default. This was followed by a second letter from the trustee, dated the same day, advising that all the bonds from the five issues were being called by the obligor on January 31, 2020 at par plus a 1% premium plus accrued interest.

A call to the Huntington National Bank was not returned. I then turned to a recipient of the January 1 notice letter, Waldrep Law, which describes itself as "a boutique law firm specializing in business bankruptcy, healthcare restructuring and insolvency, and long-term care. We offer a unique combination of top-tier credentials and efficient, individualized client service." As soon as I identified myself and why I was calling, I received a "no comment" and a hang-up. I then called Tortoise Credit Strategies LLC, a firm that represents itself as a "Bondholder Representative." No call back from them either. I suspect they hold these bonds for investor clients.

Continue reading.

Forbes

by Richard Lehmann

Jan 27, 2020

MSRB Seeks Comment on Potential Changes to Board Governance Rule.

Washington, DC – Following a comprehensive review by its Governance Review Special Committee, the Municipal Securities Rulemaking Board (MSRB) today published a request for comment on potential amendments to its rule establishing the parameters for composition and selection of its Board of Directors.

The proposed amendments to MSRB Rule A-3 include tightening the independence standard required of public representatives on the Board by requiring a minimum of five years of separation from a regulated entity before an individual would be eligible to serve as a public member.

The proposal also includes reducing the size of the Board to 15 members, with eight members representing the public and seven representing regulated entities. To facilitate the possible transition to the new Board size, the MSRB currently is not seeking applicants for new Board members for Fiscal Year 2021.

"The MSRB is uniquely positioned as a self-regulatory organization to bring together expertise from across the market to effectively and efficiently safeguard the integrity of the $4 trillion municipal securities market, which is responsible for the bulk of our nation's infrastructure," said MSRB Board

Chair Ed Sisk.

MSRB Governance Review Special Committee Chair Bob Brown said, “As an independent, majority-public Board, we must continue to hold ourselves to the highest standards of integrity to maintain the confidence of municipal securities investors and issuers.”

The MSRB’s proposal addresses many of the issues raised by Senator Kennedy (R-LA) and co-sponsors Senators Warren (D-MA) and Jones (D-AL) in their proposed legislation, S. 1236, the Municipal Securities Rulemaking Board Reform Act of 2019, as well as recommendations identified as a result of the Special Committee’s review and assessment of the Board’s governance practices. The MSRB is subject to oversight by both Congress and the Securities and Exchange Commission.

The MSRB established a 60-day comment period for the proposal, with comments due by March 30, 2020. After considering comments on the proposal, the MSRB would file any proposed changes to its rules with the SEC for approval.

Date: January 28, 2020

Contact: Leah Szarek, Director of Communications
202-838-1500
lszarek@msrb.org

Avoiding Redemption Risk In This New Municipal Environment.

Summary

- Growing threats to Municipal bondholders.
- Little known provisions can lay waste to bond values.
- Recommendations and strategies to escape getting burned.

Municipal bond issuers are under increasing pressure to fund their ballooning pension costs. Red flags are abundant in muni-land right now since many public entities are selling their assets – sewer and utility systems among them. Some are even merging with private entities to fund their growing liabilities. These types of transactions can have enormous negative repercussions and should put municipal bond investors on high alert. Specifically, investors should fear the triggering of Extraordinary Redemption Provisions (ERPs), explained below. I’ll also recommend safe alternatives to buy, what to avoid, and what steps do-it-yourself investors can take to reduce risk in the muni market.

Significant events involving one of your municipal bond issues can trigger Extraordinary Redemption Provisions. This provision appears in the municipal bond’s Official Statement. It states that if a certain event occurs, the issuer can redeem the bonds early. Sometimes this redemption can occur at par value $100, which can have huge downside ramifications for those who own bonds trading at a premium (above $100). ERP trigger events include unexpended proceeds, determinations that the status of the bonds are no longer tax free, changes in uses of proceeds, failure of issuer to appropriate funds, or destruction of facilities from which the bonds are payable. These events can cause massive losses if your bond has appreciated in market value and trades at a premium, such as $120. That premium can be lost in a heartbeat unless you have done the proper credit analysis.

Although this still happens only rarely, it has become more frequent of late. We are increasingly seeing privatization of municipal assets, as the issuers strain to fund their pension liabilities. We see this with water and sewer bonds. These were once considered the gold standard of the muni market. They were essential services, isolated from a municipality's pension liabilities. As some move from public to private they become far riskier.

Continue reading.

Seeking Alpha

Jan. 21, 2020

Alexander Anderson

Senator Mulls Bill Giving States A Mulligan On Choosing Opportunity Zones.

One of the opportunity zone bill's original sponsors is coming around to revising the program.

Sen. Tim Scott (R-SC) said at the United States Conference of Mayors on Wednesday that he is considering a bill that would allow local and state governments to revisit a small percentage of the census tracts that were, or were not, designated opportunity zones in 2018, Bloomberg Tax reports.

Scott said he is in discussions with Sen. Cory Booker (D-NJ), his fellow co-sponsor on the original legislation, and the Senate Finance Committee's ranking Democrat, Ron Wyden (D-OR), on a new bill.

Continue reading.

Bisnow

Matthew Rothstein

January 29, 2020

Federal Tax Bulletin: Final Qualified Opportunity Zone Regulations Adopt Many Changes

Read the Bulletin.

Vorys | Jan. 30

TAX - LOUISIANA

Herman E. v. Robinson

Court of Appeal of Louisiana, First Circuit - December 27, 2019 - So.3d - 2019 WL 7206881 - 2019-0213 (La.App. 1 Cir. 12/27/19)

Taxpayers sought review of decision of Board of Tax Appeals finding that their claim for refund of state income taxes from Department of Revenue was prescribed.

The Court of Appeal held that:

- Burden was on Department prove claim was prescribed, and
- Department failed to prove claim was prescribed.

The burden of proving that a cause of action has prescribed rests with the party pleading prescription; however, when the face of the plaintiff's petition shows that the prescriptive period has run, and the plaintiff is contending there is a suspension or interruption of prescription, the burden is on the plaintiff to prove suspension or interruption.

Burden was on Department of Revenue to prove taxpayers' claim for refund of state income taxes was prescribed due to untimely filing, where taxpayers' appeal of decision of Board of Tax Appeals alleged they filed tax return seeking refund within proper time frame.

Department of Revenue failed to prove taxpayers' claim for refund of state income taxes was prescribed due to untimely filing, despite argument that certified mail receipt showed tax return seeking refund was received after deadline for filing, where mailing date, not date of receipt, constituted filing date, and certified mail receipt did not show when return was mailed.

NFMA Annual Conference in New Orleans.

The National Federation of Municipal Analysts will return to New Orleans in 2020. This year's Jazz Fest will begin on April 23. We have an event website where all information may be found in one place: Click here.

Or look at the following links:

- To view the event schedule, click here.
- To view confirmed speakers, click here.
- To register, click here.

BofA Muni-Bond Banker Fink to Seek House Seat in New York.

- **Democrat cites experience with infrastructure, public transit**
- **Says he'd also seek to reinstate subsidies for refinancings**

Washington dealt a major blow to Wall Street's municipal-bond industry with its 2017 tax changes. Now, one banker from New York says he wants to fight back from inside the walls of Congress.

Christopher Fink, a managing director at Bank of America Corp., the biggest underwriter of state and local government debt, said he plans to mount a Democratic primary challenge against longtime Representative Eliot Engel. If Fink wins, he said he'd help reverse the tax-law changes that crimped bond sales by pulling subsidies from a key type of debt refinancing.

Fink, who lives in New York's Westchester County town of Pelham, made the election announcement on Tuesday at an industry conference hosted by the Bond Buyer. “Hopefully I’ll come back a year from now and tell everybody that we’ve reinstated the advance refunding rules,” he said to laughs.

It won’t be an easy election. Engel has been a congressman since 1989 and is chairman of the House Foreign Affairs Committee. The seat is also being challenged by a middle school principal from the Bronx who is supported by the Justice Democrats, the insurgent group that backed Representative Alexandria Ocasio-Cortez, according to the New York Times.

Fink’s campaign website says he’ll pull on his banking experience to help improve infrastructure and public transportation. But he’s also focused on issues with broader scope, including gun control, protecting women’s reproductive rights and pushing back against President Donald Trump’s administration.

Bloomberg Politics

By Amanda Albright

January 28, 2020, 8:45 AM PST Updated on January 28, 2020, 9:29 AM PST

S&P: Governor's Veto Keeps New Jersey School Districts' Budgets Crunched

New Jersey (NJ) Bill S-4289, sponsored by the senate president, would have allowed certain school districts to raise property taxes above the 2% state-mandated levy limit to make up for sharp state aid reductions without seeking voter approval; however, the governor vetoed the bill on Jan. 13, 2020, citing the state’s already high local property taxes, and presenting another challenge to school districts. New Jersey school districts are constrained by a state-imposed tax levy limit and aid reductions, and despite the difficult funding environment, have generally maintained steady credit quality and fiscal stability. In the past two years, New Jersey school district ratings have also remained stable: of the 309 districts rated by S&P Global Ratings, only 30 experienced a rating or outlook change. Although our analysis has not assumed school districts would be afforded the flexibility provided in this bill, we still believe the veto could ultimately have negative implications for district operations and finances.

The current state aid disputes trace back to New Jersey’s fiscal 2018 budget, which included a state aid realignment that would increase aid for approximately two-thirds of school districts, but would eventually decrease it for nearly one-third of them over the course of seven years. That one-third is now trying to present balanced budgets, and several have implemented or are considering layoffs, program cuts, and school closures to achieve this.

State aid reductions had ratings implications for several New Jersey school districts in the past three years. The majority of affected districts have maintained structural balance either through cost-cutting measures or the modest use of reserves. However, since the aid reductions have been implemented, we have made six negative outlook revisions or downgrades to our rated portfolio. Those include outlook changes to negative from stable for Brick Township Board Of Education (BOE) and Weehawken Township BOE, and downgrades to Freehold Regional High School District, Plumsted Township BOE, and Flemington-Raritan Regional school district. We also lowered our rating on Vernon Township BOE and assigned a negative outlook.

Continue reading.

Demystifying P3: A Review of Essential Public-Private Partnership Concepts

Orrick and *The Bond Buyer* co-hosted a webinar discussing the use of public-private partnerships or P3s in the public finance market. Topics addressed the considerations and financing structures available for government sponsors considering P3 methods of delivery for a project or service.

View the Webinar.

The Bond Buyer | December.17.2019

- Municipal Securities Regulation Enforcement: Year in Review 2019 and Look Ahead 2020
- S&P: Five U.S. State and Local Government Pension and OPEB Trends to Watch for in 2020 and Beyond.
- Very interesting eminent domain case here for the serious aficionado.
- *In re PG&E Corporation* – Bankruptcy Court holds that the doctrine of inverse condemnation, which imposes strict liability in favor of the owner of property that has been taken or damaged through a public use or purpose, applied to Chapter 11 debtors, as privately-owned utilities.
- And finally, 'Me Too' Ends Up In A Ditch is brought to us this week by *Pisack v. B & C Towing, Inc.*, in which the court repeatedly referred to the act of removing an unauthorized vehicle as, "non-consensual towing." You can attach your cable to my bumper any time, big boy.

PUBLIC UTILITIES - CALIFORNIA

In re PG&E Corporation

United States Bankruptcy Court, N.D. California - November 27, 2019 - B.R. - 2019 WL 6492472 - 68 Bankr.Ct.Dec. 19

In proceedings for estimation of unliquidated claims arising from California wildfires admittedly caused by the equipment of Chapter 11 debtors, a private gas and electric utility and its holding company, the debtors, joined by unsecured creditors committee and certain shareholders of company, challenged application of the doctrine of inverse condemnation in connection with the wildfires.

Tort claimants committee, ad hoc group of subrogation claim holders, and other parties supported continued application of the doctrine.

The Bankruptcy Court held that, under California law, as predicted, the doctrine of inverse condemnation applied to debtors, as privately-owned utilities.

ZONING & PLANNING - ILLINOIS

Ryan v. City of Chicago

Appellate Court of Illinois, First District, Third Division - December 11, 2019 - N.E.3d - 2019 IL App (1st) 181777 - 2019 WL 6769619

Landowner brought action seeking writ of mandamus against city and commissioner of city department of buildings directing that neighboring house comply with two-foot minimum side setback of local zoning ordinance and seeking mandatory injunction directing neighboring homeowner and homebuilder to move wall of house to comply with setback.

The Circuit Court granted city and commissioner's motion to dismiss mandamus claim. Landowner filed interlocutory appeal.

The Appellate Court held that:

- Statute allowing private landowners to institute an action to prevent violation of a zoning ordinance or regulation did not provide landowner a private right of action against city, and
- City and commissioner had no clear duty to enforce ordinance.

City and commissioner of city department of buildings had no clear duty to revoke building permit for house allegedly built in violation of side setback local ordinance, to direct builder and owners of house to submit new building plans that complied with ordinance, or to direct the house be built in compliance with setback, and thus mandamus was not appropriate remedy for adjoining landowner challenging house's compliance with ordinance, even though ordinance mandated compliance for builders; city and commissioner had discretion in their enforcement of the ordinance.

ZONING & PLANNING - MAINE

Portland Pipe Line Corporation v. City of South Portland

United States Court of Appeals, First Circuit - January 10, 2020 - F.3d - 2020 WL 113390

Pipeline operator and trade association brought action against city and city's code enforcement officer, challenging validity of city zoning ordinance that prohibited bulk loading of crude oil onto tankers in city harbor and building new structures for that purpose.

The United States District Court for the District of Maine granted in part and denied in part defendants' motion for summary judgment and denied plaintiffs' cross-motion for summary judgment, and, after bench trial, dismissed plaintiffs' sole remaining claim. Plaintiffs appealed.

The Court of Appeals held that:

- Certification of question whether renewal of operator's existing oil terminal facility license by Maine's Department of Environmental Protection (MDEP) was an order with preemptive effect was warranted, and
- Certification of question whether Maine's Coastal Conveyance Act (CCA) expressly or by implication preempted ordinance twas warranted.

Certification of question whether renewal of pipeline operator's existing oil terminal facility license by Maine's Department of Environmental Protection (MDEP) was an order with preemptive effect was warranted, since operator's action alleging that city zoning ordinance that prohibited bulk loading of crude oil onto tankers in city harbor was preempted by Maine's Coastal Conveyance Act (CCA) lacked controlling precedent and presented close and difficult legal issue of state law.

Certification of question whether Maine's Coastal Conveyance Act (CCA) expressly or by implication preempted city zoning ordinance that prohibited bulk loading of crude oil onto tankers in city harbor was warranted, in pipeline operator's action challenging validity of ordinance, since there was no controlling precedent that resolved the state law preemption issue.

MUNICIPAL ORDINANCE - MISSOURI

Wilson v. City of St. Louis

Supreme Court of Missouri, en banc - January 14, 2020 - S.W.3d - 2020 WL 203137

Recipients of parking citations brought action against city, state, and various state and city officials, challenging the constitutionality of parking statutes and city parking fine ordinances, and seeking injunctive relief.

