
MUNICIPAL CORPORATIONS - INDIANA

Hoagland Family Limited Partnership v. Town of Clear Lake

Court of Appeals of Indiana - August 28, 2019 - N.E.3d - 2019 WL 4050038

Following settlement of inverse condemnation litigation, town filed complaint seeking order requiring landowner to connect to sewer system.

The Circuit Court granted summary judgment for landowner, and town appealed. The Court of Appeals reversed and remanded with instructions. On remand, the Circuit Court ordered landowner to be in compliance with town's ordinance, including payment of all fees, and that town was not required to initiate eminent domain proceedings. Both parties appealed.

The Court of Appeals held that:

- Penalty timeline set forth in town ordinance was not triggered against landowner until after first appeal of proceedings was certified;
- Ordinance enacted after town filed action against landowner did not apply to landowner;
- Trial court erred by requiring landowner to pay attorney's fees; and
- Landowner was not entitled to discovery sanctions against town.

EMINENT DOMAIN - MISSISSIPPI

Starkville Lodging, LLC v. Mississippi Transportation Commission

Court of Appeals of Mississippi - August 27, 2019 - So.3d - 2019 WL 4024777

Transportation Commission filed eminent domain petition, seeking to have property owner's land condemned in order to allow for relocation and expansion of state highway system, and owner filed motion to dismiss.

The Special Court of Eminent Domain denied motion. Property owner appealed.

The Court of Appeals held that:

- Property owner failed to establish that Commission sought to condemn property for benefit of private purchaser, not for public necessity;
- Commission's taking of property was for public use; and
- Trial court's error in stating that owner's land would remain property of Commission after condemnation was harmless.

Property owner failed to establish that Transportation Commission sought to condemn owner's property for benefit of private purchaser, not for public necessity, as necessary for Commission's eminent domain action to be dismissed; although owner argued that sales contract between city and purchaser conditioned sale on state allowing access to property, and that city needed owner's land in order to establish such access, owner offered no concrete proof of any abuse of discretion on Commission's behalf, let alone evidence of fraudulent conduct.

Transportation Commission's proposed taking of property owner's land was for public use, and thus dismissal of eminent domain action brought by Commission against property owner was not warranted; in condemnation order, Commission stated that it had determined it to be in best interest of state motorists and taxpayers to relocate and construct segment of state highway system on land belonging to property owner, and in memorandum of agreement, Commission indicated that such taking was necessary to "expand and relocate" highway.

MUNICIPAL ORDINANCE - NEW YORK

Dua v. New York City Department of Parks and Recreation

Supreme Court, Appellate Division, First Department, New York - August 20, 2019 - N.Y.S.3d - 2019 WL 3913574 - 2019 N.Y. Slip Op. 06154

Artists brought action against city parks department challenging rules placing restrictions on sales by expressive matter vendors (EMVs) in parks.

Trial court denied artists' motion for preliminary injunction, and artists appealed. The Supreme Court, Appellate Division affirmed, finding that rules were content-neutral part of comprehensive vendor regulation scheme that addressed city's significant interests. Parks department moved and artists cross-moved for summary judgment, and artists moved for leave to amend complaint to add separation of powers claim. The Supreme Court, New York County granted summary judgment in favor of parks department on claim that rules were unconstitutionally vague, granted summary judgment in favor of artists on claim that rules violated vendor regulation provision of city administrative code, enjoined enforcement of rules, denied summary judgment as to all other claims, and granted artists leave to amend complaint. Parks department appealed.

The Supreme Court, Appellate Division, held that:

- EMV rules did not conflict with city council's legislative intent;
- EMV rules served legitimate government interest outweighing resulting interference with free expression;
- Parks department did not impose disparate treatment on EMVs relative to general vendors;
- Artists' failure to present evidence that reasons for adopting EMV rules were pretextual mandated dismissal of Human Rights Law claims; and
- Trial court could not grant artists leave to amend complaint to assert separation of powers claim.

TOLLS - PENNSYLVANIA

Owner Operator Independent Drivers Association, Inc. v. Pennsylvania Turnpike Commission

United States Court of Appeals, Third Circuit - August 13, 2019 - F.3d - 2019 WL 3789232

Motorists who routinely accessed state-wide, east-west toll highway brought class action against Pennsylvania Turnpike Commission (PTC) and other defendants, alleging violation of the dormant Commerce Clause and the constitutional right to travel by setting exorbitantly high tolls for use of the Pennsylvania Turnpike and that the amounts collected in tolls exceeded the costs to operate the Turnpike, and seeking declaratory judgment, preliminary and permanent injunction, and judgment ordering the refund of excess toll payments.

The United States District Court granted defendants' motions to dismiss for failure to state a claim, and denied motorists' motion for summary judgment. Motorists appealed.

The Court of Appeals held that:

- Defendants' use of funds for non-toll road projects did not violate the dormant Commerce Clause;
- PTC's failure to submit annual certifications, as required under the Intermodal Surface Transportation Efficiency Act (ISTEA), did not affect Congress's unambiguous intent to authorize states to allocate excess toll funds to non-toll road projects; and
- Allegations that increased tolls caused and would continue to cause Pennsylvania Turnpike users to switch to non-toll roads in the future, but not that interstate or intrastate travel had been or would be deterred, were insufficient to state a claim for infringement of the right to travel.

Through the Intermodal Surface Transportation Efficiency Act (ISTEA), Congress expressed its unmistakably clear intent that states could collect and use toll revenues for non-toll road projects, including on highways, bridges, tunnels, ferry boats, and ferry terminal facilities, funds, even if tolls collected exceed a toll road's costs, and thus Pennsylvania Turnpike Commission's (PTC) use of funds for non-toll road projects did not violate the dormant Commerce Clause.

Pennsylvania Turnpike Commission's (PTC) failure to submit annual certifications that toll facility was being adequately maintained, as required under the Intermodal Surface Transportation Efficiency Act (ISTEA) before any excess funds could be used for non-toll road projects, did not affect Congress's unambiguous intent to authorize a state authority, such as the PTC, to allocate excess toll funds to non-toll road projects, as would support finding that PTC's use of excess funds did not violate the dormant Commerce Clause.

Motorists' allegations that increased tolls caused and would continue to cause Pennsylvania Turnpike users to switch to non-toll roads in the future, but not that interstate or intrastate travel had been or would be deterred, were insufficient to state a claim for infringement of the right to travel.

ZONING & PLANNING - PENNSYLVANIA

Appeal of Andover Homeowners' Association, Inc.

Commonwealth Court of Pennsylvania - August 26, 2019 - A.3d - 2019 WL 4007577

Homeowners' association sought review of decision by zoning board that granted zoning, building, electrical, and grading permits for placement of pipelines on association's property according to easement.

The Common Pleas Court affirmed, and association appealed.

The Commonwealth Court held that:

- Record established that township reasonably accounted for environmental features of property;
- Zoning board lacked jurisdiction to consider association's argument that township's grant of grading permit to energy company for placement of pipelines violated Business Corporation Law; and
- Substantial evidence support zoning board's findings that energy company would perform construction work on property within its right-of-way within energy company's easement.

SPECIAL ASSESSMENTS - SOUTH DAKOTA

Bingham Farms Trust v. City of Belle Fourche

Supreme Court of South Dakota - August 14, 2019 - N.W.2d - 2019 WL 3819850 - 2019 S.D. 50

Landowner brought declaratory judgment action against city, challenging special assessment lien levied on property by city and asserting claims including slander of title and abatement of false lien.

The Circuit Court granted city's motion to dismiss but denied city's motion for attorney's fees. Landowner and city both appealed.

The Supreme Court held that:

- Slander of title claim fell within circuit court's general jurisdiction;
- Claim for abatement of false lien also fell within general jurisdiction;
- Declaratory judgment claim fell within circuit court's jurisdiction under Uniform Declaratory Judgment Act; and
- Statute preventing actions "attacking the validity of the proceedings for special assessments" did not preclude landowner's action.

Statute preventing actions "attacking the validity of the proceedings for special assessments" did not preclude landowner's declaratory judgment action alleging city's special assessment lien was unenforceable; statute only applied to challenges up to and including the approval of assessment roll, and heart of landowner's claims was that irregularities and instances of statutory non-compliance after roll was approved resulted in a failure to register the lien, which in turn prevented city's effort to enforce it.

OPEN MEETINGS - TEXAS

City of Plano v. Hatch

Court of Appeals of Texas, Dallas - August 26, 2019 - S.W.3d - 2019 WL 4010777

Residents sued city after city council voted to rename and expand city's non-discrimination policy, alleging that although vote occurred at public meeting, council actually held deliberations and voted on ordinance in prior closed meetings, in violation of Texas Open Meetings Act (TOMA).

The District Court, Collin County, denied city's plea to the jurisdiction. City appealed.

The Court of Appeals held that:

- City was governmental body, for purposes of TOMA;
- Waiver of governmental immunity in TOMA did not apply to residents' requests for declaration

preventing city from re-enacting disputed ordinance and for declaration that city's conduct violated residents' rights;
- Provisions of TOMA indicating that actions taken by governmental bodies in violation of TOMA are voidable and permitting interested persons to obtain mandamus or injunctive relief to prevent or reverse violation of TOMA by members of governmental body applied to waive city's governmental immunity for residents' claim seeking declaration that ordinance enacted by city council was void; and
- City's argument that TOMA did not make ordinance voidable when ordinance was passed in legal, open meeting was not proper subject for interlocutory appeal.

REFERENDA - UTAH

Downs v. Thompson

Supreme Court of Utah - August 27, 2019 - P.3d - 2019 WL 4051010 - 2019 UT 53

City employee brought action challenging county board of commissioners' decision upholding a fine levied against him by county clerk for advocating for or against a ballot proposition via public e-mail in violation of Political Activities of Public Entities Act.

After removal, the United States District Court for the District of Utah certified questions.

The Supreme Court held that:

- State district courts do not have appellate jurisdiction to review county commissioners' decision upholding a fine levied by county clerk for using public e-mail for ballot propositions;
- Term "ballot measure," as used in statute prohibiting use of public e-mail for ballot propositions, includes the entire referendum process; and
- Term "ballot measure" includes signature gathering phase of referendum process, regardless of whether the challenged government action is later found to be not subject to referendum.

ZONING & PLANNING - WASHINGTON

Clark County v. Growth Management Hearings Board

Court of Appeals of Washington, Division 2 - August 20, 2019 - P.3d - 2019 WL 3927449

Citizens' organizations and county sought review of final decision and order of growth management hearings board as to county's compliance with Growth Management Act (GMA) in updating comprehensive land use and zoning plan, and organizations moved to dismiss county's petition for judicial review.

After accepting direct review of compliance order, the Court of Appeals held that:

- County's e-mailing of petition for judicial review to the board was insufficient to satisfy delivery requirement of section of Administrative Procedure Act (APA) providing for service on agency by delivery to director's office or agency's principal officer;
- Board's determination of invalidity of urban growth area provisions in plan, due to noncompliance with GMA, was prospective from date of order rather than retroactive; and
- Issues regarding validity of urban growth area designations were rendered moot by city's annexation of those area.

S&P Credit FAQ: Are Covered Bonds Becoming More Sustainable?

Since S&P Global Ratings published its last green covered bond report, the issuance of environmental and social themed covered bonds has steadily risen (see “What’s Behind The Rise In Green Covered Bond Issuance?,” published on June 26, 2018). While growth in the overall sustainable covered bond segment has perhaps not fully met the some market participants’ high expectations, social themed covered bonds have emerged as a new flavor of covered bonds over the past year, as issuers are looking to align their public sector and mortgage loans with broader social objectives.

This credit FAQ describes the recent developments, opportunities, and challenges facing the sustainable covered bond market, the nature of the collateral backing social bonds, and how we measure the social impact. We also consider the benefits of the covered bond structure in enabling environmental and social finance, how the structure supports good governance, and describe how we capture green and social factors and overall environmental, social, and governance (ESG) performance in our credit rating criteria.

- What’s Changed In The Sustainable Covered Bond Market Over 2018-2019?
- What Are The Challenges For Sustainable Covered Bonds?
- Why Has Sustainable Covered Bond Issuance Increased?
- How Suitable Are Covered Bonds As Assets For Sustainable Financing?
- How Do Social Covered Bonds Report Their Impact?
- How Does S&P Global Ratings Consider ESG Factors In Its Covered Bond Ratings?
- How Do Social Factors Influence Credit Risk?
- Related Criteria
- Related Research

Read the full FAQ.

S&P Pension Brief: Credit Effects Of Municipal Pension Plans Approaching Asset Depletion

Table of Contents

- What Could Asset Depletion Mean For Pension Plans?
- How Might Asset Depletion Affect Ratings?
- How Likely Is Asset Depletion And How Can Plans Avoid It?
- Actions Taken To Date
- Related Research

Some public pension plans around the country have raised concerns about whether they might completely run out of money set aside to fund pension benefits. The reasons for such a scenario vary from poor funding discipline, to investments not meeting target rates of return, to newly negotiated benefits, to demographic changes in membership. Having to fully address obligations on a pay-a--you-go (paygo) basis can add volatility and cost to budgets, just as the credit cycle may be turning. Increasingly, these poorly funded plans are addressing the possibility and repercussions of asset depletion.

This Pension Brief addresses S&P Global Ratings' views on the following questions:

- What could asset depletion mean for pension plans?
- How might asset depletion affect issuer credit ratings?
- How likely is asset depletion and what can be done to avoid it?

Sponsor governments have not typically considered plan contributions tantamount to debt and so, in times of budgetary stress, there has been leniency for pension contributions that provide short-term budgetary relief. The actual benefit payments, on the other hand, must be paid out to the members to avoid reneging on plan obligations, so contributions under paygo funding must be paid each year. Typical plan design puts the responsibility and risk on plan sponsors (the employer and any external contributors such as the state) to fund benefits in excess of a fixed employee contribution.

Continue reading.

S&P Credit Conditions: U.S. State And Local Governments Will Need To Keep Their Hands On The Wheel

Table of Contents

- Is The National Economy Floating Over To The Slow Lane?
- Risk Of Recession Is Speeding Up
- Next Stop: ESG
- Mixed Housing Messages Drive Uncertainty And Uneven Trends
- Comparing the Regions: Recurring Themes

The second quarter of 2019 showed ongoing stability in state and local government ratings despite some signs of a weakening national economy such as a slowdown in single-family building permits. S&P Global's economists project GDP growth will slow during the rest of 2019 following first-quarter growth of 3.2%, and are targeting an annual growth rate in 2019 of 2.5%. However, we expect credit quality to generally remain stable, although there may be some areas more susceptible to looming pressures.

We are in the midst of the longest expansion on record, but with slower growth comes the challenge for local governments to provide the services for a changing world when revenues may not be keeping pace.

Continue reading.

S&P Credit FAQ: How The Proposed Global Not-For-Profit Transportation Criteria Could Affect Mass Transit Ratings

On July 30, 2019, S&P Global Ratings published a request for comment (RFC) on proposed updates to its methodology "U.S. And Canadian Not-For-Profit Transportation Infrastructure Enterprises: Methodologies And Assumptions," published March 12, 2018. The proposed updates, in "Request For Comment: Global Not-For-Profit Transportation Infrastructure Enterprises: Methodologies And Assumptions," would expand the scope of these criteria to issuers globally and add mass transit

systems in our definition of transportation infrastructure enterprises (TIEs). This article answers frequently asked questions related to the proposed criteria updates.

Continue reading.

S&P Request for Comment: Global Not-For-Profit Transportation Infrastructure Enterprises: Methodologies And Assumptions

Table of Contents

OVERVIEW AND SCOPE
KEY PUBLICATION INFORMATION
IMPACT ON OUTSTANDING RATINGS
QUESTIONS
RESPONSE DEADLINE
PROPOSED METHODOLOGY
A. Framework
B. Analytical Considerations
C. Primary Credit Factors
ADDITIONAL INFORMATION
APPENDIX 1: GLOSSARY
APPENDIX 2: COVERAGE
APPENDIX 3: AIRPORT CREDIT METRICS
APPENDIX 4: PARKING CREDIT METRICS
APPENDIX 5: PORT CREDIT METRICS
APPENDIX 6: TOLL ROAD CREDIT METRICS
APPENDIX 7: MASS TRANSIT SYSTEM CREDIT METRICS
RELATED CRITERIA AND RESEARCH

OVERVIEW AND SCOPE

1. S&P Global Ratings is proposing to publish an update to its methodology "U.S. And Canadian Not-For-Profit Transportation Infrastructure Enterprises: Methodologies And Assumptions," March 12, 2018. The proposed updates expand the scope of these criteria to issuers globally and include mass transit systems in our definition of transportation infrastructure enterprises (TIEs). As a result of the proposed updates, the new criteria would supersede:

- U.S. And Canadian Not-For-Profit Transportation Infrastructure Enterprises: Methodologies And Assumptions, March 12, 2018; and
- Mass Transit Enterprise Ratings, Dec. 18, 2013.

2. The proposed criteria would apply to TIEs or projects of an independent authority, a municipality, province, or comparable political subdivision, and whose debt is secured by revenue of the enterprise on a senior or subordinate basis. See Additional Information paragraphs for more details on scope.

3. These proposed criteria provide additional transparency and comparability to help market participants better understand our approach in assigning ratings, to enhance the forward-looking nature of these ratings, and to enhance the global comparability of our ratings through a clear, comprehensive, and globally consistent criteria framework. This proposed criteria article is related

to our criteria article “Principles Of Credit Ratings”, published Feb. 16, 2011.

Continue reading.

BlackRock Says the Key Gauge of Muni Bond Prices May Be Broken.

- **The ratio of muni yields to Treasuries is closely watched**
- **But firm’s strategist says main buyers aren’t driven by it**

The world’s largest money manager says one of the most meaningful measures in the municipal-bond market is starting to mean a lot less.

That’s because a steady influx of cash earlier this year pushed some state and local government debt yields to record lows relative to U.S. Treasuries. In normal times, the decline of that ratio — which is closely watched by professional investors — would signal that the securities had become significantly overpriced.

But Sean Carney, the head of municipal strategy at BlackRock Inc., which oversees nearly $7 trillion in assets, said in an interview that the buy-and-hold investors who dominate the municipal market are more interested in the tax breaks and the protection the securities offer from stock market swings. That may help explain why retail buyers have poured more than $43 billion into municipal-bond mutual funds even as prices hit record highs against Treasuries this year.

“There’s less predictive power to muni-Treasury ratios today,” said Carney, who like others on Wall Street still watches it.

Corporations like banks and insurance companies do pay attention to the gauge, Carney said. But those companies aren’t driving the municipal-bond market rally right now. Some have even slashed their holdings because the 2017 tax overhaul that reduced corporate tax rates, which makes tax-exempt debt less attractive compared with other securities.

“Everybody likes to get caught up in muni-Treasury ratios,” Carney said. “They mean a lot when you’re looking for a non-traditional buyer to buy munis. When it’s retail that’s driving it — and it’s retail driving this rally — they tend not to care as much about ratios.”

This may mean that tax-exempt bonds have more room to run regardless of whether municipals are considered cheap or expensive, Carney said. Tax-exempt debt has returned about 7.7% this year, according to the Bloomberg Barclays index. While that’s less than Treasuries or corporate bonds, it’s still the biggest gain since 2014.

For those who do still care about the gauge, the ratio of 10-year municipal yields to Treasuries is hovering around 86%, up from as little as 72% in May.

Maybe that means they’re cheap. Or maybe not.

Bloomberg Markets

By Amanda Albright

September 4, 2019, 9:54 AM PDT

— With assistance by Danielle Moran

MSRB Proposed Rule Change to Amend and Restate the Application of Rule G-17: SIFMA Comment Letter

SUMMARY

SIFMA provided input to the Securities and Exchange Commission on the Proposed Rule Change to Amend and Restate the Municipal Securities Rulemaking Board's August 2, 2012 Interpretive Notice Concerning the Application of Rule G-17 to Underwriters of Municipal Securities. Although SIFMA recognizes the modifications that the MSRB has made to the rule based, in part, upon our comments to MSRB, SIFMA requests that the SEC disapproves of this Filing until such time that the MSRB amends the Filing to address our further comments described herein.

Read the letter.

S&P: Not-For-Profit Health Care Medians Show Improvement Overall

NEW YORK (S&P Global Ratings) Sept. 4, 2019–The 2018 U.S. not-for-profit acute health care medians highlight continued stability in the sector and demonstrate that some of the operating concerns S&P Global Ratings had last year did not affect the 2018 medians. Operating income and operating cash flow have ceased their multi-year decline overall, while balance sheets remain stable at very strong levels, with many medians exceeding the prior peaks before the Great Recession. Overall enterprise profiles are improving.

These are among the highlights of our annual medians report, "U.S. Not-for-Profit Acute Health Care Ratios: 2018 Medians Show Operating Margin Improvement But Are Otherwise Stable," published today.

"We expect continued stability for the near to medium term but note that the industry faces ongoing systemic risks, including a potential recession, continued Medicaid changes, increased traction from nontraditional competitors, the need to build out ambulatory care capacity, and heightened cost and revenue pressure in part due to an aging population," says S&P Global Ratings credit analyst Anne Cosgrove.

S&P Global Ratings today also published:

U.S. Not-For-Profit Acute Health Care Stand-Alone Hospital Median Financial Ratios — 2018 vs. 2017, Sept. 4, 2019
U.S. Not-For-Profit Health Care System Median Financial Ratios — 2018 vs. 2017, Sept. 4, 2019
U.S. Not-For-Profit Health Care Small Stand-Alone Hospital Median Financial Ratios — 2018 vs. 2017, Sept. 4, 2019
U.S. Not-For-Profit Health Care Children's Hospital Median Financial Ratios — 2018 vs. 2017, Sept. 4, 2019
U.S. Not-For-Profit Acute Health Care Speculative Grade Median Financial Ratios — 2018 vs. 2017, Sept. 4, 2019

This report does not constitute a rating action.

The report is available to subscribers of RatingsDirect at www.capitaliq.com. If you are not a RatingsDirect subscriber, you may purchase a copy of the report by calling (1) 212-438-7280 or sending an e-mail to research_request@spglobal.com. Ratings information can also be found on S&P Global Ratings' public website by using the Ratings search box located in the left column at www.standardandpoors.com. Members of the media may request a copy of this report by contacting the media representative provided.

S&P U.S. Not-for-Profit Acute Health Care Ratios: 2018 Medians Show Operating Margin Improvement But Are Otherwise Stable

Table of Contents

- Upgrades Exceeded Downgrades Through August 2019, But Outlooks Are Skewed Toward Negative
- Industry Trends Influencing These Medians: Management Teams Continue To Be Proactive
- Ratio Highlights: Providers Continue To Invest To Remain Competitive
- Overall Leverage Has Decreased And Contingent Debt Has Continued To Decline
- Many Operating Margins Were Boosted By FASB ASU 2017-17; Should Provide More Year-Ove--Year Consistency In Operating Income
- Defined Benefit Funded Ratios Increased In Fiscal 2018 Due To A Higher Bond Rate
- Forward View: Broad Stability But Headwinds Will Continue
- Ratio Analysis
- Related Research

The 2018 U.S. not-for-profit acute health care medians highlight continued stability in the sector and demonstrate that some of the operating concerns S&P Global Ratings had last year did not affect the 2018 medians. Operating income and operating cash flow have ceased their multi-year decline (although there are numerous individual exceptions), while balance sheets remain stable at very strong levels, with many exceeding the prior peaks before the Great Recession. Overall enterprise profiles are improving as consolidation continues, including a growing array of diversifying joint ventures, even as new market entrants pressure existing business models. The vast majority of ratings remain stable with only 20 upgrades and 18 downgrades in 2019 through Aug. 15. In addition, 83% of rated health care providers have stable outlooks, but of the non-stable outlooks the majority are skewed toward negative at 12% compared to 5% positive. We expect continued stability for the near to medium term but note that the industry faces ongoing systemic risks. These risks include a potential recession, continued Medicaid changes, increased traction from nontraditional competitors, the need to build out ambulatory care capacity, and heightened cost and revenue pressure in part due to an aging population. Management teams have continued to navigate through these industry pressures and risks by being proactive and adopting and refining strategies to contend with these challenges. The potential ramifications of a recent court ruling that the Affordable Care Act (ACA) is unconstitutional could be severe if upheld, although in our view this threat, in the unlikely event that it occurs, would likely be a factor in 2020 or later.