City filed cross-claim against state. The Circuit Court granted partial summary judgment in favor of plaintiffs and in favor of the city on its cross-claim. State and officials appealed.

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

- Order granting declaratory relief in favor of recipients did not qualify as "judgment" eligible for immediate appeal, and
- Orders granting injunctive relief from parking statutes and granting summary judgment on city's cross-claim were not eligible for certification to allow immediate appeal.

Circuit Court order granting declaratory relief in favor of recipients of parking citations did not fully resolve any claim, and thus, did not qualify as a "judgment," as required to be eligible for certification as final judgment to allow for immediate appeal, in action against city, state, and various state and city officials, challenging the constitutionality of parking statutes and city parking fine ordinances, where order did not address portion of claim seeking injunctive relief.

Circuit Court orders granting injunctive relief from parking statutes and granting summary judgment in favor of city on its cross-claim were not eligible for certification to allow immediate appeal, in action against city, state, and various state and city officials, challenging the constitutionality of parking statutes and city parking fine ordinances; many additional claims remained pending in the Circuit Court, and neither order disposed of a judicial unit that would qualify it for certification for immediate appeal, as the orders did not resolve all claims by or against one party, or one or more claims that were sufficiently distinct from those claims that remained pending.

MUNICIPAL CONTRACTS - NEW JERSEY

Pisack v. B & C Towing, Inc.

Supreme Court of New Jersey - January 16, 2020 - A.3d - 2020 WL 237201

In separate cases, motorists brought putative class actions against towing companies which had municipal contracts to provide towing services, challenging fees charged in connection with non-consensual towing of vehicles.

The Superior Court granted summary judgment to companies. Owners appealed, and cases were consolidated. The Superior Court, Appellate Division, reversed and remanded. Companies appealed.

The Supreme Court held that:

- Legislation amending Towing Act with regard to permissible fees for non-consensual towing of vehicles was not intended to be curative, and thus retroactive application was not indicated on that basis;
- Towing companies were not sellers, lessors, creditors, or lenders when they towed motorists' vehicles, supporting finding that motorists could not assert claim under Truth-in-Consumer Contract, Warranty and Notice Act (TCCWNA) against companies based on such towing;
- Towing companies were not bailees when they towed vehicles, also supporting finding that motorists could not assert claim under TCCWNA; and
- Bills issued by towing companies after towing were not consumer contracts or notices and thus did not satisfy writing requirement for a claim under TCCWNA.

REFERENDA - OHIO

State ex rel. Dunn v. Plain Local School District Board of Education

Supreme Court of Ohio - January 9, 2020 - N.E.3d - 2020 WL 104387 - 2020 -Ohio- 40

Village residents sought writ of mandamus to compel school board to forward residents' petition proposing transfer of village's territory to a different school district to county board of elections for it to review sufficiency of signatures on petition.

The Supreme Court held that:

- Residents' claim was not barred by laches;
- Residents lacked adequate remedy in ordinary course of the law, as required for mandamus relief;
- School board had clear legal duty to forward petition to board of elections for review of signatures;
- School board's substantive challenges to petition could not extinguish residents' clear right to relief;
- School board was not entitled to indefinitely "table" petition; and
- School board's claim that residents were not entitled to relief because proposal would ultimately have to be kept off primary ballot was unripe.

EMINENT DOMAIN - TEXAS

In re Upstream Addicks and Barker (Texas) Flood-Control Reservoirs

United States Court of Federal Claims - December 17, 2019 - Fed.Cl. - 2019 WL 6873696

Property owners sued federal government, claiming Fifth Amendment taking of flowage easement from dams constructed, modified, maintained, and operated by Army Corps of Engineers after properties within flood-pool reservoirs were inundated with impounded flood waters during Tropical Storm Harvey.

Following consolidation of actions within master docket and then splitting of actions into two sub-master dockets based on whether property was upstream or downstream from dams, government moved to dismiss 13 upstream bellwether test cases for lack of subject matter jurisdiction and for failure to state claim. Resolution of motion was deferred until trial.

After bench trial, the Court of Federal Claims held that:

- Upstream owners had valid property interests;

- Taking of permanent flowage easement was effected on all bellwether properties;
- Police powers defense did not apply; and
- Necessity doctrine did not apply.

Under federal and Texas law, upstream landowners had valid property interests in their private properties that were not subject to flowage easements, in support of owners' claim for just compensation for Fifth Amendment taking of flowage easements due to inundation of upstream properties within flood-pool reservoirs by impounded flood waters during Tropical Storm Harvey as result of flood-control dams constructed and operated by Army Corps of Engineers.

Army Corps of Engineers' construction, maintenance, and operation of flood-control dams in past, present, and future had taken permanent, rather than temporary, flowage easement of upstream owners' private properties within flood pool reservoirs that resulted in inundation of properties by floodwaters during tropical storm, in support of owners' Fifth Amendment takings claims, although flood waters were only on properties for matter of days, since government had permanent right to inundate property with impounded flood waters.

Severity of invasion of landowners' upstream properties within flood pool reservoirs, by inundation of properties with impounded floodwaters during tropical storm from flood-control dams constructed by Army Corps of Engineers, favored finding of compensable taking, where owners incurred extensive damage to their real and personal property, their ability to exercise right to exclude floodwaters, and their right to use and enjoy property, and they were subject to high likelihood of recurring floods and significant diminution of property values.

Federal government appropriated benefit at direct expense of inflicting significant injury to landowners' upstream property within flood pool reservoirs, by inundation of properties with impounded floodwaters during tropical storm from dams constructed, modified, and operated by Army Corps of Engineers, in support of owners' taking claims; consistent with dams' purpose, government protected downstream properties while concurrently causing upstream properties to suffer from severe flooding that was not merely consequential result.

Federal government's invasion of landowners' upstream properties within flood pool reservoirs, by inundation of properties with impounded floodwaters during tropical storm from dams constructed, modified, maintained, and operated by Army Corps of Engineers, was foreseeable, in support of owners' taking claims; flooding of properties was predictable result of government action, not merely contributing factor, as Corps should have objectively foreseen from initial construction of dams and at every point onward that reservoir flood pools could and would exceed government-owned land and inundate private properties.

Inundation of all 13 owners' bellwether test upstream properties within flood pool reservoirs, by impounded floodwaters released during tropical storm from dams constructed, modified, and operated by Army Corps of Engineers, would not have occurred but for government's actions, in support of owners' taking claims; inundation of floodwaters onto upstream properties was direct, natural, or probable result of government's activity, not result of local drainage systems, riverine flooding, or outgrants built to reduce flood risk.

Federal government's inundation of owners' upstream properties within flood pool reservoirs, by impounded floodwaters during Tropical Storm Harvey from dams constructed, modified, and maintained by Army Corps of Engineers, severely interfered with owners' reasonable investment-backed expectations, thus effecting compensable permanent taking of flowage easement on all 13 upstream bellwether test properties; owners neither knew, nor reasonably should have known, properties were located in reservoirs and subject to government-induced flooding that rendered them uninhabitable for significant time, required substantial outlays for repairs, and resulted in steep diminution in resale value.

Police powers defense did not apply to absolve federal government from liability for taking of flowage easement on owners' upstream properties that were within flood pool reservoirs and were inundated by impounded floodwaters during tropical storm from dams designed, constructed, and maintained by Army Corps of Engineers, since flooding was not unavoidable harm, but rather, Corps' design and maintenance of dams contemplated flooding beyond government-owned land onto upstream private properties.

Doctrine of necessity did not apply to immunize federal government from liability for taking of flowage easement on owners' upstream properties that were within flood pool reservoirs and were inundated by impounded floodwaters during tropical storm from dams designed, constructed, and maintained by Army Corps of Engineers; although storm was record-breaking, government was responsible for creating emergency in that flooding was not unexpected as Corps knew flooding beyond government-owned land upstream would result from severe storm in light of design of dams and operational plans.

S&P U.S. Not-For-Profit Health Care Rating Actions, December 2019.

S&P Global Ratings' U.S. Not-for-Profit Health Care rating actions in December were balanced with two upgrades and two downgrades. Outlook revisions were slightly more positive than negative in December with four favorable outlook revisions and three unfavorable outlook revisions. We consider a favorable outlook change to include revisions from stable to positive, negative to stable, or negative to positive, and vice versa for unfavorable outlook changes where the rating itself doesn't change. Overall, we affirmed 33 ratings, of which 12 were for new sales, in the month of December.

Our view of the sector remains stable. Continued balance-sheet strength combined with improving enterprise profiles as a result of mergers and acquisitions in addition to diversifying joint ventures drives our view of the sector, despite continual regulatory and financial risks. (U.S. Not-For-Profit Health Care 2020 Sector Outlook: A Precarious Balance As Evolution Continues, published on RatingsDirect Jan. 9, 2020.) Our 2018 median ratios also support our overall stable view of the sector and are highlighted by slightly improved operating margin performance overall following a two-year decline. Based on the 2018 ratios and our view of year-to-date results, we believe operating margins are generally stable, but at lower levels (U.S. Not-for-Profit Acute Health Care Ratios: 2018 Medians Show Operating Margin Improvement But Are Otherwise Stable, published on RatingsDirect Sept. 4, 2019).

Notable December rating actions include our downgrade on Tower Health to 'BBB+' from 'A' due to significantly weaker than expected financial performance and further expansion plans, which strain the balance sheet, and Winkler County Hospital District's downgrade to 'BB+' from 'AA' driven by the application of the acute-care criteria published March 19, 2018. This organization was previously rated under priority lien tax revenue debt criteria.

Continue reading.

S&P: Five U.S. State and Local Government Pension and OPEB Trends to Watch for in 2020 and Beyond.

Table of Contents

- Low Interest Rates And Market Volatility Increase Risk For Public Pension Plans
- Pension Reforms Continue, Partly Mitigating The Effects Of The Next Recession
- Affordability Of Retirement Obligations Remains A Long-Term Source Of Credit Stress
- Demographic Trends And A Changing Public Workforce Affect Funding
- Retiree Health Care Costs And Benefits Face Heightened Scrutiny

Key Takeaways

- As interest rates remain low, safer investment options may seem less attractive for U.S. pension funds needing to meet targeted returns.
- Pension reforms and efforts to improve funding discipline will continue, while weak funded plans are likely to consider new ways to solve funding challenges.
- Many state and local governments failed to make meaningful progress on their aggregate pension and OPEB liabilities last year.
- Changing demographics and workforce trends pose multiple risks to pension funding.
- As rising medical costs continue to outpace general price inflation, OPEB spending will likely grow as a significant cost pressure.

Continue reading.

S&P 'AAA' Rated U.S. Municipalities: Current List

Read the List.

S&P U.S. Higher Education Rating Actions, Fourth Quarter 2019.

The following tables summarize S&P Global Ratings' quarterly bond rating actions for its U.S. non-profit colleges and universities. All credit rating actions are based on our "Methodology: Not-Fo--Profit Public And Private Colleges And Universities" criteria, published Jan. 6, 2016.

View the tables.

Bonds are a Risky Way to Deal with Pension Woes.

By Jon Coupal, includes "Recently, this column exposed the foolishness of two proposed statewide bond measures: A $15 billion school bond, which will be on the March 3 ballot, as well as a 'climate resiliency' bond. … But at the local level, taxpayers need to be aware of a recent resurgence in the use of pension obligation bonds, a risky financing method that fell out of favor during the recession but is now making a comeback. …"

Read the full article on: The Daily Breeze (California)

Jon Coupal | January 27, 2020

Rainy Days Ahead: States Boost Reserves, Anticipating Slowdown.

An expanding economy led to expanded budgets. Now, with slowdown looming, rainy-day funds get more attention

As the longest economic expansion in American history continued last year, state governments increased salaries for teachers and other public employees, authorized new construction projects and — recognizing good times won't last forever — added to reserve funds.

Cash reserves could become more important this year, as experts project the economy to slow down in 2020. Though a full-scale recession seems less likely than it did at points last year, a slower rate of growth still appears likely. Fitch Ratings, a credit ratings agency, projects a 1.7 percent expansion in 2020, which would be the lowest level since 2011.

Understanding that growth — which has lasted since the Great Recession officially ended in June 2009 — can't last forever, most states have tried to budget conservatively and set money aside, according to Eric Kim, senior director of public finance at Fitch.

Continue reading.

Roll Call

by Jacob Fischler

Jan 27, 2020

'Exit Option' Complicates Picture for Illinois Pension Reform.

Op-ed by Bill Bergman, includes "Union opposition to proposed pension reforms have sparked a new wave of protests in France, a little more than a year after the onset of the 'yellow vest' protest movement. These twin threads of civil unrest followed French government fiscal actions following the election of President Emmanuel Macron in mid-2017. … Could protests like these erupt in Chicago and Springfield? …"

Read the full article on: Daily Herald (Illinois)

Bill Bergman | January 23, 2020

Key Takeaways from Municipal Bankruptcies.

When strictly analyzing the default risk of your investment holdings, municipal debt is often regarded as one of the safest forms of investments – compared to corporate debt – because municipal bankruptcies are a rare occurrence in the United States.

This also means that municipal debt investors often spend more time analyzing other risk and intricacies of municipal debt like interest evaluating rate risk, comparing taxable and tax-free returns, and comparing revenue vs GO debt instruments. However, the number of recent municipal bankruptcies reminds investors to stay vigilant of the municipal default risk when making their fixed-income investment decisions.

In this article, we will take a closer look at the recent municipal bankruptcies, any commonalities, and what investors should look for before making their investment decisions.

Continue reading.

municipalbonds.com

Jayden Sangha

Jan 22, 2020

Urban Land Institute's Public/Private Partnerships Council Discusses 2020 Outlook.

Read the Report.

Urban Land Institute | Jan. 21

Muni Funds See Record Inflows in 2019.

Investors' appetite for municipal bonds soared last year, helping push already low muni yields even lower.

Municipal-bond funds saw record inflows in 2019, as investors poured a massive net $105.5 billion into muni open-end mutual funds and exchange-traded funds during the year. That amount dwarfed the annual gains of each of the past 25 years, including the group's previous boom year of 2009, which brought in roughly $75 billion.

Demand remained high throughout the year, as muni funds saw 12 straight months of net inflows over $5 billion, and by midyear had gathered 10 times the assets that flowed into those strategies in all of 2018.

Roughly 90% of 2019's flows went into actively managed mutual funds, yet a substantial $8.7 billion went to passive strategies, mainly muni ETFs, which have continued to gain prominence since they first arrived on the scene in 2000.

Continue reading.

Morningstar

by Elizabeth Foos

Jan 27, 2020

TAX - NEW YORK

In re Brookdale Physicians' Dialysis Associates, Inc.

Supreme Court, Appellate Division, First Department, New York - December 3, 2019 - 178 A.D.3d 443 - 113 N.Y.S.3d 691 - 2019 N.Y. Slip Op. 08636

Building owner, which was a not-for-profit healthcare fund, and for-profit healthcare provider brought article 78 petition to annul determination by city department of finance denying application for exemption from real property taxation.

The Supreme Court, New York County, found building qualified for tax-exempt status and granted petition, denying finance department’s cross-motion to dismiss petition. Finance department appealed.

The Supreme Court, Appellate Division, held that use of nonprofit healthcare fund’s building by for-profit lessee for dialysis was reasonably incident to fund’s purpose.

Use of building owned by not-for-profit healthcare fund and leased to for-profit healthcare provider was reasonably incident to fund’s purpose of funding its affiliated hospital and nursing institute, and, thus, building qualified for tax-exempt status, where for-profit provider provided dialysis services in building to patients of hospital and nursing institute at little to no direct cost to not-for-profit healthcare affiliates, dialysis provider was staffed exclusively by employees of hospital, majority of dialysis patients were referred by hospital and nursing institute, and fund placed profits from rent receipts back into healthcare affiliates.

TAX - INDIANA

Square 74 Associates LLC v. Marion County Assessor

Tax Court of Indiana - December 3, 2019 - N.E.3d - 2019 WL 6696247

Tenant of five commercial spaces appealed from determination by Indiana Board of Tax Review granting county assessor’s motion to dismiss tenant’s petitions for correction of errors in tax assessments, based on finding that purported errors in determination of leasehold interest were not objective errors that could be corrected in such proceeding.

The Tax Court held that:

- Lease did not objectively exclude land underneath ground-floor commercial spaces from leasehold;
- Statute governing assessment of leased, tax-exempt real property did not require exclusion of underlying land from assessment of leasehold; and

- Regulation governing assessment of improvements on leased ground did not require assessment of leasehold estates to exclude underlying land.

Lease defining tenant spaces, real estate taxes, and respective responsibilities of lessee and lessor did not objectively exclude land underneath ground-floor commercial spaces from leasehold, and, thus, county assessor's purported errors in assessing taxes against tenant based on land underneath commercial spaces could not be fixed by means of administrative process for correction of objective errors; lease did not directly state land was excluded or clarify whether land was among those "structural components" of overhead parking garage that were excluded from tenant's responsibilities.

Tax statute providing that when real property that is exempt from property taxation is leased to an entity that is not entitled to a property tax exemption, the leasehold estate is to be assessed and taxed as if the lessee owns the real property did not dictate conditions of lease creating leasehold estate, and, thus, did not require assessment of commercial leasehold of ground-floor spaces, which were owned by city, to exclude land beneath spaces; statute treated leasehold estate as synonymous with term "real property," such that it could include assessed value of land itself, building or fixture on land, appurtenance, or certain mining rights or mineral interests.

Regulation providing procedures for assessing improvements located on leased ground did not create per se rule that assessment of leasehold estates excludes the underlying land.

S&P Medians And Credit Factors: California Municipalities

Overview

California municipalities' credit quality remains very strong, in S&P Global Ratings' view, supported by a dynamic economy that has been one of the nation's top performing for the last several years, generally strong budgetary performance facilitated by steady revenue growth, and financial management often supported by formal policies and regular budget monitoring. These conditions have supported municipalities' efforts to maintain robust available reserves, which have helped more than 83% of California's municipal issuers maintain general obligation (GO) ratings, issuer credit ratings, or general creditworthiness in the 'AA' or 'AAA' categories. S&P Global Ratings does not expect any significant changes to the California municipal sectors' credit quality over the next year, but believes prospects for continued growth are diminishing.

S&P Global Ratings maintains public ratings on 200 municipalities in California. Overall, the credit quality increased recently, with 9% of California cities and towns experiencing upward rating movement or positive outlooks throughout 2019. More specifically, we took 17 positive rating actions and two negative rating actions on municipalities' GO or appropriation debt.

Continue reading.

Municipal Securities Regulation Enforcement: Year in Review 2019 and Look Ahead 2020

Read the report.

Muni Index Funds Are Moving Closer to Their Benchmarks.

- **'Tracking error' on funds has narrowed to 0.35%: Morningstar**
- **Muni-bond ETFs attracted a record $10 billion in 2019**

Municipal-bond exchange-traded funds, which attracted $10 billion in investor cash last year, are getting better at tracking their benchmarks.

The average gap between municipal-bond index fund returns and their targets fell to 0.35 percentage point for the three years ended Dec. 2019, compared with 0.57 percentage point for the 36-month period ended in November 2013, according to Morningstar Inc. Expanded electronic trading and improved sampling of bonds by large asset managers like The Vanguard Group Inc, BlackRock Inc. and State Street Corp. have lowered costs and made tracking more precise, said Neal Kosciulek, a Morningstar analyst.

"Managers themselves have gotten better and more experienced," Kosciulek said in a telephone interview. "A lot of that has to do with sampling, considering the size and diversity of the municipal-bond market. Picking the right bonds is very important."

A narrowing tracking error means investors are getting closer to what they paid for and could make muni ETFs and a small number of muni open-end index funds more appealing. At about $50 billion, muni ETFs comprise just more than 1% of the state and local government debt market, but the segment is growing quickly. Last year, muni ETF inflows grew 48% after increasing 26% the previous year, according to UBS Global Wealth Management's Chief Investment Office. Actively managed open-end municipal-bond funds include more than $800 billion in assets, according to Morningstar.

Index funds were slow to arrive to the fragmented and relatively illiquid $3.8 trillion muni market, which is comprised of almost a million securities issued by an estimated 50,000 municipalities. The first muni open-end index fund was created in 2000, according to Morningstar. The first municipal-bond ETF, iShares National Muni Bond ETF (MUB), was formed in September 2007, 14 years after the first ETF, the SPDR S&P 500 Trust was created by State Street.

"Liquidity and fragmented issuance were challenges that had to be overcome," said David Perlman, ETF strategist at UBS Global Wealth Management.

Sampling Process

Muni-bond indexes include thousands or tens of thousands of individual bond issues, and muni ETFS can't fully replicate them. Instead, portfolio managers use a sampling process, buying enough bonds from the index to match its key characteristics like sector, credit risk and duration.

Technology improvements have enabled fund managers to more effectively sample indexes by simplifying monitoring of changes to the funds' benchmarks and helping to identify bonds on the market, according to Kosciulek. And when a manager finds the bond, the expansion of electronic trading has made it less costly to buy and sell securities.

The average spread between what a seller receives and a buyer pays for a security with dealers acting as an intermediary dropped by more than half between 2005 and 2018, according to the Municipal Securities Rulemaking Board. Institutional investors who buy blocks of $1,000,000 or more are paying less than 20 basis points to trade on average, according to the MSRB.

More than 60% of institutional investors reported using electronic trading platforms in 2018, up from half only two years before, according to a survey last year by Greenwich Associates.

Both MUB and Vanguard's Tax-Exempt Bond ETF, (VTEB), the biggest muni ETFs, aim to mirror the S&P National AMT-Free Municipal Bond Index, which contains more than 12,000 bonds. MUB, which holds about 4,200 bonds, returned 7.28% last year on a net asset value basis, compared to 7.42% for the index. MUB's management fee is 7 basis points.

VTEB, with 4,350 bonds and a management fee of 8 basis points, returned 7.5% last year on a net asset value basis. VTEB had a slightly higher average coupon, stated maturity and duration than its benchmark.

Bloomberg Markets

By Martin Z Braun

January 21, 2020, 10:13 AM PST

A Massive Gap Explains Why Muni Prices Are Testing Record Highs.

- **Debt payments, mutual fund inflows outpace new debt sales**
- **'Everybody is just piling money into the muni market'**

Over the next month, about $25 billion of municipal debt will be paid off. Bondholders will receive another $13 billion of interest payments in February. And mutual funds have pulled in nearly $7 billion of new cash already this month.

Yet over the next four weeks, only a fraction of that money may find new securities to buy: American states and cities are so far set to sell just $13 billion of bonds in that time, according to data compiled by Bloomberg.

That yawning gap between the amount of cash looking to be reinvested and the amount of new securities being sold is driving the municipal market to new heights. Yields are at the lowest since the 1950s, 30-year munis are hovering around their highest values against Treasuries since at least 2001, and this month's 1.2% return marks the strongest start to a year since 2016.

"There is a mismatch between supply and demand," Matt Fabian, a partner at Municipal Market Analytics, said in a telephone interview on Wednesday. "Part of it is the continued trend of exceptional demand from last year."

Yields holding near lowest against Treasuries since at least 2001
The demand for tax-exempt debt has been fueled in part by President Donald Trump's 2017 tax law that capped state and local deductions, leaving investors in high-tax states looking for other ways to drive down what they owe. That's caused a steady influx of cash into municipal-bond mutual funds, which have gained money each week since last January.

At the same time, interest rates have fallen so low that governments can even sell taxable bonds to refinance their debts, contributing to a relative dearth of new tax-exempt securities.

So far, state and local governments have issued about $18.4 billion of new long-term bonds in January, the slowest start to a year since 2014, according to data compiled by Bloomberg. Some $5.7 billion were taxable.

“Everybody is just piling money into the muni market and there is only so much supply,” said Jeffery Timlin, a managing director at Sage Advisory Services, an investment firm.

While the amount of debt in the pipeline will continue to increase, since many deals are scheduled with less than a month’s notice, analysts don’t see a pullback from the market on the horizon.

“We do not have reason to believe that the current trend of fund inflows will reverse any time soon,” Wells Fargo Securities senior analysts Randy Gerardes and George Huang said in a report on Tuesday. “So, absent a significant build in the February calendar, we think the technicals will remain accommodative for a continued muni rally.”

Bloomberg Markets

By Shruti Singh

January 22, 2020, 10:59 AM PST

— With assistance by Mallika Mitra

[Muni Bonds That Deter Retail Investors Are Blowing Up (Podcast)]

Retail investors are being steered clear of high-risk muni bonds by banks, who raise the minimum amount they can purchase. And more of those deals are getting into trouble. Reporter Amanda Albright and muni bond columnist Joe Mysak explore this booming segment of the municipal market, as well as mobile home parks in California.

[Play Episode]

Bloomberg

January 24, 2020 — 11:46 AM PST

[MSRB Advances Governance Proposal at Quarterly Board Meeting.]

Washington, DC – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) met on January 22-23, 2020 for its quarterly in-person meeting, where it voted to seek public comment on recommendations from its Governance Review Special Committee.

The Board established a [special committee] at the start of Fiscal Year 2020 to conduct a comprehensive review of the MSRB’s governance practices, including potential improvements to the Board’s structure and composition.

“The structure of the MSRB’s Board of Directors leverages the expertise of diverse municipal market participants to effectively and efficiently protect investors and issuers,” said MSRB Board Chair Ed Sisk. “We know there is room for continuous improvement, and we set out this fiscal year to carefully scrutinize our governance practices and consider input from policymakers and other stakeholders.”

The potential amendments to MSRB Rule A-3, which will be released for a 60-day comment period, include tightening the independence standard required of public representatives on the Board and reducing the size of the Board.

Market Regulation

The Board also plans to seek public comment on a retrospective rule review of MSRB Rule G-27, on supervision, to align the rule with the Financial Industry Regulatory Authority’s (FINRA) supervision rules. Rule G-27 was one of the rules prioritized for review by the Board at its meeting in July 2019.

In another action to promote regulatory consistency, the Board voted to file proposed amendments to its rules concerning suitability, gifts and gratuities, and books and records to facilitate implementation of the Securities and Exchange Commission’s (SEC) Regulation Best Interest (“Reg BI”). The MSRB has coordinated closely with the SEC and FINRA to mitigate any potential confusion over which standards will apply with respect to recommendations to retail customers.

The Board discussed public comments submitted to the SEC on a proposed order to grant conditional exemptive relief, which would, if granted by the SEC, permit municipal advisors to engage in certain limited activities in connection with the direct placement of municipal securities without registering as a broker. The Board submitted a comment letter on the proposal.

Market Transparency

The Board continued its review of comments received on its proposal, filed with the SEC in November 2019, to enhance the Electronic Municipal Market Access (EMMA®) website with a “submission calculator” to more prominently display existing information on the timing of issuers’ annual and audited financial disclosures. The MSRB will continue to review input from commenters and will publish a letter responding to comments in advance of SEC action on the proposal.

The Board received an update on the enterprise-scale migration of MSRB market transparency systems and data to the cloud, which aims to position the MSRB to evolve its EMMA system to facilitate the use of municipal market data for dynamic comparison, regulatory compliance and deeper market analysis.

“Our long-term strategic goal is to optimize the utility of market data for our stakeholders and enhance our own capabilities to effectively oversee the market,” Sisk said. “The Board’s investment in cloud technology and system modernization brings us much closer to that goal.”

Other Business

During its meeting, the Board met with SEC Chairman Jay Clayton and FINRA CEO Robert Cook to discuss regulatory coordination and oversight of the municipal securities market.

As part of its stewardship of financial resources, the Board reviewed its reserves in accordance with the organization’s funding policy.

Date: January 24, 2020

Contact: Leah Szarek, Director of Communications
202-838-1500
lszarek@msrb.org

The OZ Regulatory Process: Behind the Scenes at Treasury, with Dan Kowalski.

What are the five most impactful changes in the final IRS regulations on Opportunity Zones? And what's the true story behind the Opportunity Zone designation in Storey County, NV? Daniel Kowalski is counselor to Treasury Secretary Steven Mnuchin and led the Treasury Department's efforts in issuing regulations on Qualified Opportunity Funds. Click the play button below to listen to my conversation with Dan.

Continue reading.

Opportunity Db

January 22, 2020

How Investments in Innovation Districts Can Combat the Country's Regional Divides.

Last month, Robert D. Atkinson of the Information Technology & Innovation Foundation, together with our colleagues Mark Muro and Jacob Whiton, published a report calling for a renewed federal role in helping to balance the country's growing geographic inequities. "The case for growth centers: How to spread tech innovation across America" carefully documents how and why the innovation economy—the driver of much of the nation's growth—has become increasingly concentrated in a handful of coastal metropolitan areas, leaving much of the heartland struggling to keep pace. It also proposes a way for leaders in Washington, D.C. to boost lagging regions by selecting a small group of "growth center" metro areas (chosen via a competitive process) to receive a package of federal supports.

The "growth center" construct was originally conceived in the 1950s, but this 21st century version acknowledges that in today's economy, federal support for more widespread diffusion of innovative activity will not be enough to combat the entrenched economic divergence between regions. Rather, such "top-down" investment needs to be matched with "bottom-up" leadership, drive, and capacity to make the kinds of transformative investments in places and placemaking essential for growth centers to thrive.

Continue reading.

The Brookings Institution

by Jennifer S. Vey and Julie Wagner

Thursday, January 23, 2020

Claims By Tort Claimants Against Municipal Insurer Over Coverage for Sexual Abuse Dismissed By Federal Court.