Continue reading.

S&P: U.S. Not-For-Profit Acute Health Care Stand-Alone Hospital Median Financial Ratios -- 2018 vs. 2017

Table of Contents

- Ratio Analysis
- Related Research

Financial ratios for stand-alone hospitals in 2018 saw improvement in median operating margin across all rating categories and nearly all rating levels, representing a reversal of the significant trend of tightening performance that was first documented in 2016. This observation is consistent with health system medians, as well as the overall median level for our entire rated acute care sector including both stand-alone hospitals and health systems. In addition, balance sheet medians for stand-alone hospitals generally held stable in 2018, with mixed results across most rating levels and rating categories and some minor weakening in debt-related metrics. We believe the sharp investment market decline at the end of calendar 2018 played a role in pressuring the fiscal 2018 balance sheet medians as about one-third of all hospitals have Dec. 31 year-ends. Most rated stand-alone hospitals experienced some balance sheet recovery in early 2019, as unrealized investment losses were offset wholly, or at least partly, by year-to-date equity market gains.

Continue reading.

S&P: U.S. Not-For-Profit Health Care System Median Financial Ratios -- 2018 vs. 2017

Table of Contents

- Ratio Analysis
- Related Research

Health care system medians for 2018 generally followed the trends displayed across the entire acute care sector. Overall median operating margins for health systems improved, reversing a multi-year decline, which started in 2016. However, maximum annual debt service (MADS) coverage declined slightly (see table 1), which is largely due to weaker non-operating income in 2018 following a strong non-operating year in 2017. Balance sheet metrics continued to remain broadly stable in 2018 with increasing unrestricted reserves and days' cash on hand and a stable debt profile, with slight reductions in leverage and contingent debt. In our view these trends are consistent with our stable outlook on the sector.

Continue reading.

S&P: U.S. Not-For-Profit Health Care Children's Hospital Median Financial Ratios -- 2018 vs. 2017

Table of Contents

- Ratio Analysis
- Related Research

Stand-alone children's hospitals rated by S&P Global Ratings continue to exhibit healthy credit characteristics. This has led to favorable rating distributions, including an increasing number of rated children's hospitals within the 'AA' rating category over the last several years, with overall excellent financial median ratios reflecting stable and strong credit fundamentals. We rate 20 children's hospitals; 86% of them are rated 'A+' or higher, including one rated 'AA+', which is currently the highest rating that a U.S. not-for-profit acute health care provider has (see chart 1). Since our last published median report, two children's hospitals moved up to the 'AA' category from the 'A' category, and none moved to a lower rating. We added one new hospital, East Tennessee Children's Hospital (A/Stable), to our portfolio in the past year. Children's hospitals have remained stable historically: 19 of the 20 carried a stable outlook at Aug. 15, 2019; one had a positive outlook (see chart 2). Because of the small sample size, we do not calculate financial medians on the individual rating level and have excluded the single 'BBB+' provider as well.

Continue reading.

S&P U.S. Not-For-Profit Acute Health Care Speculative Grade Median Financial Ratios -- 2018 vs. 2017

Table of Contents

- Key Takeaways
- Stand-Alone Hospitals Continue To Dominate The Speculative Grade Rating Categories
- Overall 2018 Credit Metrics Broadly Improve Over 2017
- Lower-Rated Credits Typically Remain In The Speculative Grade Category
- Our Speculative Grade Universe Has A Higher Percentage Of Negative Outlooks
- Separate Criteria Is Used For Organizations Rated 'CCC+' And Below
- Ratio Analysis
- Related Research

Key Takeaways

- Stand-alone hospitals continue to dominate the speculative grade category.
- Speculative grade credit metrics in 2018 show broad overall improvement compared to 2017, particularly with regard to operating performance and debt service coverage.
- There is a higher percentage of negative outlooks in our speculative rating categories than in the overall acute care not-for-profit provider portfolio.

Continue reading.

S&P U.S. Not-For-Profit: Health Care Small Stand-Alone Hospital Median Financial Ratios -- 2018 vs. 2017

Table of Contents

- Key Takeaways
- 2018 vs. 2017
- Broad Trends: Small Hospitals vs. Stand-Alone Hospitals
- Small Hospitals Skewed Toward The Lower Portion Of The Rating Spectrum
- Rating And Outlook Distribution
- Ratio Analysis
- Related Research

Key Takeaways

- Small hospitals' ratings are skewed toward the lower end of the spectrum compared to all stand-alone hospitals given inherent risks associated with small hospitals, including small medical staffs and often small and narrow-based economies.
- The outlook distribution for small hospitals is consistent with the outlook distribution for the overall stand-alone sample.
- Compared to 2017, 2018 individual rating level results for the small hospital sample vary by rating level with a combination of improvement and declines.
- Compared to the broad stand-alone universe, balance sheet metrics including days' cash on hand, unrestricted reserves to long term debt and leverage, are significantly better. Operating margins; however, vary by rating category. Generally, small hospitals need to have stronger financial metrics than their larger stand-alone counterparts to achieve comparable ratings.

Continue reading.

The Great Tax Break Heist.

The many, many fiascos of policy by tax cut.

Tax scams are the tribute policy vice pays to policy virtue.

A few days ago The Times reported on widespread abuse of a provision in the 2017 Trump tax cut that was supposed to help struggling urban workers. The provision created a tax break for investment in so-called "opportunity zones," which would supposedly help create jobs in low-income areas. In reality the tax break has been used to support high-end hotels and apartment buildings, warehouses that employ hardly any people and so on. And it has made a handful of wealthy, well-connected investors — including the family of Jared Kushner, Donald Trump's son-in-law — even wealthier.

It's quite a story. But it should be seen in a broader context, as a symptom of the Republican Party's unwillingness to perform the basic functions of government.

Continue reading.

The New York Times

By Paul Krugman

Sep. 20, 2019

BlackRock Sees Supply and Demand Driving Municipal Bond Rally.

Sean Carney, head of municipal strategy at BlackRock, discusses the municipal bond market posting its best returns since 2014. He speaks with Bloomberg's Taylor Riggs in this week's "Muni Moment" on "Bloomberg Markets."

Watch video.

Bloomberg MarketsTV Shows

September 4th, 2019, 10:09 AM PDT

Bondholders Burned in Denver Show Rare Risk From Bull Market,

- **Denver project highlights risks to buyers of premium bonds**
- **Par buyback clause means some investors may lose over 10%**

Denver International Airport's decision to terminate a contract with private developers to build a "Great Hall" at one of its terminals is proving costly to investors who bought about $190 million municipal bonds to help finance the project.

The securities were sold at a premium and borrowing provisions allow Great Hall Partners LLC to redeem the debt at par plus accrued interest upon cancellation of the development agreement. Because the debt was trading for 115 cents on the dollar, the prices swiftly dropped by more than 10% after the airport announced last month that it was terminating a $1.8 billion contract with the consortium to renovate the main terminal and operate retail concessions for three decades.

It follows an instance last year when for-profit health system HCA Healthcare Inc. bought Mission Health System, an Asheville, North Carolina-based non-profit, triggering a par call on Mission's premium bonds. The losses imposed by Denver Great Hall and Mission could cause buyers to shun new deals with similar provisions.

"This should be a wake-up call for the industry," said Fred Cohen, former director of municipal bond trading at AllianceBernstein Holding LP. "Buyers haven't focused on it because it hasn't happened that often, but it happens every once in a while and investors pay the price."

The steep price drop illustrates a rarely seen risk in the $3.8 trillion municipal-bond market that's grown as tumbling interest rates push prices of many securities well above face value. Since many investors still want debt that carry 5% coupons because it's the easiest to resell, more than 70% of the $232 billion of municipal bonds issued this year have been sold at a premium, according to data compiled by Bloomberg.

Investors should demand that borrowers issuing new premium bonds agree to pay the amortized cost of the debt, reflecting how much money they've lent to the issuer, rather than par in the event of an extraordinary redemption, Cohen said.

Disappointed

Denver officials in August notified the partnership that includes Ferrovial Airports International Ltd,

Saunders Construction Inc. and JLC Infrastructure, that it was terminating the development agreement for the Great Hall Project in the airport's Jeppesen Terminal, which had been beset by delays and cost overruns.

Nuveen LLC held about $20 million of the Great Hall bonds as of July 31. John Miller, who oversees more than $150 billion state and local government bonds as head of municipal investments, said the firm was disappointed at Denver International Airport's decision to terminate the agreement.

The action "will result in bondholders being damaged and the equity participant possibly benefiting from a make whole equity call. It is unknown how much the developer will be paid to go away as a result of the termination payment, meanwhile, bondholders may be offered par," Miller said in an email. "DIA believes the best course of action is to take over as developer because the project has experienced significant delays and cost overruns. While the majority of bondholders have supported DIA deals in the past, its purported course of action is not a viable solution for bondholders as this action would hurt long-term investors in the airport."

Adam Banker, a spokesman for Fidelity Investments, which owned about $20 million of the bonds at the end of July, said the company doesn't comment on specific holdings.

The decision to terminate the contract was in the best interest of the airport, passengers and the airport's investors, said Stacey Stegman, an airport spokeswoman.

"The bottom line is that these are not the city's or airport's bonds," Stegman wrote in an email. "In the case of termination, a 'termination for convenience' placed Great Hall Partners' bondholders/accredited investors in the best position."

The city will make a termination payment to Great Hall Partners and the Public Finance Authority which issued the debt and it will be their responsibility to pay bondholders, she said.

Prices on the biggest maturity of the bonds, a $132 million block maturing in 2049, dropped to 104 cents on the dollar from 115 cents the day before. The partnership issued the maturity in December 2017 at 113 cents on the dollar. As of mid August the amortized cost of $132 million Denver Great Hall bonds maturing in 2049 was about 111 cents on the dollar or $147 million.

Redemption Provisions

Buyers have accepted "extraordinary" redemption provisions at par not only because they're triggered infrequently, but because of a bull market for tax exempt debt where demand far exceeds supply, Cohen said. Investors have poured $43 billion into municipal bond funds through August, an almost five-fold increase compared to the same period last year. State and local debt issuance has increased about 9%.

Premium bonds are desirable for institutional investors because they outperform discount bonds when rates rise and are less costly to trade. In general, revenue bonds issued for specific projects such as hospitals, have extraordinary redemption provisions, while general obligation bonds don't, Cohen said.

Bloomberg Markets

By Martin Z Braun

September 5, 2019, 10:43 AM PDT

— With assistance by Amanda Albright

What Is a Dedicated Tax-Backed Municipal Debt?

A string of municipal bankruptcies following the 2008 financial crisis forced many investors to question the utility of municipal bonds in their portfolio. Whether warranted or not, these concerns have given rise to dedicated tax bonds.

A dedicated tax bond, as far as municipal debt is concerned, refers to a variety of bond issues whose primary repayment method is secured by government tax or fee revenues. So long as a municipality generates tax and other forms of revenue, bondholders can feel certain that they will be repaid. The majority of debt issuers are supported by income tax, sales tax or gas tax, among others. The projects usually financed by this type of debt include economic growth initiatives.