Typically, a claimant has no direct right of action against an insurance company especially prior to a judgment against the insured. Even more typically, a claimant has no right to "cut-through" to the reinsurers based on an alter ego or fronting claim when the claimant is not the insured and is not in contractual privity. Nevertheless, that doesn't stop claimants from trying. In a recent case, a federal court rejected that attempt based on a lack of subject matter jurisdiction.

In *Bridges v. Poe*, No. 7:19-cv-00529-LSC, 2020 U.S. Dist. LEXIS 11240 (N.D. Ala. Jan. 23, 2020), a series of individual plaintiffs sued similar defendants for allegations of systemic sexual harassment, abuse and rape of female pretrial detainees at a city jail. After the first case was filed, the city's insurance company filed a state court declaratory judgment action seeking a declaration that it had no duty to defend or indemnify the city or its employees in the case. Subsequent cases filed by other plaintiffs in federal court named the insurance carrier as a defendant.

Each plaintiff alleged that the insurer was a shell corporation with no real employees, was merely the alter ego for a state municipality organization and a fronting company for the insurer's reinsurers. Plaintiffs, in the federal court actions, sought declarations that the insurance company had a duty to defend and indemnify the city defendants in the cases and that each plaintiff was an assignee of the insurance company's rights under its reinsurance contracts allowing plaintiffs to recover any judgment based on a cut-through to the reinsurers.

The insurance company moved in each of the federal cases to dismiss the claims against it for lack of subject matter jurisdiction. The plaintiffs argued that the court could retain the cases under supplemental jurisdiction. The district court granted the insurance company's motions to dismiss.

In granting the motion to dismiss, the court noted that the claims against the insurance company were state law claims between citizens of the same state. Thus, the analysis came down to whether supplemental jurisdiction was appropriate. Given that the claims against the insurance company were about insurance coverage, separate and distinct from the underlying tort claims, the court said that the exercise of supplemental jurisdiction "may not be appropriate." The court found that the claims against the insurance company alleging alter ego, fronting and as an assignee on a cut-through basis were not typical tort claims, were complex and hinged on whether the insurer was a shell corporation and a mere front for reinsurers. These allegations implicated matters of local law and policy. Because resolving these issues would cause the court to unnecessarily make decisions of state law, the court concluded that the state court would be better suited to hear and resolve those novel and complex state law claims.

The court also determined that it was not even clear that the plaintiffs had Article III standing to sue the insurance company for a declaration of coverage before the entry of judgment against the insured. Dismissing the claims, said the court, promoted judicial economy by avoiding substantial duplication of effort where there as a state case already pending.

January 24 2020

Squire Patton Boggs – Larry P. Schiffer

Nacha Takes Position of “No Enforcement” With Respect to Government Entities on "Supplementing Data Security Requirements"

NASACT, in conjunction with the Government Finance Officers Association and the National Association of State Treasurers, recently responded to Nacha’s upcoming rule, *Supplementing Data Security Requirements*.

Although NASACT, NAST and GFOA are supportive of the enhanced security provisions outlined in the rule, state and local governments expressed concerns about the implementation deadline of June 30, 2020, for account information used in states’ Origination of ACH entries to be rendered unreadable when it is stored electronically. The government groups requested a one-year extension to the implementation date. Read the full letter.

On January 21, Nacha responded and will be taking a position of “no enforcement” of the new data security rule through June 30, 2021, with respect to government entities that are working in good faith toward implementation and compliance, but that require additional time. With this position of no enforcement, Nacha thinks that government entities can continue to work towards compliance without interruption to their existing ACH payment processes.

Financial Accounting Foundation Announces Search for New Member of Governmental Accounting Standards Board.

Press Release.

[01/23/20]

- Negative Interest Rates x Negative Bond Yields = Positive Arbitrage?
  How Cybersecurity is Factoring Into Credit Ratings.
- Fitch Ratings Updates Infrastructure Completion Risk Criteria; Requests Market Comments
  Fitch Exposure Draft: Completion Risk Criteria FAQs
- BlackRock’s Larry Fink Sees Bond Peril for Cities Over Climate Change.
- U.S. Flood Risk Model to Be Publicly Available in Boon for Homebuyers.
- S&P U.S. Municipal Water And Sewer Utilities 2020 Sector Outlook: Finding Stability Between Headline Risk And Credit Risk
- S&P U.S. Public Power And Electric Cooperative Utilities 2020 Sector Outlook: Heading Into A New Decade On A Familiar Road
- And finally, To Protect and Unnerve is brought to us this week by *Unidentified Police Officers 1 v. City of Billings*, in which the Billings Gazette discovered that *three* Billings police officers had been investigated and disciplined “for having sex on City property” with the *same* city clerk. “The article reported that one of the incidents, involving an on-duty officer, occurred in a police car in a private lot, and the other two incidents—involving both an on-duty and an off-duty officer—occurred in the area of the police department records storage in the City Hall basement.” And you thought romance was dead.

BALLOT INITIATIVES - FLORIDA

Advisory Opinion to the Attorney General re Raising Florida's Minimum Wage

Supreme Court of Florida - December 19, 2019 - So.3d - 2019 WL 6906963 - 44 Fla. L. Weekly S302

Attorney General of Florida petitioned for advisory opinion on validity of proposed citizen initiative amendment to Florida Constitution to raise the minimum wage, and corresponding financial impact statement prepared by Financial Impact Estimating Conference (FIEC).

The Justices of the Supreme Court were of the opinion that:

- Proposed amendment complied with Florida Constitution’s single-subject requirement for citizen initiative petitions;
- Ballot title and summary for proposed amendment complied with statutory requirement that they be printed in clear and unambiguous language; and
- The Court lacked original jurisdiction to review financial impact statement, receding from *Advisory Opinion to the Attorney General re Referenda Required for Adoption*, 963 So.2d 210.

Proposed amendment to the Florida Constitution, which addressed raising Florida’s minimum wage, complied with Florida Constitution’s single-subject requirement for citizen initiative petitions; amendment clearly addressed one subject, raising minimum wage, and although it could affect contracts entered into and wages paid by each branch of government, the effects were incidental to amendment’s chief purpose, which was not to alter or perform any governmental function.

Ballot title and summary for proposed amendment to the Florida Constitution, which addressed raising Florida’s minimum wage, complied with statutory requirement that they be printed in clear and unambiguous language; title clearly and accurately identified subject matter and complied with word-count requirement, and summary was clear and unambiguous and complied with word-count requirement.

Supreme Court lacked original jurisdiction to review financial impact statement prepared by Financial Impact Estimating Conference (FIEC), as it was not considered part of an initiative petition to amend state Constitution, receding from Advisory Opinion to the Attorney General re Referenda Required for Adoption, 963 So.2d 210.

EMINENT DOMAIN - INDIANA

City of Kokomo v. Estate of Newton

Court of Appeals of Indiana - December 18, 2019 - N.E.3d - 2019 WL 6885081

Company owner’s estate, which owned two contiguous parcels of land, filed exceptions to appraisers’ assessment of $143,000 in damages for city’s taking of one of the parcels. Estate sought $305,600 in damages, both for the taking and for resulting damages to the adjacent parcel.

City moved for a directed verdict. The Superior Court denied the motion. Following a jury trial on the issue of damages, the Superior Court entered judgment in favor of estate for $305,600 in damages plus interest, as well as $25,000 in litigation expenses. City appealed.

The Court of Appeals held that:

- Estate was entitled to damages only for city’s condemnation of one parcel, not for damages to adjacent parcel, and
- Estate was not entitled to litigation damages.

Company owner’s estate, which owned two contiguous parcels of property on which company operated, was entitled to damages only for city’s condemnation of one parcel, not for damages to adjacent parcel, which was not condemned, although company incurred relocation expenses and suffered lost profits after it was forced to relocate following city’s taking of other parcel; estate, which owned both parcels, was a separate entity from company, neither company nor owner’s son, who served as estate’s personal representative and company’s sole shareholder, were ever joined as parties to estate’s action challenging appraisers’ assessment of damages for city’s taking of parcel, and it was company, not estate, which sustained damages as a result of being forced to relocate.

Estate was not entitled to litigation expenses in its action challenging appraisers’ assessment of damages for city’s taking of a parcel of land it owned, where damages award was less than settlement amount city had offered one year prior to trial.

IMMUNITY - MISSOURI

Thompson v. City of St. Joseph

Missouri Court of Appeals, Western District - December 17, 2019 - S.W.3d - 2019 WL 6843499

Passengers of stolen vehicle brought suit against city to recover damages for injuries sustained in automobile accident, alleging that road maintained by city was in dangerous and defective condition.

The Circuit Court granted city’s motion for summary judgment. Passengers appealed.

The Court of Appeals held that:

- Genuine issue of material fact precluded summary judgment;
- Passengers introduced sufficient evidence in summary judgment record to put issue before jury; and
- Passengers sufficiently alleged waiver of city’s sovereign immunity.

Genuine issue of material fact as to whether lack of edge lines and signage together with edge-drop in road maintained by city was or was not proximate cause of automobile passengers’ injuries precluded summary judgment for city in suit brought by passengers to recover damages.

Automobile passengers introduced sufficient evidence in summary judgment record to put issue before jury of whether city should have foreseen that lack of edge line markings and excessive drop off on edge of roadway could cause driver leaving roadway to overcorrect upon reentry and crash vehicle resulting in similar injuries as passengers, where passenger-side wheels of automobile carrying passengers leaving of roadway was only slight deviation from road.

Allegation that lack of edge line markings and excessive drop off on edge of roadway maintained by city caused or contributed to cause driver to leave roadway, overcorrect upon reentry, and crash vehicle, sufficiently alleged that city’s conduct in failing to maintain road was proximate cause of passengers’ injuries, as necessary to allege waiver of city’s sovereign immunity.

COMMUNITY IMPROVEMENT DISTRICTS - MISSOURI

Henderson v. Business Loop Community Improvement District

Missouri Court of Appeals, Western District - November 26, 2019 - S.W.3d - 2019 WL 6314755

Voter brought action against community improvement district, district's president, and its executive director, challenging validity of election conducted by district that approved half-cent sales tax within district.

The Circuit Court granted district's motion to dismiss for lack of subject matter jurisdiction on ground that court had no statutory authority to hear the challenge. The Supreme Court granted voter's petition for a writ of mandamus directing the Circuit Court to issue a signed judgment, denominated as such, disposing of her claims, so she could appeal their dismissal. Voter appealed.

The Court of Appeals held that:

- Voter's challenge was not moot, even though tax was approved and collection had started;
- Voter's challenge was not moot, even though voter had moved outside district;
- Voter's challenge was a civil case over which circuit court had subject matter jurisdiction;
- Voter had statutory right to challenge validity of election, even though statute authorizing election did not provide for election contests;
- Election contest provisions contained in general election laws applied to sales tax elections; and
- Fact that election was a special election did not preclude registered voter's statutory right to challenge its validity.

Voter's challenge to validity of election approving half-cent sales tax in community improvement district was not moot, even though tax was approved and collection of the tax had started; voter was undisputedly eligible to vote in challenged election, and the trial court could invalidate the challenged election and prohibit collection of the tax, if voter prevailed.

Voter's challenge to validity of election approving half-cent sales tax in community improvement district was not moot, even though voter had moved outside the district's boundaries and might not be eligible to vote in a new election; voter's relocation did not make it unnecessary or impossible for trial court to rule on her allegations of irregularity directed at a previously held election in which she had participated, notwithstanding any effect of voter's relocation on her eligibility to vote in a potential future election.

Voter's challenge to validity of sales tax election in community improvement district was a civil case over which circuit court had subject matter jurisdiction pursuant to provision of State Constitution granting trial courts original jurisdiction over all cases and matters, civil and criminal.

Voter had statutory right under general election laws to challenge validity of election approving sales tax in community improvement district, even though statute authorizing community improvement district to hold sales tax election did not provide for election contests; State's election laws generally applied to all public elections in the state not requiring ownership of real property to vote, and the election was public and did not require voters to own property, as it was open to all qualified registered voters in the district.

Although statute governing sales tax elections conducted by community improvement districts stated the statute applied "notwithstanding" the provisions of the State's general election laws, the election contest provisions contained in the general election laws applied to sales tax elections conducted by community improvement districts; statute governing sales tax elections was silent on the issue of election contests and so did not conflict with general election law provisions governing such contests, and the “notwithstanding” clause only purported to avoid applying general election laws to manner in which district sales tax elections were conducted.

That community improvement district’s sales tax election was a special election did not preclude registered voter’s statutory right to challenge its validity; statute allowed voter to contest the result of any election, special or general, on any question, occurring in a geographic area where she was a registered voter.

PUBLIC RECORDS - MONTANA

Unidentified Police Officers 1 v. City of Billings

Supreme Court of Montana - December 31, 2019 - P.3d - 2019 WL 7374361 - 2019 MT 299

Following issuance of temporary restraining orders (TROs) and order of protection in favor of police officers who had been investigated and disciplined for having sexual relations with a city employee, which prohibited media companies from releasing officers’ identities, media companies moved to intervene in officers’ TRO actions and filed counterclaim and cross-claim against the city, seeking declaration that public’s right to know clearly outweighed officers’ alleged privacy interests and an order making documents available for inspection to media companies and requesting attorney fees and costs for enforcing the public’s right to know.

Following show-cause hearing, the District Court ordered release of officers’ identities and subsequently granted media companies’ request for fees and costs in the amount of $10,052.70. City appealed.

The Supreme Court held that:

- District court did not abuse its discretion in making statutory award of fees to media companies as prevailing parties, but
- Award of attorney fees for time spent by media companies recovering fees was not authorized on appeal.

District court did not abuse its discretion in making statutory award of attorney fees to media companies as prevailing parties in action against city seeking declaration that public’s right to know identities of police officers who had been investigated and disciplined for having sexual relations with a city employee clearly outweighed officers’ alleged privacy interests and an order making documents about investigation available for inspection; city’s actions in stipulating to officers’ requests for temporary restraining orders (TROs) to protect their identities led to additional litigation that could have been avoided, and media companies prevailed in securing release of public information.

Award of attorney fees for time spent by media companies recovering fees incurred in action against city seeking declaration that public’s right to know identities of police officers who had been investigated and disciplined for having sexual relations with a city employee clearly outweighed officers’ alleged privacy interests and an order making documents about investigation available for inspection was not authorized on appeal, where district court held that media companies were not entitled to fees for time spent recovering their fees, and companies did not appeal that ruling.

ANNEXATION - NEW MEXICO

[Board of County Commissioners of County of Rio Arriba v. Board of County Commissioners of County of Santa Fe]

Court of Appeals of New Mexico - December 12, 2019 - P.3d - 2019 WL 6795709

Residents who lived in city that lied within boundaries of two different counties filed motion for peremptory writ of mandamus in the District Court, Santa Fe County, to compel board of county commissioners of county in which residents lived to publish notice of residents' petition for annexation of their portion of city into new county.

The District Court issued peremptory writ of mandamus in favor of residents. Board appealed.

The Court of Appeals held that city residents failed comply with statutory condition for annexation petitions.