To be sure, most general obligation (GO) bonds have an unlimited tax pledge. However, municipalities must use a portion of their tax revenues to cover frequent operating costs. Dedicated tax bonds, on the other hand, have revenue streams specially assigned to servicing debt. As such, they differ from traditional GO bonds and limited-tax GO bonds, which are backed by a limited amount of taxes.

Although dedicated tax-backed municipal bonds are more secure during economic downturns, there's little recourse for bondholders to access other funds from the issuer. However, since these bonds are backed by state revenues, the prospect of default is extremely slim.

Continue reading.

municipalbonds.com

by Sam Bourgi

Sep 04, 2019

XBRL US 2nd Release of CAFR Taxonomy for Municipal Reporting in Public Exposure Review.

NEW YORK–(BUSINESS WIRE)–Sep 5, 2019–

XBRL US announced today that it is conducting a 60-day public review and comment period for the second release of the Demonstration Comprehensive Annual Financial Report (CAFR) Taxonomy. The taxonomy, developed by the XBRL US State and Local Government Disclosure Modernization Working Group, includes the CAFR's Statement of Net Position, Statement of Activities, Governmental Fund Balance Sheet, and Governmental Fund Statement of Revenues, Expenditures and Changes in Fund Balances. The public review will also contain a limited number of concepts from pension and other post-employment benefit footnotes that are planned for a future taxonomy update.

This second release of the CAFR Demonstration Taxonomy incorporates feedback received during

the first public review which ended on March 18, 2019. Municipalities, analysts, investors, data and software providers are invited to review and comment on the new release during the second public exposure period, which will close on October 28, 2019.

XBRL US also announced that Will County, Illinois, is the first local government to publish their financial statement data in standardized, XBRL format on their public website, using the CAFR Demonstration Taxonomy. View the Will County financials: https://www.willcountyauditor.com/financial-and-statistical-reports

“Open, honest, transparent government, is important to the residents of Will County,” said Duffy Blackburn, CPA, Auditor of Will County, “Financials prepared using data standards give our citizens, investors, and government agencies access to standardized, machine-readable data to better gauge financial health, and make more timely, informed decisions.”

Dr. Shannon Sohl of Northern Illinois University’s Center for Governmental Studies, and Vice Chair of the XBRL US State and Local Working Group, added, “Users of Will County’s digital CAFR will also see other elements found in annual financial reports (AFR’s) produced for the Illinois Office of the Comptroller (IOC) to demonstrate the possibility of producing a single annual report, eliminating redundant reporting for local governments to reduce the reporting lag, increase efficiency and transparency.”

Approximately 30,000 state and local governments in the United States produce audited financial reports annually. Because this data is not standardized or machine-readable, the ability to aggregate data and compare the financial performance of governmental entities is limited. The state of Florida led the effort towards greater standardization in local government reporting with the passage of House Bill 1073 in March 2018, which mandates data standards for local government; and by the state of California, which has introduced Senate Bill 598, which requires the creation of a Commission to investigate and report on the implementation of data standards for state and local government financial reporting. SB 598 was approved by the State Senate in June and by three State Assembly committees this summer.

“We’re pleased to see Florida, California and Will County take the lead in adopting open government financial reporting data standards, and we look forward to supporting other early adopters of XBRL-based CAFRs,” said Marc Joffe, Senior Policy Analyst at Reason Foundation and Chair of the XBRL US State and Local Disclosure Modernization Working Group.

Materials available for reviewers include the Taxonomy, in XML and spreadsheet format, a Taxonomy Architecture Guide, and six sample instance documents. Those reviewing the taxonomy will have an opportunity to post comments related to individual elements and the structure of the taxonomy.

The XBRL US State & Local Working Group is also hosting Municipal Finance Data Forum Midwest, on October 3 in Naperville, IL. Learn more and register: https://xbrl.us/events/muniforum-20191003/

Members of the XBRL US State and Local Working Group include Aquorn Inc., Bond Intelligence, DataTracks, Crowe LLP, Ez-XBRL Solutions, Gray CPA Consulting, Intrinio, IRIS Business Services LLC, Lehigh University, Middle Tennessee State University, Neighborly Investments, Novaworks LLC, Reason Foundation, Thales Consulting (CAFROnline), Touro College, Truth In Accounting, Northern Illinois University, the University of Maryland, the University of South Florida, and Workiva. Observers to the Working Group include NASACT (the National Association of State Auditors, Comptrollers and Treasurers) and the U.S. Census, among other organizations.

About XBRL US

XBRL US is the non-profit consortium for XBRL business reporting standards in the U.S. and represents the business information supply chain. Its mission is to support the implementation of business reporting standards through the development of taxonomies for use by U.S. public and private sectors, with a goal of interoperability between sectors, and by promoting XBRL adoption through marketplace collaboration. XBRL US has developed taxonomies for U.S. GAAP, credit rating and mutual fund reporting under contract with the U.S. Securities and Exchange Commission and has developed industry-specific taxonomies for corporate actions, solar financing, and surety processing. http://xbrl.us

Access the public review: https://xbrl.us/xbrl-taxonomy/2019-cafr/

Learn about the State and Local Working Group: https://xbrl.us/home/government/state-and-local-government/

Learn more about the Municipal Finance Data Forum: https://xbrl.us/events/muniforum-20191003/

View the Will County, Illinois financials: https://www.willcountyauditor.com/financial-and-statistical-reports

View source version on businesswire.com:https://www.businesswire.com/news/home/20190905005876/en/

Michelle Savage,michelle.savage@xbrl.us, 917 747 1714

Ohio Supreme Court: Municipal Bond Buyers Do Not Automatically Acquire Right To Sue.

Ohio law does not automatically transfer to the buyer of a municipal bond the seller's right to sue a financial institution overseeing the repayment of the bonds, the Ohio Supreme Court ruled.

A Supreme Court majority decided Aug. 22 that unless the right to file a lawsuit is expressly assigned to the buyer when a bond is purchased, the buyer does not acquire the right. Writing for the Court majority, Justice Melody J. Stewart stated that purchasers of distressed bonds incorrectly concluded that R.C. 1308.16 gave them the right to sue Huntington Bank for breach of contract. Huntington served as a trustee overseeing the nearly $6.6 million in revenue bonds issued for a Lucas County nursing home that went bankrupt.

Chief Justice Maureen O'Connor and Justices Judith L. French and Michael P. Donnelly joined Justice Stewart's opinion.

Justice Patrick F. Fischer concurred in the judgment. Justice Sharon L. Kennedy concurred in judgment only with a written opinion joined by Justice R. Patrick DeWine.

In 1998, Lucas County issued $6.59 million in revenue bonds to back construction of the Villa North Health Care and Rehabilitation Center. The agreement exempted the bonds from federal taxes but made it clear that Lucas County was not obligated to pay back the borrowed money. Rather, it would pay the bondholders only what it received from the project's owner, the Foundation for the Elderly.

Huntington Bank entered into an agreement with the county, known as a “trust indenture,” in which the bank would earn a fee for collecting the bond payments and distributing the funds to the bondholders.

The project ran into difficulties. In 2003, the foundation defaulted on about $420,000 in principal and interest payments. A new entity, Benchmark Health Care of Toledo, assumed the nursing home lease, but it also defaulted by the end of 2003. In May 2004, Huntington informed the bondholders that Benchmark filed for reorganization through Chapter 11 bankruptcy. After two attempts at reorganization, the plan failed in 2009, and Huntington foreclosed on the property.

An investor, through a fund named Paul Cheatham IRA, began purchasing the Villa North bonds in 2003 as part of a risky investment strategy. His investment advisers identified distressed, nontaxable bonds and urge investors to buy them at a discount. The buyers purchased the bonds with the hopes that any problems causing the value of the bonds to drop would be remedied and the bonds’ value eventually would increase. Cheatham IRA continued to purchase Villa North bonds, paying 32 cents on the dollar, after Benchmark filed for bankruptcy.

In the end, Huntington was able to collect only about $340,000, paying bondholders 5 cents on the dollar.

Cheatham IRA filed a class action lawsuit against Huntington Bank, alleging the bank breached the trust indenture, and that Huntington could have done more to protect the bondholders against the mismanagement of the Villa North project. Cheatham asked the Lucas County Common Pleas Court to certify a class of more than 50 bondholders, and the bank objected.

The trial court ruled that Cheatham IRA did not have the same rights to sue as the original bondholders and that they could not be joined together as a class. The court stated that many of the alleged breaches by Huntington occurred before the fund bought the bonds, and that R.C. 1308.16(A) did not transfer to the subsequent bondholders the right to sue for acts that occurred before they bought the bonds.

Cheatham IRA appealed to the Sixth District Court of Appeals, which reversed the trial court and ruled that the fund did acquire the right to sue Huntington. The bank appealed the decision to the Supreme Court, which agreed to hear the case.

Justice Stewart explained that under common law, only the person injured can sue to recover from an injury, unless that person expressly transfers the right to another. The Sixth District found that in the case of securities, Ohio law made an exception, and that R.C. 1308.16(A) gives the purchaser of a security “all rights in the security that that the transferor had or had power to transfer.” The Sixth District interpreted “all rights” to include the right of the original bondholder to sue for breach of contract based on a breach that occurred when the original bondholder owned the bond. In this case, Cheatham IRA acquired to right to sue when it bought the bonds, even if the “injury” occurred before they bought the bonds, the appeals court ruled.

The Supreme Court disagreed. The opinion explained that a “chose in action,” which includes the right to sue, belongs to the owner of a piece of property. The right to sue does not automatically transfer to a buyer of property, such as a bond. If the agreement to sell does not expressly include the seller’s assignment of the right to sue to the buyer, no right transfers, the Court stated.

The majority opinion noted that R.C. 1308.16(A) is Ohio’s version of the Uniform Commercial Code’s (UCC) section 8-302. Nearly every state adopted similar versions of the UCC to bring uniformity to business laws, and the Court stated the UCC is considered to “make uniform the law among the

various jurisdictions." No other jurisdiction has interpreted UCC 8-302 as overruling the common law rule that a right to sue does automatically transfer, the Court stated.

"The Cheatham IRA has been clear that its claim is based on Huntington's alleged failure to act upon notice of the initial default. Only those who owned the bonds at the time of the original default could bring an action for that breach of the trust indenture," the opinion stated.
The Court majority also stated that it expressed no opinion on allegations made by Cheatham IRA against Huntington for actions that occurred after the fund bought the bonds.

In her concurring opinion, Justice Kennedy stated that the Court need look no further than the "plain and unambiguous language of R.C. 1308.16(A)" to conclude that a buyer of a municipal bond does not automatically acquire the right to sue.

R.C. 1308.16(A) provides that a purchaser of a security acquires "all rights in the security that the transferor had or had power to transfer." While the phrase "rights in a security" is not defined in R.C. Chapter 1308, Justice Kennedy wrote that the common dictionary definitions of the words lead to only one interpretation — that the buyer of the bond can acquire only the legally recognized title to the bond that the seller had the power to transfer.

The opinion further stated that "rights in a security" does not encompass the "trust indenture." A trust indenture is an agreement governing a trustee's conduct and the trust beneficiaries' rights. It is not a security. To find the right to sue based on a violation of the trust indenture, the Court would have to read the term "related to" into the phrase "all rights in the security," which statutory construction does not permit, she concluded.

The Highland County Press

September 5, 2019

Avoid Muni Bonds Issued By New Jersey, California And New York, Invest Elsewhere.

How often have you heard a value equity manager say his sector is overdone? Or have you ever heard a growth manager shout from the rooftops that growth stocks are overvalued? Probably not.

Well, as a bond manager I will break the rules and tell you municipal bonds issued by high-tax states are overvalued. Grotesquely overvalued.

These nose-bleed-high municipal bond prices in California, New York, New Jersey, Oregon and Minnesota are literally erasing the tax advantages they were intended to create. Remember, high prices equal limbo low yields.

In fact, yields in the high-tax states are so low that most investors in those states who invest in 1-10 years will be better off either investing in municipals out of their state of residence or investing in taxable corporate bonds.

Continue reading.

Forbes

by Marilyn Cohen

Sep 4, 2019

The Power of Scarcity.

The fast food world gave us an interesting case study in supply and demand last week. By now you've no doubt heard about The Chicken Sandwich, the surprise superstar menu item from Popeyes Louisiana Kitchen that's launched 1,000 blog posts, op-eds and thought pieces. According to reports, the Cajun restaurant sold out of its entire seven-week inventory in just over two weeks.

As what often happens when demand outpaces supply this dramatically, the value of the Popeyes sandwich has exploded on the secondary market. One Maryland man managed to sell his for $100, an incredible 2,400 percent markup over the retail price of $3.99.

There are a few lessons investors can learn here—one of them being that people put a premium on scarcity.

Continue reading.

Forbes

Frank Holmes

Sep 3, 2019

Public Finance And Public Policy: Insights From 5 Experts

In Boston there is always one harbinger of fall you can count on. No, it's not the changing colors of the tree leaves. It's the plethora of moving vans and overstuffed cars crowding the streets as students make their way into dorms and back to class.

It's back to school for their professors as well. While traditional academicians almost without exception have Ph.D. after their names, there is emerging a new group, the "Practitioner Professor": men and women who have spent their lives building accomplished careers in their field are now coming into the classroom to share their knowledge as well as reflect on it themselves.

Interestingly, one area that has benefited by this growing trend is public finance. There are numerous schools of public policy around the nation, but very few actually offer classes much less degrees or certifications focused on public finance or the municipal bond market.

Continue reading.

Forbes

Barnet Sherman

Sep 3, 2019, 09:14am

BDA Releases a GSE Reform "White Paper" as the Debate on a Housing Finance Overhaul Heats Up.

In the coming weeks, Treasury Secretary Steven Mnuchin, Housing and Urban Development Secretary Ben Carson and Federal Housing Finance Agency Director Mark Calabria are all scheduled to testify before Congress regarding the Trump Administration's plan to reform Fannie Mae and Freddie Mac. The administration's blueprint document on a reform plan is likely to be released in the next week.

Due to BDA's unique position in the mortgage market, a small group of BDA members have drafted a policy "white paper" on specific broker-dealer priorities within GSE reform. The document details the following principles:

- Preserve the "TBA" mortgage securities market
- UMBS is a welcome advancement
- Focus on agency capital-building
- Recognize the vital role state and local governments play in the GSE market
- Preserve access to local lending models

BDA will share this document with policymakers as the conversation on GSE reform begins in Washington.

Bond Dealers of America

September 4, 2019

Munis in Focus: Joe Mysak on Ridership (Radio)

Munis Editor for Bloomberg Briefs, on why the falling of ridership hasn't stopped municipalities from investing in mass transit. Hosted by Lisa Abramowicz and Paul Sweeney.

Running time 06:15

Play Episode

Bloomberg

September 6, 2019

Addicted to Fines.

Small towns in much of the country are dangerously dependent on punitive fines and fees.

Flashing police lights are a common sight all along Interstate 75 in rural south Georgia. On one recent afternoon in Turner County, sheriff's deputies pulled over a vehicle heading northbound and another just a few miles up on the opposite side of the interstate. In the small community of Norman

Park, an officer was clocking cars near the edge of town. In Warwick to the north, a police cruiser waited in the middle of a five-lane throughway.

These places have one thing in common: They issue a lot of tickets, and they finance their governments by doing it. Like many other rural jurisdictions, towns in south Georgia have suffered decades of a slow economic decline that's left them without much of a tax base. But they see a large amount of through-traffic from semi-trucks and Florida-bound tourists. And they've grown reliant on ticketing them to meet their expenses. "Georgia is a classic example of a place where you have these inextricable ties between the police, the town and the court," says Lisa Foster, co-director of the Fines and Fees Justice Center. "Any city that's short on revenue is going to be tempted to use the judicial system."

This is by no means just a Georgia phenomenon. Throughout the country, smaller cities and towns generate major dollars from different types of fines, sometimes accounting for more than half of their revenues. Some places are known for being speed traps. Others prop up their budgets using traffic cameras, parking citations or code enforcement violations.

Continue reading.

GOVERNING.COM

BY MIKE MACIAG | SEPTEMBER 2019

Developing OZ Owner Occupied Housing on a Massive Scale, with NeighborBuilt.

Is the development of owner occupied housing on a massive scale achievable in blighted Opportunity Zone neighborhoods? First, you have…

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Opportunity Db

September 4, 2019

S&P Medians And Credit Factors: Maine Municipalities And Counties

Table of Contents

- Overview
- Rating Changes And Distributions

Overview
Maine local government (LG) ratings remain stable, in S&P Global Ratings' view, characterized by strong wealth and income indicators, low unemployment rate, and generally strong budgetary flexibility supported by positive financial performance. Overall, we do not expect any significant changes to Maine LGs' credit quality over the next year.

Supporting Maine local governments' credit quality are low pension costs, with almost no other postemployment benefits (OPEB) liabilities. Most LGs contribute to the Participating Local Districts Plan, administered by the Maine Public Employees Retirement System, which is funded at 83% as of fiscal 2018. The plan's good funded ratio has kept pension costs manageable for LGs. In addition to manageable retirement costs, LGs continue to benefit from an overall stable economy experiencing modest employment growth and increases in assessed values (AVs) over the past few years, which have contributed to generally strong budgetary performance. However, we believe the economic growth experienced by LGs will be challenged by aging workforce participation and slow population growth that is expected to remain among the lowest in the nation over the next 10 years. In addition, we believe many Maine LGs will continue to face long-term climate change related risks due to rising sea levels, which could require further investments in infrastructure projects and sustainability initiatives requiring increases in property taxes, higher debt burdens, use of reserves, or a combination of all three. Furthermore, we believe future AV growth could be hampered by federal caps on the deductibility of state and local taxes that could weaken local revenue sources and population rates especially given the large number of second-homes throughout the state.

Continue reading.

S&P: Oklahoma Court Ruling On Johnson & Johnson In Wake Of Opioid Crisis Is Not Likely To Affect Municipal Credit Quality

NEW YORK (S&P Global Ratings) Aug. 27, 2019–S&P Global Ratings does not expect Monday's court ruling in Oklahoma imposing a $572 million judgment on Johnson & Johnson for contributing to the state's opioid crisis to affect municipal credit quality.

Although the opioid crisis is real (see "The Opioid Crisis Is Real, But Not Yet A Threat To State Credit Quality," published Oct. 31, 2017, on RatingsDirect), the direct financial impact on the various states for the costs of the crisis has not been high enough to date to affect a municipal bond rating. In this particular case, the judge has ruled that judgment proceeds should be directed to opioid mitigation programs; therefore we believe it would be unlikely to affect state unreserved fund balances. The size of the judgment also needs to be placed in context with Oklahoma's $8.1 billion enacted fiscal 2020 budget, assuming the judgment is not reduced on appeal. We rate Oklahoma's general obligation debt AA/Stable.

In the wake of this ruling, other states and other opioid manufacturers might pursue private legal settlements that could impose fewer restrictions on the use of settlement proceeds, similar to settlements reached in earlier state litigation over the costs of tobacco use. That master tobacco settlement essentially imposed no restrictions on state use of settlement proceeds. Some minor favorable increase to state budgets is possible if opioid settlements increased state coffers, but as has happened following the earlier tobacco settlement, we do not expect to change an individual state rating based on expected settlement outcomes. That tobacco settlement provided ongoing state revenue from continued smoking consumption, while in the opioid situation the states' goal is to end misuse of opioids. As a result, opioid settlement proceeds are likely to be of a one-time nature, and even less likely to affect long-term credit quality.

This report does not constitute a rating action.

S&P Global Ratings, part of S&P Global Inc. (NYSE: SPGI), is the world's leading provider of independent credit risk research. We publish more than a million credit ratings on debt issued by

sovereign, municipal, corporate and financial sector entities. With over 1,400 credit analysts in 26 countries, and more than 150 years' experience of assessing credit risk, we offer a unique combination of global coverage and local insight. Our research and opinions about relative credit risk provide market participants with information that helps to support the growth of transparent, liquid debt markets worldwide.

Review of Department of Commerce Policy in Opportunity Zones.

Read the review.

S&P: Despite ERCOT's Price Spikes, Texas Public Power Utilities Remain Resilient

Table of Content

- ERCOT's Price Spikes And Low Reserve Margins
- Exposure To Increased Power Costs
- Common Strategies To Mitigate Market Price Spike Exposure

In mid-August, S&P Global Ratings observed price spikes in the Electric Reliability Council of Texas Inc. (ERCOT) market, which exposes utilities short on energy to increased power costs. Because the ERCOT market does not compensate generation owners with capacity prices that might provide incentives to encourage new market entrants, regulators use scarcity-pricing signals and energy conservation measures to ensure system reliability of the electric grid. Despite the recent price spikes and ERCOT's recent energy emergency alerts (EEA1) on Aug. 13 and 15, 2019, ERCOT has not had to implement systemwide rotating outages this summer. Although ERCOT's market dynamics present cost-recovery challenges to utilities for a period when reserve margins are thin and energy demand peaks, we observe public power and electric cooperatives in Texas sufficiently managing power supply needs and using power cost recovery mechanisms to recover increased power costs. We also observe that these spikes tend to be short-lived. Utilities with surplus capacity to sell might benefit during these spikes, but at other times, they face cost-recovery challenges because prices are generally low in the ERCOT market due to an abundance of renewable generation and natural gas relative to pipeline capacity. We're following the ERCOT market price spikes to better understand utilities' power supply strategies and the extent to which they are exposed to cost recovery challenges.

Continue reading.

CDFI Fund Opens CY 2019 Round of New Markets Tax Credit Program.

The U.S. Department of the Treasury's Community Development Financial Institutions Fund (CDFI Fund) released today the Notice of Allocation Availability (NOAA) for the calendar year (CY) 2019 round of the New Markets Tax Credit Program (NMTC Program). The NOAA makes up to $3.5 billion in tax credit allocation authority available for the CY 2019 round. The CDFI Fund provided the

NOAA on its website in anticipation of its publication in the Federal Register on September 6, 2019.

The NMTC Program spurs investment of private sector capital into distressed communities by providing a tax credit to corporate or individual taxpayers who make Qualified Equity Investments (QEIs) in designated Community Development Entities (CDEs). The CDEs, in turn, invest the capital raised into businesses in low-income communities. The credit provided to the investor totals 39 percent of the investment in a CDE and is claimed over a seven-year credit allowance period.

The CDFI Fund has made 1,178 awards—totaling $57.5 billion in tax credit allocation authority—to CDEs through the NMTC Program since the program's inception. More information about the NMTC Program can be found on the program's webpage, www.cdfifund.gov/nmtc, or in the program's fact sheet.

Continue reading.

Wednesday, September 4, 2019

How To Build Your Own Bond Portfolio.

Summary

- The best way to build a bond portfolio is to start by thinking about the risks.
- Treasury—all interest rate risk. Investment-grade corporates—some credit risk, some interest rate risk. High-yield corporates—mostly credit risk (they behave like stocks).
- The other thing you need to consider is the length of maturity you want. The idea is to spread your risk along the interest rate curve.
- Short-term bonds = less interest rate risk and less credit risk. Long-term bonds = more interest rate risk and more credit risk.
- The key here is diversification. And yes, this is more art than science. But the bond market is much larger than the stock market. For many reasons, it is not clever to avoid it altogether.

Continue reading.