City resident's petition to annex into a new county that portion of their city that laid in another county, which contained maps depicting distances and travel times from city to satellite offices of new county, failed to comply with one of two conditions of annexation statute requiring residents to show that it was more convenient for them to travel to county seat of new county; interpretation of condition, that Legislature's purpose was to gauge convenience of accessing governmental services, would replace word "county seat" with "county services," which Legislature included in second condition but omitted from first condition, and Legislature enacted statute in conjunction with other laws requiring governmental services be provided at the county seat.

PUBLIC UTILITIES - OHIO

[Mauldin v. Youngstown Water, Department]

Court of Appeals of Ohio, Seventh District, Mahoning County - December 5, 2019 - N.E.3d - 2019 WL 6713412 - 2019 -Ohio- 5065

Homeowner brought action against city water department, mayor, and water commissioner in their respective capacities, alleging that department negligently or recklessly performed function of turning off water to homeowner's house which caused flooding.

City filed motion for summary judgment, arguing that homeowner's action was barred by the statute of limitations, which the Court of Common Pleas granted. Homeowner appealed.

The Court of Appeals held that:

- Two-year special statute of limitations applied to homeowner's action against city water department, mayor, and water commissioner, and
- Issue of negligence and political subdivision immunity did not create a genuine issue of material fact.

Two-year special statute of limitations for actions against political subdivisions for injuries to property, rather than residual provision of four-year general statute of limitations for injuries not enumerated in statute, applied to homeowner's action against city water department, mayor, and water commissioner for flooding caused to her house after department's allegedly negligent failure to properly turn off water to homeowner's house; special statute explicitly required actions against political subdivisions be brought within two years or any applicable shorter period, additional statute required all civil actions be commenced within periods prescribed in special and general statutes, and amendments to special statute did not manifest an intent that the residual provision would prevail over special statute.

Issue of whether city water department, mayor, and water commissioner were entitled to political subdivision immunity for department's allegedly negligent performance of allegedly proprietary function of turning water off at homeowner's house was rendered moot by two-year special statute of limitations for actions against political subdivisions, and, thus, did not create a genuine issue of material fact as to preclude summary judgment against homeowner in her action seeking damages for flooding caused to her house after department's allegedly negligent action.

INVERSE CONDEMNATION - WYOMING

Byrnes v. Johnson County Commissioners

Supreme Court of Wyoming - January 13, 2020 - P.3d - 2020 WL 132198 - 2020 WY 6

Property owner filed inverse condemnation action against county, Department of Transportation, and other defendants.

The District Court granted State's motion for judgment as a matter of law (JMOL). Property owner appealed.

The Supreme Court held that:

- Owner failed to demonstrate direct taking of her property;
- Owner failed to demonstrate indirect taking of her property;
- There was no evidence of preconstruction value of property, and thus owner failed to establish before and after measure of damages for a partial taking;
- Evidence regarding estimated costs related to amending driveway was insufficient to establish value of property allegedly taken, as measure of damages for a partial taking; and
- Owner was not entitled to default judgment against Department.

Chronically Late Municipal Bond Audits Further Delayed in FY 2018.

Every year since 2007, Merritt Research Services1 (Merritt Research) reports the time it takes for municipal bond borrowers to complete their annual financial audits. The results of the study consistently show slower reporting relative to industry standards of the securities markets. By now, it has been well documented that most municipal audits lag the corporate standard of 60 days by a range of three to six more months.

Slower audit turnaround times increase the likelihood that analysts will miss signals that may adversely affect municipal bond pricing and catch investors or other stakeholders off guard. In short, the useful value of the audits will become either stale or diminished, or potentially not useful at all. That concern is aggravated by the fact that the Merritt Research study evidenced that weaker borrowers generally experience longer delays than better quality credits to complete their audits.

This year's findings are particularly disappointing. Despite a decade of placing a spotlight on the problem2, audit reporting took another step down to tie the slowest median audit time recorded over the past eleven years.

Continue reading.

muninetguide.com

By Richard A. Ciccarone, President of Merritt Research Services, an Investortools, Inc. Company

Jan 13, 2020

U.S. Flood Risk Model to Be Publicly Available in Boon for Homebuyers.

NEW YORK — A climate research organization will offer access to a risk model that predicts the probability of flooding for homes across the United States, giving the public a look at the data institutional investors use to gauge risk.

First Street Foundation on Tuesday launched Flood Lab, a research partnership which provides eight universities with its model that maps previous instances of flooding as well as future risks. Using the dataset, Wharton business school at the University of Pennsylvania, Massachusetts Institute of Technology and Johns Hopkins University among others will quantify the impacts of flooding on the U.S. economy.

The move could put pressure on prices of homes, municipal bonds and mortgage-backed securities linked to real estate in risk-prone areas, according to Matthew Eby, executive director of research organization First Street Foundation, and other Flood Lab participants.

The data will be made available to the public in the first half of 2020 in an online database searchable by home address.

About 62 million American homes have a moderate to severe risk of flooding, data analytics firm Verisk has estimated.

Major risk modeling firms like Risk Management Solutions, CoreLogic, AIR Worldwide and KatRisk are currently the sole purveyors of that information, which they sell to big insurers, mortgage lenders and investment firms. But the cost, which can run into seven figures a year, is prohibitive for universities, smaller financial firms and homeowners.

“We tried to get some of the data from one of the providers and they quoted us an astronomical price,” said Benjamin Keys, a real estate economics professor at Wharton.

Keys had reached an impasse in his research: he had evidence that mortgage markets in coastal regions of the United States were being affected by rising sea levels, but couldn’t get accurate or comprehensive datasets that modeled the risk of flooding. Flood Lab will help fill that gap.

First Street says its model rivals those at big private firms. While there have long been researchers modeling flood risk, the timeframe and geographic scope have been limited as the manpower and cost have been too great for any one university. First Street currently has around 70 researchers working on its model, more than some of the proprietary firms.

Private risk modeling agencies will still have business: they offer other catastrophic risk data on a global scale and there is demand for multiple models. But a public option could lead to competitive pricing and a demand for transparency around methodologies.

The most lasting impact, however, is likely to be on homeowners.

“Where does your average homeowner get that flood risk information and make an optimal decision?” asked Carolyn Kousky, executive director of the Wharton Risk Center.

“I think that’s the place First Street will actually be disruptive.”

By Reuters

Jan. 14, 2020

(Reporting by Kate Duguid; Editing by Stephen Coates and David Gregorio)

‘That is Insane’: Muni Yields at the Lowest Since Elvis Was King.

- **The bond market’s oldest yield index hits lowest since 1956**
- **Steady influx of cash into market is keeping a rally going**

The last time municipal-bond yields were this low Dwight D. Eisenhower was the president, Elvis Presley released his second studio album and Grace Kelly married Monaco’s Prince Rainier III.

The Bond Buyer’s 20-year index of general-obligation bonds reset at 2.56% this week, the lowest since June 1956, according to Bloomberg’s records. And for some context, that year some $5.4 billion of new long-term bonds were sold, a sum that’s now considered a somewhat slow week.

The 20-bond index is the oldest gauge of yields in the tax-exempt securities market, started by the newspaper in 1917.

“That is insane,” said Nisha Patel, the director of portfolio management at Parametric, an affiliate of Eaton Vance Management. She said the massive amounts of money that have been flowing into mutual funds have driven down absolute yields, most notably for long-dated debt, as investors hunt for bigger payouts.

“One part of me thinks it’s hard to see how this is sustainable,” Patel said. “But another part says if Treasury yields grind lower, you could see this going down to 2%.”

Albert Jalso, a senior portfolio manager for Russell Investments, said the lower yields may increase the pace of new debt sales. “The state can say ‘hey, rates are lower, we can borrow a little more.’”

That’s the consensus view, with analysts forecasting a potentially record-setting year for new bond issues. Such sales have been met with seemingly boundless demand. Investors added another $2.3 billion to municipal-securities mutual funds in the week ended Wednesday, marking the 54th straight week of inflows, according to Refinitiv Lipper US Fund Flows data.

Patel said investors at some point may stop throwing their cash into the funds because of the “sticker shock” of how pricey — and low yielding — tax-exempt bonds have become.

“We started crossing over into taxables because of the richness,” she said, saying that Treasuries look more attractive in this environment. “It’s just extremely rich.”

Bloomberg Markets

By Danielle Moran and Mallika Mitra

January 17, 2020, 10:31 AM PST

— With assistance by Joe Mysak

Negative Interest Rates x Negative Bond Yields = Positive Arbitrage?

Former Federal Reserve Chairman Ben Bernanke recently advised that the Fed should maintain “constructive ambiguity” about the possibility of taking the Federal funds rate below 0% in an effort to simulate the U.S. economy during the next recession. Given that current short-term interest rates in the United States are at near-historic lows, many believe that it is inevitable that U.S. monetary policy will replicate the negative interest rates employed in Japan and Europe when the next recession hits. One economist suggests that negative interest rates and negative bond yields (more on that below) are the inexorable conclusion of a trend that began in the late 1400s. We are on notice.

If the Fed experiments with a Bret Easton Ellis-inspired monetary policy and takes the Federal funds rate to less than zero,[1] what are the potential consequences for issuers of tax-exempt bonds? For some speculation (and to see the text of the first footnote), hit the jump.

Continue reading.

By Michael Cullers on January 20, 2020

The Public Finance Tax Blog

Squire Patton Boggs

Fitch Ratings Updates Infrastructure Completion Risk Criteria; Requests Market Comments

Link to Fitch Ratings’ Report(s): Exposure Draft: Completion Risk Rating Criteria

Fitch Ratings-New York-15 January 2020: Project completion is a meaningful risk for project finance transactions, and has garnered significant attention recently with several infrastructure projects globally running into cost overruns and delays. As a result, Fitch Ratings has released an exposure draft for its rating criteria for completion risk, and is now requesting market commentary on the updated criteria.

“Delays, cost overruns and outright cancellations of high profile infrastructure projects in the U.S. and Canada are recent by-products of an increasingly competitive market environment,” said Global Infrastructure and Project Finance Head Cherian George. “In Latin America, completion risk has been manifested due to right-of-way, social and environmental issues,” said George. “Risk is getting pushed down to contractors in greater numbers, which is resulting in some fixed-price projects becoming unprofitable. The downfall of certain European contractors also highlights the pressure contractors are feeling.”

While the analytical approach is conceptually the same, Fitch will now break completion risk out into a separate standalone criteria that will shed more light on factors like a project’s complexity, scale, and duration (CS&D), availability of replacement contractors and contract terms. Fitch does not anticipate changes to its outstanding ratings as result of the new criteria.

Specifically, the exposure draft:
–Distinguishes the range of projects, using project CS&D as the attribute with the highest influence, although it is constrained by the weakest of all the attribute assessments.
–Explicitly recognizes the credit strength garnered from joint ventures (JVs) with joint and several liability, and distinguishes the relative strength of near-equal members, versus those with disparate expertise and credit strength.
–Recognizes independent engineer (IE) reports do not have global or regionally accepted or established standards for risk evaluation, so the opinions provided are not of consistent quality and reliability. The criteria therefore establishes a risk margin to replacement cost scenarios based on contractor credit quality. In addition in the absence of a well-substantiated IE opinion, the criteria establishes indicative security levels based on market input.
–Reflects the exposure to delay risk by establishing minimum thresholds, noting delay risk is relevant across all projects, regardless of counterparties.
–Clarifies notching between thresholds based on available performance security and liquidity.

Fitch invites feedback from market participants on the released criteria. Comments should be sent to criteria.feedback@fitchratings.com by March 15, 2020. Once finalized, Fitch will apply the criteria to existing ratings and apply the criteria described in this exposure draft to new projects during the exposure draft period.

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Additional information is available on www.fitchratings.com

Fitch Exposure Draft: Completion Risk Criteria FAQs

Read the FAQs.

S&P U.S. Municipal Housing 2020 Sector Outlook: The Foundation Remains Stable

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- Rating Distribution
- What We Are Watching
- Affordable Housing Properties

Outlook: Stable
Economic fundamentals bode well for continued stable performance in the U.S. public finance housing sector. Favorable financial conditions due to a lowered chance of recession, expected low rates through the end of the year, modest inflation, steady labor force participation, and continued wage growth–most importantly even for lower wage workers–provides a solid foundation for the sector to remain on largely stable ground during 2020.

Continue reading.

S&P U.S. Municipal Water And Sewer Utilities 2020 Sector Outlook: Finding Stability Between Headline Risk And Credit Risk

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- State Of The Sector
- We're Watching E, S, And G
- Looking Ahead
- Last Year's Rating And Outlook Actions

Outlook: Stable
To the extent that utility leadership demonstrates proactive operational and financial risk management toward day-to-day challenges such as infrastructure renewals, as well as resilience to impactful events like extreme weather or a recession, credit quality can generally be preserved. Forward-looking analysis always begins with the capital plan.

Continue reading.

S&P U.S. Public Power And Electric Cooperative Utilities 2020 Sector Outlook: Heading Into A New Decade On A Familiar Road

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- Rating Distribution
- What We Are Watching

Outlook: Stable

Although U.S. public power and electric cooperative utilities face the specter of significant credit disruptors in 2020, we expect to see resilient and generally stable ratings. Electric utilities are benefiting from a predictable pathway for recovering costs, whether through autonomous or regulated ratemaking. Furthermore, the moderately growing economy and its low interest rates and natural gas prices is tempering pressures on income statements and balance sheets in this capital intensive industry.

Continue reading.

How Cybersecurity is Factoring Into Credit Ratings.

Cyberattacks are an emerging factor in public finance credit ratings for state and local governments, governmental authorities and non-profit community groups.

A couple of states already have stepped forward to help smaller communities and governmental authorities cope and about two dozen have formed state task forces.

A growing number of communities and government agencies also have taken out cybersecurity insurance policies.

“State and local governments are soft targets because they don’t have the expertise in cybersecurity that corporations do,” said Michael Belsky, executive director of the Center for Municipal Finance at the University of Chicago.

“I would say that being adequately prepared for a cyber event is a positive credit factor and being ill prepared is a negative credit factor,” Belsky said in an interview.

Credit rating agencies are looking at the quality of the computer systems personnel and whether a government entity has a plan to deal with cybersecurity.

“It’s more like a management practice like fund balance policy or revenue forecasting,” Belsky said.

The first hard evidence of how this is affecting ratings in the public finance sector came from a downgrade two months ago involving Princeton Community Hospital in West Virginia.

S&P Global Ratings lowered its rating to BBB from BBB+ on series 2012A refunding bonds in November, more than two years after a cyberattack weakened the hospital’s reserves which already were declining because of operating losses. Another factor in the downgrade was the integration risk associated from the acquisition of a regional medical center.

When the attack occurred in June 2017, the hospital had to divert ambulances and limit its services for seven weeks because the ransomware attack froze all systems including billing, accounting and electronic medical records.

Although S&P said the hospital’s management “responded appropriately” to the cyberattack and the hospital did not violate its debt service covenants in fiscal 2018, the incident provides a good example of how a cyberattack can factor into bond ratings.

“We are saying now that an attack has affected operations of a public finance entity to be the primarily the attribute to lead directly to the downgrade,” said Geoff Buswick, S&P Global Ratings managing director.

“We have watched this emerge over the past few years,” said Buswick. “Now it’s something that we are expecting every analyst to at least ask a question or two about on a call so it’s more business as usual.”

Moody’s Investors Service hasn’t downgraded any of its ratings because of cybersecurity risks as yet, but officials there said it could happen in the future.

“A lot of the losses have minimized because of cyber insurance or state support,” said analyst Nisha Rajan, Moody’s lead for ransomware attacks on local governments. “Smaller local governments tend to be more vulnerable because their budgets are smaller and there are less resources to tap.”

A Moody’s report last August highlighted the state support Louisiana provided when five school districts came under cyberattack.

Louisiana Gov. John Bel Edwards declared a state of emergency and the targeted school districts gained access to state resources from the Louisiana National Guard, Louisiana State Police, Louisiana Office of Technology Services and Louisiana State University.

The effort was coordinated by the governor’s office of Homeland Security & Emergency Preparedness.

Similarly, the Moody’s report noted that Colorado Gov. John Hickenlooper declared a state emergency in March 2018 following a ransomware infestation at the Colorado Department of Transportation.

Louisiana’s response was aided by the fact that Gov. Edwards had established the Louisiana Cybersecurity Commission in 2017. About two dozen states have taken a similar step, including California, Texas, New York and Illinois.

Ohio received a credit positive from Moody’s in November after Gov. Mike DeWine signed legislation creating a civilian cybersecurity reserve force, named the Ohio Cyber Reserve, to protect local governments, critical infrastructure and businesses from the impact of cyberattacks.

The 50 person unit is part of the Ohio National Guard.

Moody’s said it “underscores the significant role states can play in helping governments respond to rising cybercrime.”

The vulnerability is generally the greatest in smaller local governments and agencies.

“You have some state and local governments that are well-resourced that are able to mount a comparable defense to large private organizations,” said Leroy Terrelonge, assistant vice president and cyber risk analyst at Moody’s Investors Service.

“But you have in this large world of state and local governments you many that do not have the resources to have dedicated cyber expertise and to be able to protect themselves as well,” Terrelonge said. “So when you have such a large attack surface for criminals that are looking to find weak links they can probe, it’s a very rich target landscape.”

At Fitch Ratings, cybersecurity risk is a factor in its ratings but not to the point where it has become a credit concern as yet, according to Managing Director Amy Laskey.

“We look at their general ability to deal with the unexpected as part of their ESG score,” said Laskey.

Laskey the risk of cyberattacks is growing everywhere.

“There’s going to have to be a lot more done to address it, as these events become more common and more sophisticated and potentially more impactful,” Laskey said. “It’s probably going to get worse and not better so the responses are going to have to get stronger.”

The latest warning of the growing threat of cyberattacks came from the U..S. Department of Homeland Security and the Multi-State Information Sharing and Analysis Center shortfall after the U.S. killed Iranian Gen. Qassem Soleimani with a drone attack.

“The Iranians probably don’t have military capabilities to fight person for person or weapon system for weapons system, but they have a very sophisticated cybersecurity wing,” Buswick said.

On Jan. 7, Texas Gov. Greg Abbott and Texas Department of Information Resources executive director Amanda Crawford reported as many as 10,000 “probes” per minute of state agencies’ computer systems that originated from Iran.

“That whole chain of events was pretty stunning and telling to what we have been warning,” said Buswick. “Don’t have your head in the sand on this. Prudent cyber hygiene is going to benefit everyone.”

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 01/14/20 02:35 PM EST

New Law Repeals Parking Tax for Tax-Exempt Organizations.

Good news for tax-exempt organizations! The “Further Consolidated Appropriations Act, 2020” (H.R. 1865 — 116th Congress (2019-2020)) (the “Act”) signed into law on December 20, 2019, retroactively repealed Section 512(a)(7) of the Internal Revenue Code of 1986, often referred to as the “parking tax.”

Section 512(a)(7) was enacted under the Tax Cuts and Jobs Act of 2017 and generally required tax-exempt organizations to include as unrelated business taxable income amounts paid for employee parking and/or qualified transportation fringe benefits (e.g., transit passes). Section 512(a)(7) was widely criticized not only for the tax and administrative burden it imposed on tax-exempt organizations, but also for its lack of clarity and uncertain application.

Because the Act retroactively repealed Section 512(a)(7), tax-exempt organizations may be entitled to file an amended Internal Revenue Service Form 990-T to claim a refund for any parking taxes paid.

Thursday, January 16, 2020

Low Bond Yields Are Killing Muni Tax Breaks.

Don't expect to reap much of a tax break from municipal bonds anymore.

Investors have flooded into muni bond funds, expecting to reap savings by owning nontaxable bonds issued by states, municipalities and other local-government entities. But bond prices have risen so much, pushing yields down, that the savings are getting tougher to find.

"For most taxpayers, there's no longer a significant yield advantage for muni funds after you take taxes into account," Amy Arnott, a portfolio strategist at Morningstar, writes in an article posted Tuesday on Morningstar.com.

Continue reading.

Barron's

By Daren Fonda

Updated Jan. 15, 2020

Financing Affordable Housing and Small Businesses through Opportunity Zones.

Abstract

The Opportunity Zones tax incentive, created by the Tax Cuts and Jobs Act of 2017, was designed to spur investment in low-income and undercapitalized communities. How can stakeholders use the program to support affordable housing, finance small businesses, and boost job creation? The experiences of investors, developers, government officials, and business representatives show how the incentive is playing out nationally and locally in Cuyahoga County, Ohio.

Download pdf.

The Urban Institute

by Jorge González & Brett Theodos

January 14, 2020

BlackRock's Larry Fink Sees Bond Peril for Cities Over Climate Change.

- **'This is going to change the municipal-bond market,' he says**
- **Puerto Rico, Houston, California a reminder of potential risks**

The head of the world's largest asset manager has a message for American cities that don't prepare for climate change: The bond market may not always be so welcoming.

BlackRock Inc. Chairman and Chief Executive Officer Larry Fink said in his annual letter to corporate executives that the risks posed by rising world temperatures will affect “both our physical world and the global system that finances economic growth.” He said that includes the $3.8 trillion municipal-bond market, which finances the roads, utility systems and other infrastructure vulnerable to the impacts of devastating storms, wildfires or rising seas.

“This is going to change the municipal-bond market,” Fink said in an interview with television network CNBC Tuesday after the release of his letter. “Areas that are more impacted by climate change [are] going to have harder time to finance their debt if they don’t focus on the impact of climate change.”

Those risks have been drawing increased scrutiny in the state and local government securities market, underscored in recent years by wildfires that scorched California, the severe flooding of Houston and the heavy damage visited on bankrupt Puerto Rico by Hurricane Maria in 2017.

Yet such events have had little if any impact on the price of bonds sold by cities, counties and states, even though many are increasingly highlighting their vulnerability to climate change in prospectuses circulated to investors. That’s in part because natural disasters have typically brought an influx of federal aid, which isn’t guaranteed if such events become more common in the decades ahead.

In April, BlackRock estimated that within a decade more than 15% of debt in the S&P National Municipal Bond Index will come from regions that could suffer losses from climate change.

In his letter, Fink said BlackRock joined with France, Germany and global foundations to establish the Climate Finance Partnership, an effort to improve financing mechanisms for infrastructure investment.

“The need is particularly urgent for cities, because the many components of municipal infrastructure — from roads to sewers to transit — have been built for tolerances and weather conditions that do not align with the new climate reality,” he wrote. He added: every “government, company, and shareholder must confront climate change.”

Bloomberg Finance

By Danielle Moran

January 14, 2020, 9:00 AM PST

The Obscure Reason Banks Will Finally Embrace Opportunity Zones.

Looming changes to 1970s-era law could open the lending floodgates

Banks may soon have the incentive they need to sink huge amounts of money into Opportunity Zones, the controversial Trump administration tax abatement program that has seen tepid investment levels to date.

The federal government plans to give commercial banks credit for issuing loans in low-income communities as part of a larger reform to a 1970s-era law called the Community Reinvestment Act. This is the first direct regulatory incentive for banks to lend in Opportunity Zones and could be a game-changer for the program, according to some experts.

“CRA is a big motivator for inter-activities at banks,” said Steve Glickman, one of the architects of the Opportunity Zone initiative, which gives massive tax deferments and tax breaks to those who invest in projects in designated low-income neighborhoods across the country. “They are going to have institutional interest in all of this.”

Glickman, who founded and runs Opportunity Zone consultancy firm Develop LLC, said that the reformation of the CRA and the recent finalization of the program’s rules should spur banks to direct investor money into qualifying projects. Banks’ own asset management arms could begin to deploy more money into Opportunity Zones as well, he said.

For banks, lending in Opportunity Zones would allow them to fulfill elements of a government mandate that they lend in poor communities.

Although many bankers and developers believe the combination of expected CRA reforms and finalized Opportunity Zone regulations could lead to substantial investment in poor communities, finance watchdogs are wary about the types of projects that qualify.

What the CRA is and why it matters

The CRA was crafted in 1977 under President Jimmy Carter and was designed to incentivize banks to lend in low income communities and prevent redlining, or the practice of not lending to minority communities.

A poor rating on the CRA can prevent a bank from opening new branches or completing a merger. It also invites heavier scrutiny from regulators if a bank has a bad rating.

But some bankers argue the law is out of date, especially in the age of digital banking and the lack of brick and mortar branches. Under a more banker-friendly Trump administration, two regulators, the Office of the Comptroller of the Currency and the FDIC, are now looking to revamp the rule and change how the CRA looks at geographic areas where the banks take in deposits. The regulators are also looking to combine Opportunity Zones into the CRA rules under a proposal released by the OCC and the FDIC.

This inclusion of Opportunity Zones in the revamp, however, has also drawn the most criticism from those who are skeptical of the proposed CRA changes.

One section of the proposed regulation mentions that banks can receive credit for lending to athletic facilities in Opportunity Zones. In other words, a bank could potentially receive credit on their CRA exam for financing the proposal to build the Tampa Bay Rays stadium in Ybor City, Florida, that was estimated to cost nearly $900 million.

“The Baltimore Ravens Stadium would qualify as a credit. We have got to look at the large scale projects that might not have localized community impact,” said Nikitra Bailey, the executive vice president of the Center for Responsible Lending.

Giving credit to sports stadiums in Opportunity Zone projects amplifies the argument of critics who claim that the program is effectively a tax break for wealthy developers masquerading as a benefit for the poor. Critics have pointed to Richard LeFrak’s $4 billion mixed-use project Sole Mia in an Opportunity Zone in North Miami as well as Kushner Companies plans to build a 1,100 unit-luxury apartment building in Miami’s Edgewater neighborhood.

Opportunity Zones developers have largely focused on building projects in gentrifying areas and in projects that were already planned before the Opportunity Zone legislation was released. The

Department of Housing and Urban Development under Sec. Ben Carson said the agency is giving preferences on certain credits for developers who build affordable housing in Opportunity Zones. But so far, large-scale investment in affordable development in these areas has yet to materialize.

Lending in the land of OZ

The Opportunity Zone program became the arguably most talked about program in the real estate world over the last two years. Tucked away in President Trump's tax plan, it offers developers and investors the ability to defer or forgo paying capital gains taxes for investment in one of the more than 8,700 federal Opportunity Zones across the country. Treasury Secretary Steven Mnuchin even said it could result in $100 billion in private investment.

Despite the hype, investor interest in hasn't quite materialized.

Many funds have had trouble raising capital. Of a sampling of 103 Opportunity Zone funds that sought to raise $22.7 billion, only $3 billion was raised, according to an October report by accounting firm Novogradac & Co. One notable pullback is Anthony Scaramucci's SkyBridge Capital, which first sought to raise $3 billion, but is now seeking just $300 million.

But there are signs that the finalization of program rules has already contributed to an uptick in investment. At least $2.3 billion was put into Opportunity Zone Funds between early December through early January, according to a survey from Novogradac, a 51 percent increase over the prior month. (It should be noted that investors had to commit their capital by the end of 2019 to receive the full benefit of the program, which is likely a bigger reason for the increase in investment.)

Brett Forman of Trez Forman, a nonbank lender based out of Boynton Beach, said he is skeptical of some of the proposed projects in Opportunity Zones. So far, some of the borrowers that have approached him are less experienced in real estate development and are sometimes ones that wouldn't be able to land bank financing.

"They think that a nonbank lender will jump on it," said Forman.

Avra Jain, a Miami-based Opportunity Zone developer, however, has previously told The Real Deal that the program makes financing for certain projects more accessible, such as her group's 15-story office building in Miami's Midtown neighborhood.

Shane Neman, who purchased a cold-storage facility in an Opportunity Zone in Miami's Allapattah neighborhood, said he is now considering refinancing the property. Neman said the property's position in an Opportunity Zone makes it more attractive for getting financing from lenders.

"I even have private lenders and funds that are coming to me with loans that are beating the terms of regional banks, which usually give the best deals," said Neman.

Some banks have already started investing in Opportunity Zones themselves, such as PNC Bank which has established an Opportunity Zone fund to invest in affordable housing, economic development and revitalization projects. In July, the bank provided $15 million in funding to repurpose a vacant, nearly century-old office building into workforce housing in downtown Birmingham, Alabama.

There's also Woodforest National Bank, of Woodlands, Texas, partnered with a Community Development Financial Institution (CDFI) and a commercial real estate group to create a $20 million Opportunity Zone fund.

John Hope Bryant, an entrepreneur and the founder of the economic empowerment nonprofit Operation HOPE has been pushing for CRA reform. He recently went on a five-city tour over the summer with Comptroller of the Currency Joseph Otting to discuss potential changes. Bryant said that adding Opportunity Zones to the CRA modernization can only help encourage lending in low-income communities.

"You are creating a magnet and pointing capital and equity there and saying, 'Go and invest there.'"

The Real Deal

By Keith Larsen

January 13, 2020

[Larry Fink Defends BlackRock's New Emphasis on Climate Change. What Investors Need to Know.]

Larry Fink's recent letters to CEOs and investors were certain to press buttons, because they dealt with BlackRock's plans to address climate change.

Yet the reactions, Fink tells Barron's, have been positive even as climate change has become a political football. "I received one of the great letters of my career from a client in a red state," says the CEO of BlackRock (ticker: BLK). "This client was very thankful. This client said, 'We have a 10- to 20-year investment horizon. We now need to look at how we think about investing.' "

BlackRock puts climate-risk analysis at the heart of its investing process and gives a huge boost to sustainable investing. The world's largest asset manager aims to double to 150 the number of ESG exchange-traded funds that it offers around the world. BlackRock will also push companies to report on sustainability metrics and vote against managements that do not make sustainability disclosures.

"In the next five years, ESG will be one of the key lenses for how investors look at everything, from corporate to country to municipal," Fink says. BlackRock also plans to withdraw from big thermal-coal producers in its active funds.