Seeking Alpha

by Jared Dillian

Sep. 8, 2019

TAX - INDIANA

City of Lawrenceburg v. Franklin County

Court of Appeals of Indiana - August 28, 2019 - N.E.3d - 2019 WL 4050295

County brought action against city for breach of contract, stemming from city's alleged failure to make payments to county under agreement to share gaming tax revenue.

The Superior Court entered summary judgment in favor of county. City appealed.

The Court of Appeals held that:

- City did not waive its argument that agreement was void by statute, and
- City's agreement with county was void by statute.

City did not waive its argument that agreement to share gaming tax revenue was void by statute, in county's breach of contract action against city, though city did not assert that agreement was void by statute in its answer and raised argument for the first time in summary judgment proceedings; county had ample time to respond and did respond to city's arguments made at summary judgment, county designated no evidence showing prejudice from timing of city's arguments, and argument was a purely legal argument that did not necessitate a fully developed factual record to address.

City's agreement to share gaming tax revenue with county was void by statute, in county's breach of contract action against city, though revenue sharing statute allowed city to share its gambling revenue with county without county having to provide actual consideration; statute governing obligations of city beyond amount of money appropriated required city to appropriate all necessary funds to fulfill agreement at time it was executed, and city did not appropriate any money to fulfill agreement at time it was executed.

Final Bond Insurers Join Deal Over Puerto Rico Electric Utility Debt.

SAN JUAN, Sept 9 (Reuters) – Two holdout bond insurers have agreed to a previously announced deal to restructure more than $8 billion of revenue bonds issued by Puerto Rico's bankrupt electric utility, the U.S. commonwealth's federally created financial oversight board said on Monday.

The action by National Public Finance Guarantee Corporation and Syncora Guarantee Inc to join a definitive restructuring support agreement (RSA) reached in May with other creditors moves the Puerto Rico Electric Power Authority (PREPA) closer to exiting a form of bankruptcy filed in July 2017.

"The addition of Syncora and National to the RSA provides significant certainty to the restructuring not only of PREPA's bonds, but to the transformation of PREPA to a modern, efficient power utility able to deliver clean, reliable and affordable energy to the people and businesses of Puerto Rico," a statement from the oversight board said.

It added that all of the insurers guaranteeing payments on the utility's debt and holders of about 90% of PREPA's other, uninsured bonds have now joined the agreement.

National Public Finance, a subsidiary of MBIA Inc, is PREPA's largest single creditor, owning or insuring about $1.4 billion of the utility's bonds, according to the company, which claimed earlier this year it had been excluded from negotiations as it sought a court-appointed receiver for the utility.

With the PREPA restructuring, National is another step closer to resolving all of its exposure to Puerto Rico debt, Bill Fallon, the insurer's CEO, said in a statement.

The oversight board said the economic terms of the RSA, originally reached with bond insurer Assured Guaranty Corp and bondholders, have not changed. That deal would reduce PREPA's debt by up to 32.5%. Under the agreement, investors would exchange their PREPA bonds at 67.5 cents on the dollar for new Tranche A bonds and 10 cents on the dollar for new Tranche B bonds. The latter

would be contingent on full payment of Tranche A bonds and future electricity demand on the island.

PREPA would pay off the new bonds through a special charge levied on its customers.

If approved in federal court, a plan of adjustment for PREPA would mark the third major deal in Puerto Rico's efforts to restructure about $120 billion of debt and pension obligations.

PREPA's financial and operational problems were compounded by 2017's Hurricane Maria, which decimated an electric grid already struggling due to poor rate collection, heavy management turnover and lack of maintenance.

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

S&P Medians And Credit Factors: Illinois Municipalities And Counties

Table of Contents

- Overview
- Rating Changes Due To GO Credit Factors
- Rating Changes Owing to Criteria

Overview

S&P Global Ratings maintains ratings on 238 municipalities and 21 counties in Illinois. Currently, 58% of Illinois municipalities and counties are highly rated ('AA-' or above), and 8.5% have debt rated in the 'BBB' category or lower. During the period of Jan. 1, 2018 to July 29, 2019, only about 8% experienced changes in their general obligation (GO) rating or issuer credit rating (ICR). More entities' GO ratings/ICRs were downgraded than upgraded during the year.

We expect generally stable conditions in the Illinois municipal portfolio in the coming year, despite significant challenges, particularly with regard to many municipalities continuing to grapple with large unfunded pension liabilities. With regard to its economy, the state has continued to see a large divergence between the generally higher-growth economy in the Chicago metropolitan area and tax bases downstate, which are marked by weaker growth and less economic diversity. Overall, the state's economy, similar to the Great Lakes region as a whole, is expected to see slower economic growth than most other parts of the nation. The state passed its 2019-2020 budget on time, and while it still has a lingering structural imbalance, the budget includes a significant increase in state gas tax, which is expected to be used for capital projects in the coming years and will benefit local communities. The state continues to reduce the local government distributive fund by 5% for municipal governments, which is the same reduction that occurred last year. State legislators also authorized a referendum for a statewide graduated income tax, which will go to voters in November 2020.

Illinois' pension funding challenges remain acute, particularly with regard to single-employer public safety pension plans. Estimates indicate that the over 650 public safety pension plans statewide are 55% funded in aggregate. We anticipate that Illinois municipalities' attempts to remedy these funding deficiencies will absorb a sizeable portion of their budgets next year.

Continue reading.

San Francisco Assessor Sues Over Ballpark Tax Win.

(TNS) — San Francisco Assessor Carmen Chu is suing both the San Francisco Giants and the city's own Assessment Appeals Board over a multimillion-dollar property tax assessment break granted to the team's Oracle Park.

At issue is the assessed taxable value of the 42,000-seat waterfront stadium, which sits on land leased from the Port of San Francisco.

Chu set the park's assessment at $415 million for 2015, $421 million for 2016 and $430 million for 2017.

The Giants countered with an estimate of $309 million for 2015, $306 million for 2016 and $298 million for 2017.

Why the difference? The assessor's office argues the ballpark is like a house or office building — its value has risen during the real estate boom. But the Giants argue that the ballpark may need to be upgraded in the future — so it was less valuable.

After hearing both sides, the Assessment Appeals Board, which is independent of the Assessor-Recorder's Office, decided the park's value had risen, but at a far slower rate than set by the assessor. The board set the park's value at $385 million for 2015, $405 million for 2016 and $437 million for 2017.

The difference would mean San Francisco losing out on about $543,000 in property taxes over the three years in dispute.

The taxes for 2018 are still under appeal.

"A single legal error in the board's analysis caused a reduction of approximately $185 million each year," the assessor states in the lawsuit, filed Friday in San Francisco Superior Court.

"The single error is that they double counted the current depreciation of the ballpark and gave credit for future depreciations that may or may occur in the future," said Vivian Po, spokeswoman for the assessor. "We don't want the Giants to get property tax deductions that nobody else can get."

Assessment Appeals Board Administrator Dawn Duran stands by the decision.

"The board handles all of the large conflicts, including the big hotels and office buildings and the three who heard the (ballpark) case are all seasoned board members," Duran said. "I really don't have a comment, as I have yet to see the lawsuit," she added.

The Giants didn't respond immediately to a request for comment.

As for the oddity of one city office filing suit against another, Duran said, "It's rare but it does happen. The assessor has the right to file suit, just as any taxpayer has the right to take (the board) to court."

It's not the first tax go-round among the assessor, the Giants and the appeals board. Since Oracle Park opened in 2000 as Pac Bell Park, the Giants have consistently challenged the city's annual tax assessments.

For example, Chu set the 2014 value of the ballpark at almost $407 million, while the Giants pegged it at more like $158 million and then upped the estimate to $254 million just before the hearing.

The Assessment Appeals Board eventually ruled that the ballpark's value was about $365 million, way below the assessor's estimate, earning the Giants at $548,343 refund.

Oracle Park isn't the only stadium where different parties see the tax valuations differently.

Santa Clara County Assessor Larry Stone sued his county Assessment Appeals Board in late May for its assessment of the 49ers' Levi's Stadium in Santa Clara.

That board ruled the 49ers were responsible only for half of the assessed value on the $1.2 billion Levi's Stadium, because the football season is only half the year long.

Stone argued that the 49ers use the facility year-round for concerts and other sporting events "that have a value that the Assessment Appeals Board is ignoring."

The board didn't buy the argument and, as a result, the 49ers got a one-time, $36 million tax refund and a $6 million tax cut in their annual taxes.

Meanwhile, the Santa Clara suit is making its way through Superior Court.

"These sports stadium tax deals are quite complex, and teams all across the nation are paying significant attention to these cases," Stone said.

Triple play: It was a good night for San Francisco Mayor London Breed and a bad night for the progressives at the Democratic County Central Committee Wednesday evening.

Not only did the committee vote to back Breed's re-election this November, it also voted to endorse Breed's hand-picked replacement on the Board of Supervisors, Vallie Brown, over Democratic socialist Dean Preston.

Preston's campaign manager, Jen Snyder, reacted by flipping the DCCC members the bird.

"That was me, an uppity, outspoken Democratic socialist who shows her mind when the DCCC endorses a candidate backed by the real estate industry," Snyder said.

Former prosecutor, Suzy Loftus, Breed's pick in the district attorney's race, also got the nod from the panel.

Park it: San Francisco Recreation and Park Department General Manager Phil Ginsburg has been tapped by Gov. Gavin Newsom for a seat on the California State Park and Recreation Commission.

Ginsburg has been general manager of Rec and Park since 2009. He also served as chief of staff for a spell when Newsom was mayor.

During Ginsburg's tenure, San Francisco has raised more than $150 million in private donations to help fund scholarships, renovate soccer fields, playgrounds and parks, and the Golden Gate Park Tennis Center

He also has been a key player in bringing big concerts, like the Outside Lands music festival, to San Francisco's Golden Gate Park and Paul McCartney to Candlestick Park for its final event. But Ginsburg said he had no plans to push for big festivals at state parks.

When asked if Newsom had given him any mandate, Ginsburs said “yes, to show up at the meetings.”

The job pays $100 a meeting.

SEPTEMBER 6, 2019 AT 3:05 AM

FINRA Issues Guidance on Member Firms’ Supervisory Obligations When Participating in Investment-Related Activities With Municipal Clients.

On August 16, the Financial Industry Regulatory Authority (FINRA) issued Regulatory Notice 19-28 (Notice) reminding member firms of their supervisory obligations under FINRA Rules 3110 (Supervision) and 3120 (Supervisory Control System) if they 1) hold or transact in customer accounts owned by municipal entities or obligated persons (i.e., municipal clients), as defined in Section 15B of the Securities Exchange Act of 1934, as amended; and 2) participate in investment-related activities with municipal clients (e.g., recommending or selling non-municipal securities products to such municipal clients).

The Notice advises that member firms with municipal clients should evaluate whether such firms must register with the Securities and Exchange Commission and the Municipal Securities Rulemaking Board (MSRB) as “municipal advisors” or if they can rely upon an applicable exclusion from registration and/or a registration exemption.

The Notice also reminds member firms engaging in investment-related activities with municipal clients that they must establish, maintain and enforce supervisory systems and controls pursuant to FINRA Rules 3110 (Supervision) and 3120 (Supervisory Control System) that are reasonably designed to prevent and detect unregistered municipal advisory activity and non-compliance with its attendant obligations. In establishing and maintaining a supervisory system and controls that account for the municipal advisor registration requirements, member firms are advised to consider the unique risks of their business activities with municipal clients.

The Notice does not create any new requirements or expectations. Rather, the Notice is intended to assist member firms in complying with their existing obligations under FINRA, SEC and MSRB rules.

The Notice is available here.

by Susan Light, Michael T. Foley and Stanley V. Polit

August 30, 2019

Katten Muchin Rosenman LLP

FAF Trustees Appoint Fiona Ma to the Governmental Accounting Standards Advisory Council.

Norwalk, CT—August 28, 2019 — The Board of Trustees of the Financial Accounting Foundation (FAF) today announced the appointment of California State Treasurer Fiona Ma to the Governmental Accounting Standards Advisory Council (GASAC), effective immediately. Her initial term will conclude December 31, 2020.