Jeremy Grantham, the investor and founder of GMO who has spent millions of dollars to raise climate awareness, calls BlackRock's moves admirable. But why doesn't BlackRock get out of thermal-coal producers in the index funds it manages, as well? Or, for that matter, from all fossil-fuel companies? After all, Grantham says, "oil is the mother and father of all vested interests."

"It's not my money," Fink responds. "We can offer an index fund minus these, but if a client is giving me a contracted statement, then I have to be in [the specified] index…. BlackRock, as a fiduciary, isn't permitted to say we need to be out of hydrocarbons because I believe in it. It has to put it through the lens of investment risk."

Fink said that BlackRock would contact passive clients to tell them about the new offerings. Still, dumping hydrocarbons altogether means missing opportunities. "There's a 50-year transition for energy, but some energy companies are moving faster than others," he says. Once companies start making sustainability disclosures systematically, it will be easier to compare companies in actively managed funds and find the best ones, he says.

Fink describes himself as “an environmentalist: I personally don’t own hydrocarbons.” He admits he isn’t personally invested in his company’s own ESG ETFs, although he vows to do so this year in his BlackRock 401(k). He is also invested in BlackRock’s illiquid renewable-power funds.

Industry reactions to BlackRock’s moves were guarded. “Can you have it both ways?” asks Leslie Samuelrich, president of Green Century Capital Management, which offers a line of fossil-fuel-free funds. “We’ll have to see how committed BlackRock really is to addressing climate change—it’s still the largest investor in fossil fuels.” Samuelrich is also a member of the board of US SIF, a trade group for sustainable investing.

As for BlackRock’s withdrawal from big coal producers in its actively managed portfolios, Asha Mehta, a portfolio manager and director of responsible investing at Acadian Asset Management, says, “It’s not a big step in divestment, but it’s consistent with where the industry is going.” Coal shares have already tumbled, while oil has underperformed the benchmarks over the past 10 years.

Fink says, “Some would argue we were late. I don’t think so. Our job as a fiduciary is to be thoughtful and helpful to our clients.”

BlackRock’s moves put pressure on other big index investors like Vanguard that also have large active-management arms. “Vanguard funds are managed to specific objectives,” a spokesman says. “Vanguard has no plans to materially change these broad mandates, nor stipulate certain investing restrictions at the company or sector level.”

Despite the looming risks of climate change, Fink is optimistic about stocks. In 2020, “I think the market will be stronger,” he says. “I don’t see interest rates spiking up. We won’t see anything close to [last year], but could we see 8% to 10% for the market? Sure.”

“More people have underperformed because they derisked,” he adds. “The most important thing you can do for yourself is stay invested and be heavily invested in equities.”

Barron’s

By Leslie P. Norton

Jan. 17, 2020 4:41 pm ET

How Foreign Taxpayers Can Invest in Opportunity Zones, with Steve Christiano.

What types of foreign investors may be ideal candidates for Opportunity Zone investing? And is there an opportunity for OZ fund sponsors to raise capital overseas? Stephen Christiano is an associate tax director of Frank Hirth’s business tax group, specializing in U.S. business taxation and Opportunity Zones. Click the play button below to listen to my conversation with Steve. Note: This podcast interview was recorded…

Read More »

Opportunity Db

January 15, 2020

BlackRock Puts Sustainability at the Center of Investment Strategy, Expects More Transparency in Sustainability Disclosure.

Was it the heartbreaking photos of scorched koalas in Australia? Was it the pressure from activists such as As You Sow, which submitted a shareholder proposal asking for a report on how the company plans to implement the new Business Roundtable statement of purpose? (See this PubCo post.) Was it the press reports, like this one in the *NYT*, highlighting what appeared to be stark inconsistencies between the company's advocacy positions and its proxy voting record? Was it the protests outside of the company's offices by climate activists? The letters from Senators? The charges of greenwashing? Whatever the precipitating factor, in this year's annual letter to CEOs, Laurence Fink, CEO of BlackRock, the world's largest asset manager, announced a number of initiatives designed to put "sustainability at the center of [BlackRock's] investment approach." What's more, he made clear that companies need to step up their games when it comes to sustainability disclosure.

Ostensibly, none of the factors above triggered the change. In this NPR interview, Fink protested that they were "doing this on behalf of clients. I have not done this with the idea of focusing on any activist groups or any other voice. We are a voice to the investors. Our job is to be speaking on behalf of our investors. And I wrote this letter not as an environmentalist. I wrote this letter as a capitalist." What's more, he told NPR, there was no single event or conversation or news story that "flipped the switch" for him; rather, it was "really the sum of all my conversations in every part of the world with our clients and witnessing their questions about this. And it really became very clear to me—as somebody who'd been in finance for, you know, 44 years, it's very clear to me that we're at a point now where more and more people believe in the science of climate change. More and more people are worried about their portfolios and how their portfolio is going to be performing over a 10-year horizon."

According to Fink's letter, "[c]limate change has become a defining factor in companies' long-term prospects." Although he has seen many financial crises over the course of his long career, in the broad scheme of things, they have all ultimately been relatively short-term in nature. Not so with climate change: "Even if only a fraction of the projected impacts is realized, this is a much more structural, long-term crisis." As a result, "we are on the edge of a fundamental reshaping of finance":

> "Will cities, for example, be able to afford their infrastructure needs as climate risk reshapes the market for municipal bonds? What will happen to the 30-year mortgage—a key building block of finance—if lenders can't estimate the impact of climate risk over such a long timeline, and if there is no viable market for flood or fire insurance in impacted areas? What happens to inflation, and in turn interest rates, if the cost of food climbs from drought and flooding? How can we model economic growth if emerging markets see their productivity decline due to extreme heat and other climate impacts?"

The result, according to Fink, is "a profound reassessment of risk and asset values. And because capital markets pull future risk forward, we will see changes in capital allocation more quickly than we see changes to the climate itself. In the near future—and sooner than most anticipate—there will be a significant reallocation of capital."

Investors are now "recognizing that climate risk is investment risk," making climate change the topic that clients raise most often with BlackRock: what are the physical risks arising out of climate change? How will climate policy affect prices, costs and demand? How should investors modify their portfolios?

Sustainability at the center of investment strategy

Although the investment decisions are ultimately the clients', BlackRock's "investment conviction is that sustainability- and climate-integrated portfolios can provide better risk-adjusted returns to investors. And with the impact of sustainability on investment returns increasing, we believe that sustainable investing is the strongest foundation for client portfolios going forward." What's important, he said on NPR, is making sure that more investors use sustainability as a metric to analyze their investments. BlackRock expects to create the tools, techniques and analytics to navigate the risks and opportunities related to climate change and other sustainability concerns.

To that end, BlackRock announced new initiatives, including "making sustainability integral to portfolio construction and risk management; exiting investments that present a high sustainability-related risk, such as thermal coal producers; launching new investment products that screen fossil fuels; and strengthening our commitment to sustainability and transparency in our investment stewardship activities."

With regard to divestment of coal investments, the NPR interviewer noted that BlackRock "will sell out of all companies that get more than a quarter of their sales from thermal coal. That still leaves some of the biggest coal producers in your portfolio because they do a lot of other things, too." Fink responded that "coal is a very small component of any investment universe." And of course, BlackRock is limited to exiting investments and integrating sustainability considerations into the investment process only in its active strategies and discretionary active portfolios, not its index funds. Of its $7 trillion in assets under management, reportedly about $4.6 trillion is in index funds and ETFs (although ETFs can vary).

A push for better sustainability disclosure

Importantly for companies, Fink maintained that everyone needs to see a "clearer picture of how companies are managing sustainability-related questions. This data should extend beyond climate to questions around how each company serves its full set of stakeholders, such as the diversity of its workforce, the sustainability of its supply chain, or how well it protects its customers' data. Each company's prospects for growth are inextricable from its ability to operate sustainably and serve its full set of stakeholders." If companies do not ultimately address sustainability risks, Fink wrote, they will find the markets to be a skeptical bunch; transparency, on the other hand, will attract investment.

Fink advocates adoption of the SASB standards for reporting on sustainability across a wide range of issues and the Financial Stability Board's Task Force on Climate-related Financial Disclosures (TCFD) for evaluating and reporting climate risks. (See this PubCo post and this PubCo post.) While BlackRock is itself continuing to work on its own disclosures, as part of its engagement this year, it is asking companies to:

> "(1) publish a disclosure in line with industry-specific SASB guidelines by year-end, if you have not already done so, or disclose a similar set of data in a way that is relevant to your particular business; and (2) disclose climate-related risks in line with the TCFD's recommendations, if you have not already done so. This should include your plan for operating under a scenario where the Paris Agreement's goal of limiting global warming

> to less than two degrees is fully realized, as expressed by the TCFD guidelines."

BlackRock will use the information to assess companies' risk oversight and planning. Notably, in

> "the absence of robust disclosures, investors, including BlackRock, will increasingly conclude that companies are not adequately managing risk. We believe that when a company is not effectively addressing a material issue, its directors should be held accountable. Last year BlackRock voted against or withheld votes from 4,800 directors at 2,700 different companies. Where we feel companies and boards are not producing effective sustainability disclosures or implementing frameworks for managing these issues, we will hold board members accountable. **Given the groundwork we have already laid engaging on disclosure, and the growing investment risks surrounding sustainability, we will be increasingly disposed to vote against management and board directors when companies are not making sufficient progress on sustainability-related disclosures and the business practices and plans underlying them."**

What's the impact?

So here's the question: how much impact, if any, will the Fink letter describing Blackrock's new strategy and initiatives have on the CEOs to whom it is addressed? With $7 trillion under management, BlackRock has a loud voice. And, to the extent that shareholders are actually driving this change, the message could be even more persuasive. It also seems likely that BlackRock's disclosure imperative and warning on holding boards and managements accountable for inadequate disclosure will sway many companies in which BlackRock invests. And disclosure is often considered to be an indirect way to compel change (sometimes known as "regulation through humiliation"). However, as Matt Levine observed in his Bloomberg column, how persuasive will the letter be to the CEO of the largely state-owned Saudi oil company, of which BlackRock is reportedly the largest outside shareholder?

What about more broadly—the big picture? Some might say that, historically, Fink's letters have had a major impact: consider, for example, his previous letters regarding the need for a defined corporate purpose (see this PubCo post and this PubCo post), seen by many as an influential precursor to the adoption by the Business Roundtable of a new Statement on the Purpose of a Corporation. That Statement outlined a "modern standard for corporate responsibility" that makes a commitment to all stakeholders and was signed by 181 well-known, high-powered CEOs. (See this PubCo post.)

Writing in the *NYT*, Andrew Ross Sorkin observed that, while previously "many companies and investors have committed to focusing on the environmental impact of business,… none of the largest investors in the country have been willing to make it a central component of their investment strategy." And BlackRock's "green push" takes on even greater significance as the current "administration is going in the opposite direction, repealing and weakening laws aimed at protecting the environment and promoting sustainability." As a consequence, Sorkin viewed BlackRock's change as a "watershed," a move that "could reshape how corporate America does business and put pressure on other large money managers to follow suit." So how much impact? Only time will tell.

Here is BlackRock's related letter to clients and FAQs.

January 15 2020

Cooley LLP

MSRB Outlines 2019 Regulatory and Strategic Initiatives.

The MSRB outlined significant regulatory and strategic initiatives undertaken in 2019.

In its 2019 Annual Report, the MSRB, among other things:

- formalized its retrospective rule review process;
- implemented a pilot examination for municipal advisor principals;
- provided compliance assistance materials on MSRB Rule G-40 ("Advertising by Municipal Advisors");
- enhanced EMMA's search functionality and user experience for issuers;
- expanded access to municipal market yield curves and indices from third-party providers on the EMMA website;
- considered migrating MSRB market transparency systems to the cloud;
- developed over 20 interactive courses on how to "apply MSRB rules to real-world municipal market scenarios";
- launched a podcast discussing municipal securities regulation, market data and emerging market topics; and
- helped market participants understand and prepare for new disclosure requirements under SEC Rule 15c2-12 ("Municipal securities disclosure") through webinars, educational resources and other publications.

January 10 2020

Cadwalader Wickersham & Taft LLP

Municipal CUSIP Request Volume Increased 15% in 2019.

NEW YORK, NY, January 15, 2020 – CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for December 2019. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity over the next quarter, found a significant year-over-year surge in request volume for new municipal identifiers. On a monthly basis, however, CUSIP request volume trended down in December across most major asset classes.

Read Report.

December Volumes for Municipal and Corporate Security Identifiers Trend Down.

"The overall volume of municipal and corporate identifier requests was strong in 2019, driven by a combination of a favorable interest rate environment and a generally strong economy," said Gerard Faulkner, Director of Operations for CUSIP Global Services. "As we turn the corner to 2020, our

CUSIP issuance indicator appears to be signaling some caution on the part of market participants, but it is still early."

Read Press Release.

SEC Announces 2020 Exam Priorities of the Office of Compliance Inspections and Examinations.

On January 7, the SEC's Office of Compliance Inspections and Examinations (OCIE) announced the release of its *2020 Examination Priorities*. The annual release of exam priorities provides transparency into the risk-based examination process and lists areas that pose current and potential risks to investors. OCIE's 2020 examination priorities include:

- **Retail investors, including seniors and those saving for retirement.** OCIE places particular emphasis on disclosures and recommendations provided to investors.
- **Information security.** In addition to cybersecurity, top areas of focus include: risk management, vendor management, online and mobile account access controls, data loss prevention, appropriate training, and incident response.
- **Fintech and innovation, digital assets and electronic investment advice.** OCIE notes that the rapid pace of technology development, as well as new uses of alternative data, presents new risks and will focus attention on the effectiveness of compliance programs.
- **Investment advisers, investment companies, broker-dealers, and municipal advisers.** Risk-based exams will continue for each of these types of entities, with an emphasis on new registered investment advisers (RIA) and RIAs that have not been examined. Other themes in exams of these entities include board oversight, trading practices, advice to investors, RIA activities, disclosures of conflicts of interest, and fiduciary obligations.
- **Anti-money laundering.** Importance will be placed on beneficial ownership, customer identification and due diligence, and policies and procedures to identify suspicious activity.
- Market infrastructure. Particular attention will be directed to clearing agencies, national securities exchanges and alternative trading systems, and transfer agents.
- **FINRA and MSRB.** OCIE exams will emphasize regulatory programs, exams of broker-dealers and municipal advisers, as well as policies, procedures and controls.

January 15 2020

Buckley LLP

OCIE Announces Examination Priorities for 2020, Emphasizing Emerging Trends, Technologies, and Compliance with New Regulation Best Interest.

On Monday, January 7, 2020, the Office of Compliance Inspections and Examinations (OCIE), the audit and examination arm of the U.S. Securities and Exchange Commission (SEC), announced its examination priorities for 2020, which include an emphasis on evolving financial technologies and innovative investment instruments. OCIE will also work with registrants to help them comply with new Regulation Best Interest (Reg BI), click here to read more. The announced priorities are summarized below.