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

Ms. Ma, a Certified Public Accountant, was elected California State Treasurer in 2018. Previously, she served four years as chair of the California State Board of Equalization. From 2006 to 2012, she was a member of the California General Assembly, attaining the role of Speaker Pro Tempore. Prior to that, she spent four years as a member of the San Francisco Board of Supervisors.

“Fiona Ma brings to the GASAC a distinguished track record of leadership and expertise not only in government financial reporting, but also as a former legislator in state and local government,” noted FAF Chairman Charles H. Noski. “We look forward to her contributions to GASAC discussions as part of the group’s mission to provide input to the GASB.”

Ms. Ma was nominated to the GASAC by the National Association of State Treasurers.

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

Illinois’ Financially Distressed Municipal Laws Need 'Teeth' Before Next Downturn, Expert Says.

Some Illinois municipalities, mired in debt with declining populations, could lose their ability to provide core services and pay debts amid a national economic downturn a situation made worse because the state’s laws lack the instruments to intervene and stave off insolvency, according to a professor and municipal finance expert.

Illinois has two different laws meant to provide help for units of government that have reached budgetary crisis levels. The Local Government Financial Planning and Supervision Act, applicable to municipalities of fewer than 25,000 people, and the Financially Distressed City Law for cities with more than 25,000 people.

Both of the laws are elective, meaning the state cannot impose them on municipalities.

Michael Belsky, executive director at the Center for Municipal Finance at the Harris School at the University of Chicago, said state lawmakers need to give these laws “teeth” before the next economic downturn.

“Their tax bases have been ravaged and they have high levels of poverty. It’s troubling,” he said. “In other states, they have these fiscal emergency laws. We have this stewardship, but it doesn’t have any teeth. I really think that’s needed for these poorer communities.”

East St. Louis is the only city to have used one of Illinois’ financial stewardship laws, doing so shortly after the law was enacted in 1990. East St. Louis later fought back against the advisors, even suing them to stop some of the financial constraints they were attempting to put on city officials. The

city was able to shed state oversight 23 years later when it was able to pay off the money it borrowed from the state.

Belsky said states like Michigan have financial intervention laws that Illinois should emulate. Michigan's laws allow the state to impose the edicts of an appointed commission upon the city found to be approaching insolvency as demonstrated in Detroit shortly before it declared bankruptcy.

Illinois has no law allowing municipalities to file Chapter 9 bankruptcy. While some municipalities have filed, they were only allowed to do so for lack of legal challenge.

The Illinois Municipal League, which represents the interests of the state's town and city governments, said the assistance provided by the acts aren't adequate compared to their current struggles.

"We're not looking for more "teeth" necessarily, but making it more applicable to what cities are needing and actually beneficial to their residents," Illinois Municipal League Executive Director Brad Cole said. He added that the league plans to work on legislation that would give better state assistance for municipalities that enlist the state's help via the Financially Distressed Cities Act and allow smaller units of government to qualify for the same assistance.

The lack of Chapter 9 accessibility leaves municipalities that don't reach out to the state for assistance to plod along in a form of walking insolvency, paying bills as revenue arrives and surviving largely on accounting gimmicks and state assistance, something referred to as a "zombie municipality" by Truth in Accounting.

By Cole Lauterbach | The Center Square

Sep 3, 2019

Fitch Downgrades Alaska Again for State Budget Problems.

Alaska's financial situation got a little bit tougher Thursday afternoon when Fitch Ratings downgraded a suite of credit ratings tied to state debt.

Most notably, Fitch downgraded Alaska's general obligation, or GO bond rating from AA to AA- on $724 million worth of bonds.

Another roughly $1.1 billion in state appropriation bonds was downgraded from AA- to A+ and more than $1.1 billion in Alaska Municipal Bond Bank Authority resolution bonds also went from AA- to A+.

Fitch gave the ratings a stable outlook.

As with other ratings downgrades from Fitch and other agencies in recent years, the downgrade is tied to the State of Alaska's continued inability to balance its budget, according to a statement accompanying the announcement.

"To date, (state budget) operating revenue remains anemic, and the administration's commitment to funding a full Permanent Fund dividend despite projected revenue loss has contributed to the enactment of a fiscal 2020 budget that includes deep cuts to core state services," Fitch analysts

wrote. “Fitch expects this will be followed by comparable actions in fiscal 2021. Despite the expenditure reductions, appropriations from the state’s Statutory Budget Reserve Fund and Constitutional Budget Reserve Fund are required to fund the dividend payment and the capital program, reflecting the state’s ongoing structural deficit.”

Department of Revenue officials have said a one-notch downgrade such as this one roughly equates to a 0.25 percent increase in the interest rate on money the state borrows often through bonds for capital projects. Local governments and school districts also piggy-back on the state’s rating and use the moral obligation of the state to secure lower interest financing for their projects.

The Revenue Department is looking to sell up to $700 million in revenue bonds to pay off the state’s remaining oil and gas tax credit obligation after the refundable tax credit program was ended in 2017 due to budget constraints. However, it’s unclear exactly when, or if, that bond sale will take place as the legality of the plan has been challenged and is currently under review by the Alaska Supreme Court.

State debt manager and Alaska Municipal Bond Bank Authority Executive Director Deven Mitchell said via email that he was surprised and disappointed by the downgrade because even though getting to a final 2020 budget was “a painful process” the state ended up with a budget that is pretty much balanced.

“The report was based on negative ‘beliefs’ and ‘potentially expected futures’ rather than the reality of today,” Mitchell said.

The state’s credit rating has been on a downward trajectory since early 2016 when oil prices dropped to less than $30 per barrel and the state’s budget deficit was more than $3 billion. Alaska had sterling AAA ratings prior to 2016.

Moody’s and Investors Service currently has an Aa3 (comparable to AA-) rating for the state’s GO bonds, while Standard and Poor’s has an AA rating for the state.

In February, Dunleavy proposed closing the state’s roughly $1.6 billion deficit without tax increases or reducing PFD payments by drastically cutting state services and pulling local tax revenue into state coffers.

According to Fitch, Gov. Michael J. Dunleavy’s desire to pay a full, statutorily calculated PFD “elevates the state’s fixed cost burden and reduces its ability to respond to future economic weakness as revenue growth is expected to be modest.”

The agency’s analysts also believe that “substantial reductions” to the state’s health care and university budgets could have consequences for future economic growth in the state.

A prolonged budget debate resulted in Dunleavy vetoing $50 million from the state’s Medicaid budget in addition to a $70 million cut instituted by the Legislature. Dunleavy agreed to a $25 million cut — part of $70 million over three years — to the state’s support of the University of Alaska.

Dunleavy was upbeat in a statement issued late Thursday responding to Fitch’s criticisms of the state’s fiscal situation.

“In reading this report, it’s clear this is the result of what has – or has not – occurred over the last several years,” the statement said. “My administration is determined to get our fiscal house in order. Alaska has struggled with fiscal imbalance for years and we must continue moving forward on

necessary steps to put in place a stable and reliable fiscal plan. I continue to be optimistic for Alaska's future: unemployment is at its lowest rate in nine years; GDP is on the rise; billions in new oil and gas investment are being made on our North Slope; the Ted Stevens Anchorage International Airport – the 2nd busiest for air cargo in the US, 5th busiest in the world – continues to expand and bring new business to Alaska. Once our fiscal house is in order, I have no doubt Alaska will once again top the rating agency charts."

Moody's downgraded the University of Alaska's bond ratings several notches in July following the governor's initial $130 million, or roughly 40 percent, cut to its state budget.

The agency also lowered the state-owned Alaska Industrial Development and Export Authority's bond rating two notches — from Aa3 to A2 — in late July despite it's generally solid financial performance because the authority is ultimately tied to the state's budget situation, analysts wrote. AIDEA routinely finances infrastructure and real estate development projects through its roughly $1.3 billion Revolving Fund. Dunleavy proposed using a portion of the Revolving Fund to pay for other state government expenses in his original budget plan but the idea was not part of the final state budget.

Alaska Journal of Commerce

By: Elwood Brehmer

Thu, 09/05/2019 – 3:41pm

Elwood Brehmer can be reached at elwood.brehmer@alaskajournal.com.

Updated:
09/06/2019 – 10:25am

- SEC Chairman Calls for Legal Bulletin on EMMA Disclosures: King & Spalding
- NFMA Seeks Comments on Draft Recommended Best Practices in Disclosure for Dedicated Tax Bonds.
- SEC Fixed Income Market Structure Advisory Committee (FIMSAC) Meeting.
- *Cheatham I.R.A. v. Huntington National Bank* – Supreme Court of Ohio holds, as a matter of first impression, that previously-accrued breach of contract claim did not automatically transfer to bondholder pursuant to statute upon purchase of bonds and that trust indenture did no automatically transfer breach of contract claim to bondholder upon purchaser of bonds.
- And finally, Lighten Up, Francis is brought to us this week by *Preston Hollow Capital LLC v. Nuveen LLC*, in which Judge Glasscock (we're not making that up) opined as follows, "Law (and particularly its more flexible component, equity) is a creature of nuance and fine-but-significant gradations, and pithiness, like garlic, may both enhance the savor of a discourse, and at the same time mask its subtle flavors." Never in the history of American jurisprudence has there been a man in more dire need of a wedgie. Then again, given that name, we're rather certain that he's no stranger to that particular briar patch.

BOND SPATS - DELAWARE

Preston Hollow Capital LLC v. Nuveen LLC

Court of Chancery of Delaware - August 13, 2019 - A.3d - 2019 WL 3848518

Investment firm filed suit against competitor, pleading four counts, including defamation. Investment firm also filed motion for preliminary injunction and requisite motion to expedite.

The Court of Chancery granted the motion to expedite and directed parties to proceed to trial on request for permanent injunctive relief. Competitor filed motion to dismiss. In light of impending trial, the Court issued partial bench decision, granting motion to dismiss in part, denying it in part, and withholding decision on defamation claim and asking parties to file supplemental submissions regarding whether final injunctive relief may issue to enjoin defamation.

The Court of Chancery Vice Chancellor, held that:

- Purportedly-defamatory statements were oral communications, which met standard for slander per se;
- Equity would not enjoin future defamation; and
- Damages may be available should investment firm elect to transfer to court of law.

Purportedly-defamatory statements were oral communications, which met standard for slander per se, and therefore the Court of Chancery would consider defendant-investment firm's motion to dismiss plaintiff-investment firm's defamation claim under five-factor standard for defamation; defendant communicated false statements to banks, which were plaintiff's potential business partners, in a manner that those parties understood were of defamatory character, to plaintiff's detriment.

Equity would not enjoin future defamation, and therefore the Court of Chancery lacked jurisdiction to hear investment firm's defamation claim in which it sought an order preventing its competitor from engaging in further unlawful and tortious communications with lenders, broker-dealers and other participants in high yield municipal bond market; no exception, including trade libel exception, applied to general rule that actions for defamation were reserved for law courts, not Chancery.

Although investment firm's claim seeking to enjoin any and all new defamatory statements made against it by competitor would be dismissed by the Court of Chancery for lack of jurisdiction, should investment firm elect to transfer, and if the case proceeds at law, damages may be available, and, in the alternative, investment firm may pursue solely its tortious interference and statutory claims, and, if successful, seek equitable relief in the Court of Chancery.

ZONING & PLANNING - INDIANA

Metropolitan Development Commission v. Worth Outdoor, LLC

Court of Appeals of Indiana - August 16, 2019 - N.E.3d - 2019 WL 3850766

Metropolitan Development Commission brought action against billboard sign owner that had a sign permit claiming owner had violated portions of city-county ordinance by operating an unpermitted digital billboard and failing to obtain an improvement location permit (ILP) before altering the billboard from static to digital.