Protection of Retail Investors

OCIE's number one priority, as it has been in past years, is to protect retail investors. Broker-dealers trading in microcap securities (companies with a market capitalization less than $250 million) in particular will continue to face intense scrutiny of their compliance and supervision practices, including compliance with Section 5, Reg SHO "locate" requirement, and Rule 15c-211; registered representative hiring practices; and implementation of proper procedures and follow-through for required SAR filings. In 2020, OCIE has indicated interest in a few new areas:

- Reg BI, which becomes effective June 30, 2020, requires all registrants to act in the best interests of their clients when recommending an investment. OCIE has established an Inter-Division Standards of Conduct Implementation Committee to assist registrants in understanding and complying with this new standard. Registrants can send questions to IABDQuestions@sec.gov.
- Broker-dealers trading in municipal securities and corporate bonds will face particular scrutiny for compliance with best execution and fairness of pricing requirements in addition to a thorough review of their trading and risk management practices, including trading in "odd lots" (orders under 100 shares) and use of internal procedures, practices, and controls to manage both human error and risks associated with computer code and trading algorithms.
- OCIE plans to closely examine certain RIA relationships with mutual funds and exchange-traded funds (ETFs) (including RIAs that use third-party administrators to sponsor mutual funds that they advise or are affiliated with and mutual funds or ETFs that have not previously been examined) and private funds that provide management to separate accounts along with other private funds.

Information Security

For 2020, OCIE will specifically inspect network storage devices, third-party vendors, and cloud-based storage and review the firm's internal policies and governance practices respecting information and data security.

Financial Technology

The OCIE acknowledges the rapid innovation in financial technology in 2020 and its intention to stay apprised of new developments and their impact on investors. OCIE continues to be concerned with digital assets like Bitcoin and other digital- or blockchain-based assets. OCIE will observe RIA policies and practices surrounding "robo-advisers," or automated tools used to recommend investments to clients. OCIE will examine the configuration of, and internal procedures and practices related to, algorithmic trading by broker-dealers.

Anti-Money Laundering

While AML compliance has always been a significant component of OCIE examinations, examiners will place particular importance on a firm's compliance with the AML programming requirements of the Bank Secrecy Act, specifically including how it identifies customers, monitors for suspicious activity, performs due diligence, and conducts independent tests of its own AML programs. In addition, OCIE will continue to examine whether broker-dealers and other registrants are filing suspicious activity reports (SARs) when required.

Market Infrastructure, FINRA, and MSRB

As in past years, OCIE will conduct examinations of registrants that are critical to market infrastructure, including SEC SIFMU clearing agencies, FINRA, and MSRB, and will review their respective policies, procedures, and controls.

Contact the experts on Michael Best's Securities and Capital Markets team for more information about broker-dealer and registered investment adviser compliance with securities laws, preparation for OCIE examinations, and understanding and compliance with new Reg BI.

by Betsy T. Voter, Kevin C. Timken, James R. Kruse and Sam C. Johnston

January 14 2020

Michael Best & Friedrich LLP

For Shrinking Cities, an Aggressive Way to Dodge the Census Bullet.

Places where the population is declining know it could cost them money after the 2020 head count is taken. The solution: Expand their borders to add more residents.

DECATUR, Ill. — The last three census counts brought bitter confirmation of what Decatur residents could already see for themselves, after the factories cut shifts and the neighbors moved away. Their city, whose welcome sign boasts of being the original home of the Chicago Bears, was shrinking.

But ahead of this year's official head count, Decatur officials are trying a new way to boost their numbers: If people won't move to Decatur — where downtown coffee shops are nestled amid mid-rise buildings, factories are hiring again and the area's first Chipotle just opened — Decatur will move to them.

Over the last year, the City Council pushed Decatur's boundaries outward, annexing hundreds of properties despite vehement objections from new residents whose spacious houses and half-acre lots contrast sharply with the smaller, aging homes in neighborhoods closer to downtown.

Continue reading.

The New York Times

By Mitch Smith

Jan. 17, 2020

A Tale of Two Community Reinvestment Act Proposals.

Even by banker standards, Martie North is a numbers person. She's a senior vice president at Simmons Bank, where she keeps close tabs on the bank's lending to low-income communities and community development projects across the bank's 35 markets.

As a regional bank based in Pine Bluff, Arkansas, with $17.8 billion in assets and around 200 branches across eight states, every market is a little bit different, and some markets are new to Simmons Bank — it's acquired 11 other banks since 2013, quadrupling in size. It just acquired another bank last year, in St. Louis.

Each market has annual targets for loans to low-income communities and community development.

North sets the targets, and the bank's executive team and board approve them. She checks in with each market lead at least once a month.

[Continue reading.](#)

NEXT CITY

by OSCAR PERRY ABELLO

JANUARY 16, 2020

CA Appellate Court Holds Charter Cities Are Bound By State Housing Objectives, Signaling Erosion of Local Discretion.

In *Anderson v. City of San Jose* (2019), the Sixth District Court of Appeal held that California's charter cities must comply with the Surplus Land Act (Govt. Code § 54220 et seq.).[1] This decision, essentially, ruled that the statewide housing crisis is of paramount importance, and that all cities – even charter cities – must yield to the state law processes governing surplus land disposition and give affordable housing preference when building on surplus city land.

This ruling sets an important precedent establishing that, where there are concerns of statewide importance, a charter city's authority to control the disposition of its own property may be superseded by state law. In light of California's ongoing housing crisis and approved legislation designed to address it, the Anderson ruling signals a tightening grip on state control over local municipal land holdings and the related policies that cities use to dispose of real estate.

In 2016, the City of San Jose enacted Policy 7-13, which identified city-specific procedures for disposal of city-owned property. Policy 7-13 was designed to make surplus land more accessible to affordable housing developers mirroring the requirements of the Act. However, pursuant to deference afforded to charter cities for matters that are considered "municipal affairs,"[2] Policy 7-13 diverged from the Act in several ways. First, Policy 7-13 exempted certain high-rise rental developments from the affordable housing restrictions in the Act for a period of 5 years. Second, it allowed a property to be sold for uses other than affordable housing with City Council approval. Third, Policy 7-13 allowed for changes to the property disposal process. Fourth, it expanded the income range for those eligible for affordable units. In addition, Policy 7-13 omitted the requirement that affordable housing restrictions be documented in recorded covenants for certain projects. As a result, it can be argued, these provisions do not provide comparable opportunities for affordable housing developments, as anticipated in the Act.

Shortly after the City enacted Policy 7-13, two residents and two housing-focused non-profit entities filed a petition for writ of mandate compelling the City to comply with the Act. The City demurred, claiming that it was exempt from the Act under the "home rule" doctrine. The trial court sustained the demurrer, noting that the Act did not apply because the City's disposal of its own property was a "municipal affair."

Th Court of Appeal disagreed, noting that the Act's objective of facilitating affordable housing was a matter of statewide concern. Although there is substantial overlap between "municipal affairs" and "matters of statewide concern," the latter is distinguishable where "under the historical circumstances presented, the state has a more substantial interest in the subject than the charter city."[3]

The court found it significant that the Act's affordable housing objectives are consistent with the Legislature's declarations that (1) providing housing for Californians "is a priority of the highest order" and (2) that surplus government land should be made available for low and moderate income housing prior to disposition.[4] The court also found significant the "urgent statewide housing needs" and potential to address them with surplus government land referenced in the 2019 amendments to the Act.

The court acknowledged that, though legislative declarations are not determinative of "matters of statewide concern," the Legislature is entitled to deference in this regard. In addition, the court referenced recent case law and legislation further illustrating the scope of California's housing crisis as grounds to demonstrate that the state's interest in providing affordable housing with surplus government property is more substantial than identifiable municipal interests. For these reasons, the court held that that the City, and other charter cities, may be restricted by the Act's affordable housing and property disposal requirements in the interest of facilitating affordable housing.

To view all formatting for this article (eg, tables, footnotes), please access the original here.

January 13 2020

Sheppard Mullin Richter & Hampton LLP – James Pugh and Sarah Atsbaha

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TAX - NEW JERSEY

City of Plainfield v. Borough of Middlesex

Tax Court of New Jersey - December 24, 2019 - N.J.Tax - 2019 WL 7421958

City brought action against borough, seeking order declaring that real property owned by city and located in borough was exempt from local property tax.

The Superior Court transferred the case to the Tax Court, and city moved for summary judgment.

The Tax Court held that city's land was tax-exempt.

Property owned by city and located within borough's taxing district was used actually and exclusively for public purposes, and thus, was subject to local property tax exemption for government-owned lands used for a public purpose, even though a portion of the land was retained in its natural, heavily wooded state; there was public, and only public use of the property, as other portions of the land were used to store borough's construction equipment and vehicles, as a public walking path, and for a sewer line and sewer equipment.

TAX - NEW HAMPSHIRE

Ventas Realty Limited Partnership v. City of Dover

Supreme Court of New Hampshire - January 10, 2020 - A.3d - 2020 WL 122713

Taxpayer sought abatement of real property taxes regarding parcel that contained skilled nursing facility, two garages, and parking lot, alleging that city had unlawfully taxed property in excess of its fair market value.

Following a bench trial, the Superior Court denied abatement request. Taxpayer appealed.

The Supreme Court held that:

- Evidence supported trial court's determination that appraisal of taxpayer's expert did not result in credible opinion of fair market value, and
- Trial court was entitled to rely on taxpayer's use of city's property tax assessment for transfer tax purposes when assessing taxpayer's credibility.

Evidence supported trial court's determination that appraisal of taxpayer's expert using income capitalization method did not result in credible opinion of fair market value of taxpayer's property, which contained skilled nursing facility, two garages, and parking lot, in proceeding seeking abatement of property taxes; evidence indicated that expert failed to analyze how property would perform on open market during relevant tax year, expert failed to utilize comparable properties as evidence of market projections, and expert's analysis of income compared two figures from roughly the same period of time rather than figures from separate consecutive years.

Trial court was entitled to rely on taxpayer's use of city's property tax assessment for purposes of transfer tax arising from transfer of ownership of property in subsequent year when assessing credibility of taxpayer in proceeding to abate property tax; use of city's assessment for transfer tax purposes cast doubt on taxpayer's position that it was paying disproportionate amount of property taxes.

Chicago's Bond Penalty Plunges as Investors Hunt for Yields.

Chicago boosted the size of its first sale of general-obligation bonds since March as heavy demand for higher-yielding securities slashed the interest penalty that investors extracted to own the city's debt.

Chicago, the nation's third-biggest city, sold about $466 million of the bonds, according to data compiled by Bloomberg, about $100 million more than initially had been offered. The yields were steeply lower than what Chicago paid during its last such sale, with the 10-year bonds priced for yields of 2.38% on Wednesday, or 1.03 percentage point over top-rated debt. That extra interest, a key measure of perceived risk, was down from 1.69 percentage point in March.

By seizing on lower interest rates, the sale will help Mayor Lori Lightfoot close an $838 million shortfall in the budget of a city that has struggled for years with mounting pension bills. The sale comes as yields in the municipal market hold near a more than half-century low, leaving investors clamoring for lower-rated securities like Chicago's that pay higher yields.

"The investor search for yield continues," Tamara Lowin, an analyst for Belle Haven Investments, which holds about $11 billion of municipal bonds, including Chicago's. "The the spread tightening since March speaks more to technicals than credit quality."

Chicago is planning to follow Wednesday's sale with an offering of sales-tax-backed bonds this week.

Bloomberg Markets

By Shruti Singh

January 15, 2020

Wisconsin Bet That Interest Rates Wouldn't Go Down and It Lost Big.

- **Derivative deal left state paying above-market rates for years**
- **It’s now planning to call off deal with Citi, UBS, JPMorgan**

In 2003, as the Federal Reserve was easing monetary policy to stave off a recession, Wisconsin placed a nearly three-decade long bet with some of Wall Street’s biggest banks that interest rates wouldn’t go any lower.

Yet they continued to fall — and the state has been tied to those money-losing derivative trades ever since, paying as much as 5.5% interest on some of the $475 million it borrowed to shore up its employee pension system. It couldn’t refinance without paying Citigroup Inc., UBS Group AG and JPMorgan Chase & Co. steep fees to call off the contracts, which became increasingly valuable to the banks as interest rates declined.

Now, with state and local bond yields holding near more than half-century lows, Wisconsin may finally end its ill-fated experiment with high finance. It’s waiting for the chance to refinance the debt, cut its exposure to swings in interest rates and produce savings big enough to cover the $157 million of termination fees it owes the banks.

“There’s a market where we can do that and still maintain or achieve some overall savings, and that’s what we’re waiting for,” said David Erdman, who has been Wisconsin’s capital finance director since 2015. “It is market sensitive, and it just hasn’t reached our bogeys yet to move forward and complete.”

Wisconsin may be among the last wave of states and cities seeking to sever their ties to a financial tactic that has virtually disappeared since it backfired during the chaos of the credit crisis more than a decade ago, when it foisted unexpected costs on governments around the county. It helped push Alabama’s biggest county into bankruptcy and drove Detroit deeper into the hole in the run-up to that city’s record-setting collapse. As recently as 2016, Chicago spent heavily to back out of derivative trades after its credit rating was cut to junk.

A key measure of yields is about half what it was in 2003
The strategy involved governments borrowing through the sale of floating-rate bonds. They then entered into interest-rate swaps under which they agreed to make fixed-rate payments to banks in exchange for those pegged to an index. Those variable-rate payments were supposed to cover what was owed on the bonds, leaving the governments effectively paying only the fixed rate. It was supposed to be cheaper than selling traditional fixed-rate debt.

But, other risks aside, the steep cancellation fees kept governments on the sidelines during the refinancing booms that erupted when interest rates fell, keeping them locked into above-market costs. In 2003, for example, 20-year municipal-bond yields exceeded 5%. They’re about half that now.

Wisconsin is currently planning to sell $622 million of new bonds. That would raise cash to pay off $475 million of variable-rate debt and cover the termination costs owed to the banks for interest-rate swaps tied to the one-month London interbank offered rate.

Wisconsin is looking to squeeze every penny it can from the deal, postponing it until factors like credit spreads and the relationship between Libor and Treasuries are favorable enough to make canceling the swap worth it, Erdman added.

Wisconsin would join a broader push by issuers to seize on low interest rates to exit such derivative-laden bond deals, Moody's Investors Service managing director Timothy Blake said. The Illinois State Toll Highway Authority was among them, issuing nearly $700 million in fixed-rate debt last year to refinance and cover a $143 million swap-termination payment. The deal will end up costing the toll authority an additional $21 million over the 11-year life of the bonds, said chief financial officer Michael Colsch.

"The last five years, maybe even since Lehman, we don't see a lot of governments entering into new swaps," Blake said, referring to the 2008 bankruptcy of the investment bank. "The appetite for these more complex synthetic fixed-rate deals has gone away."

Bloomberg Markets

By Fola Akinnibi

January 14, 2020, 6:00 AM PST

CDFA Federal Policy Conference.

CDFA Federal Policy Conference

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