The Superior Court granted holder's motion for summary judgment. Commission appealed.

The Court of Appeals held that:

- Billboard was a structure requiring an ILP, and therefore was not a legally established nonconforming use, and
- Owner did not have statutory vested rights in its digital billboard.

Digital billboard was a structure requiring an improvement location permit (ILP) from Metropolitan Development Commission before it could be altered or erected, pursuant to a city-county ordinance, and therefore the billboard was not a legally established nonconforming use, where the billboard, whether it was a new sign or an alteration of the original sign, was a sign that required a specific location upon, and was permanently affixed to, the ground.

Billboard sign owner did not have statutory vested rights in its digital billboard, although owner had already constructed and erected the new digital billboard to replace its static billboard, where owner never applied for a required improvement location permit (ILP) when it sought permission for and competed installation of the new billboard, as was required by city-county ordinance, and the permit application process was incomplete.

EMINENT DOMAIN - MARYLAND

Wireless One, Inc. v. Mayor and City Council of Baltimore

Court of Appeals of Maryland - August 23, 2019 - A.3d - 2019 WL 3980791

Former commercial tenant in city-owned market brought action against city and related defendants to be compensated for relocation expenses after it vacated its space after a rental agent for the market informed tenant that its business did not fit into redevelopment plans for the market.

The District Court dismissed action. Former tenant appealed. The Court of Special Appeals affirmed. Former tenant petitioned for a writ of certiorari.

The Court of Appeals held that former tenant was not a “displaced person” under statute allowing for relocation assistance for persons displaced as a result of government acquisition of property by eminent domain.

Former commercial tenant in city-owned market was not a “displaced person” under statute allowing for relocation assistance for persons displaced as a result of government acquisition of property by eminent domain; although tenant vacated its space after a rental agent for the market informed tenant that its business did not fit into redevelopment plans for the market, tenant voluntarily terminated its lease before any action by city or company that city used to operate the market to terminate the lease, and tenant’s lease began well after city had acquired the market.

BONDS - OHIO

Cheatham I.R.A. v. Huntington National Bank

Supreme Court of Ohio - August 22, 2019 - N.E.3d - 2019 WL 3948892 - 2019 -Ohio- 3342

Municipal bond holder, which had purchased bonds from prior holder, brought putative class action against trustee for bondholders, asserting claims for breach of trust indenture that accrued prior to bondholder’s purchase of bonds.

The Court of Common Pleas denied bondholder’s motion to certify class. Bondholder appealed. The

Court of Appeals reversed and remanded. The Supreme Court accepted jurisdiction over bondholder's appeal.

The Supreme Court held that:

- As a matter of first impression, previously-accrued breach of contract claim did not automatically transfer to bondholder pursuant to statute upon purchase of bonds, and
- Trust indenture did no automatically transfer breach of contract claim to bondholder upon purchaser of bonds.

Absent a valid assignment of a right to bring a cause of action, the sale of a municipal bond does not automatically vest in the purchaser all causes of action the seller had the right to bring relating to the bond by operation of the statute codifying the Uniform Commercial Code (UCC) provision stating that a purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer.

Claim for breach of contract against trustee of trust indenture that accrued before bondholder owned municipal bonds did not automatically transfer to bondholder as subsequent purchaser of bonds, under statute codifying the Uniform Commercial Code (UCC) provision stating that a purchaser of security acquired all rights in the security that the transferor had or had power to transfer, but rather claim was chose in action that was personal-property right transferable only by express assignment; while language of statute might superficially support automatic transfer, it did not assign rights to a purchaser upon transfer of title, but rather only set forth shelter rule that a purchaser took all rights that seller had power to give, and such result was consistent with federal law.

As an expression of the shelter rule, the Uniform Commercial Code (UCC) provision stating that a purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer does not define "rights in the security" as any right associated with the security that the transferor "had or had power to transfer"; instead, the phrase "had or had power to transfer" stands for the proposition that people cannot transfer rights that they do not own or control.

Cause of action under the federal Trust Indenture Act, providing that any person who makes misleading statements or omissions in any document filed with the Securities and Exchange Commission (SEC) shall be liable to persons who purchased such securities in reliance upon the statements or omissions, is personal to those persons who relied, and it does not follow the security to remote purchasers who had no basis for reliance.

Provision of Ohio's version of Uniform Commercial Code (UCC), stating that a purchaser or a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer, does not operate to allow the automatic assignment of rights upon a transfer of title; it sets forth only the shelter rule of securities—the transferee takes all rights in the thing transferred that the transferor had the power to give.

Trust indenture, which stated that indenture was for the benefit, security, and protection of all present and future municipal bond holders, and that actual ownership of bond was condition precedent to maintenance of cause of action arising under trust indenture, did not automatically transfer to bondholder, upon its purchase of bonds, a chose in action for breach of contract against trustee that accrued before purchase; indenture language did not expressly provide for automatic transfer of chose in action, but rather merely stated that trustee was bound by terms of trust indenture no matter when bonds were purchased and limited rights of third-party beneficiaries, and

indenture further stated that any rights not specifically mentioned were not implied.

IMMUNITY - OHIO

Molnar v. City of Green

Court of Appeals of Ohio, Ninth District, Summit County - July 31, 2019 = N.E.3d - 2019 WL 3504031 - 2019 -Ohio- 3083

Former employee brought action against city, mayor, and law director in their individual and official capacities, for breach of contract, negligence, injunctive relief, and libel, and seeking punitive damages, alleging that city had agreed to rescind and destroy letter terminating his employment and that letter had been subsequently produced pursuant to records request.

The Court of Common Pleas denied motion to dismiss for failure to state a claim arguing they were immune from liability as a political subdivision and employees. City, mayor, and law director appealed. The Court of Appeals, reversed and remanded. On remand, the Court of Common Pleas again denied the motion to dismiss. City, mayor, and law director appealed.

The Court of Appeals held that:

- City, mayor, and law director failed to demonstrate that based on the pleadings there existed no set of facts that could have supported an exception to political subdivision immunity, and
- Mayor and law director failed to demonstrate that it was apparent on the face of the pleadings that there existed no set of facts under which employee could succeed on his claim by countering the claimed defense of immunity as employees of city.

PUBLIC UTILITIES - TEXAS

In re Texas-New Mexico Power Company

Court of Appeals of Texas, Waco - August 14, 2019 - Not Reported in S.W. Rptr. - 2019 WL 3822274

Property owners brought tort action against power company, alleging power surge that damaged property was caused by power company's negligence and violation of Texas Utilities Code and Public Utilities Commission (PUC) regulations.

Power company moved to dismiss on grounds of failure to exhaust administrative remedies. The District Court denied motion to dismiss. Power company filed petition for writ of mandamus.

The Court of Appeals held that:

- PUC had exclusive jurisdiction over property owner's claims, and
- Mandamus was appropriate vehicle for power company's challenge to trial court's denial of motion to dismiss.

Property owners' tort claims that power company's violations of utility statutes and Public Utilities Commission (PUC) regulations caused power surge to damage their home was a claim involving power company's "services," and, thus, fell within PUC's exclusive jurisdiction over the services of an electric utility.

Mandamus was appropriate vehicle for power company to challenge trial court's ruling denying its motion to dismiss property owners' tort claims, which involved power company's alleged violations of Public Utilities Commission regulations, on the ground that property owners failed to exhaust administrative remedies before the PUC; allowing trial to go forward would interfere with PUC's legislatively-mandated function and purpose.

TAX - NEW JERSEY

Reservoir v. Township

Superior Court of New Jersey, Appellate Division - August 22, 2019 - A.3d - 2019 WL 3949208

Taxpayer which operated a reservoir brought multiple actions challenging township's assessment of property taxes.

After trial, the Tax Court affirmed the assessments but also awarded taxpayer a functional obsolescence deduction. Taxpayer appealed and township cross appealed.

The Superior Court held that:

- Tax Court could use trended cost analysis to value the reservoir;
- Tax Court's could trend construction-related costs; and
- Evidence supported Tax Court's award of a functional obsolescence deduction.

Original construction costs of a reservoir were reliable for purposes of ascertaining true value of taxpayer's reservoir, and thus Tax Court could use trended cost analysis to determine value in taxpayer's action challenging tax assessments; the reservoir constituted special purpose property, there were detailed cost compilations available regarding reservoir's construction, and employee responsible for estimating the original construction costs testified as to these costs.

Soft or indirect costs such as engineering and architect's charges, environmental site planning, interior design, the expenses of a landscape architect, the cost of bringing utilities to the site, project supervision, a traffic consultant, financing charges, interest and taxes during construction, insurance and legal fees are all properly included in the cost of improvements for the purpose of establishing real property's true value.

Tax Court's choice to trend under trended cost analysis the costs incurred by taxpayer in settling claims with a contractor, public relations, and installation and maintenance of a bubble for continuation of construction work on taxpayer's reservoir during the winter did not constitute reversible error reservoir in taxpayer's action challenging property tax assessments; as a matter of law, the Court could consider public relations a reasonable expense incidental to construction of a controversial project such as the reservoir and record showed that the construction-related costs were those that any prudent person replacing the reservoir would have payed.

Evidence was sufficient to establish that the original costs incurred by taxpayer in constructing a reservoir were reasonable and reliable, supporting Tax Court's decision to award taxpayer a deduction for functional obsolescence based on increased construction costs; although the project stayed within budget, the record showed that bad weather and a poorly performing project manager imposed additional expenses on taxpayer.

NFMA Seeks Comments on Draft Recommended Best Practices in Disclosure for Dedicated Tax Bonds.

The Disclosure Committee is pleased to release the draft of the Recommended Best Practices in Disclosure (RBP) for Dedicated Tax Bonds. To view the draft, click here.

Comments on this draft will be accepted through November 30, 2019.

This paper represents the latest of sixteen distinct sectors addressed by the NFMA's Disclosure Committee over the past two decades via RBPs. In addition to RBPs, the NFMA has released eight white papers on disclosure-related issues.

If you are unfamiliar with the NFMA's efforts related to disclosure, go to Resources/Best Practices in Disclosure for more information.

SEC Chairman Calls for Legal Bulletin on EMMA Disclosures: King & Spalding

Is information posted on EMMA subject to greater scrutiny under the antifraud provisions of the federal securities laws than when posted only on an issuer's website?

That is the question raised by Securities and Exchange Commission Chairman Jay Clayton's introductory remarks to the SEC's Fixed Income Market Structure Advisory Committee on Monday, July 29. Chairman Clayton said that he had heard of issuers being advised that disclosing information through the Municipal Securities Rulemaking Board's EMMA municipal disclosure system triggered a "more rigorous liability standard for that information than disclosing the same information to investors through other means." Clayton said he had "significant questions about this advice" and whether it was correct as a matter of law and policy. He added that he would ask the SEC's Office of Municipal Securities to create a staff legal bulletin on the topic.

BACKGROUND

The SEC's Rule 10b-5, which was promulgated in 1943 under the authority of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), provides that it is unlawful "in connection with the purchase or sale" of a security "to make any untrue statement of a material fact or to omit 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." Section 17(a) of the Securities Act of 1933 (the "Securities Act") provides for similar misstatement or omission antifraud liability "in the offer or sale" of a security.

In 1975, both the Exchange Act and the Securities Act were amended in a number of ways. Among the changes was the so-called "Tower Amendment," which precludes the SEC and the MSRB from requiring filings, registration, or the provision of information by municipal issuers in connection with the sale of municipal securities. Also included in the 1975 amendments were changes that subjected municipal issuers to the antifraud provisions of Securities Act Section 17(a), Exchange Act Section 10(b) and SEC Rule 10b-5.

Prior to the promulgation of Rule 15c2-12 in 1989, issuers had no obligation to provide any sort of

prospectus in connection with a public offering of municipal bonds; indeed, the Tower Amendment prevented the SEC from requiring such a thing. With Rule 15c2-12, the SEC used its ability to regulate securities broker-dealers to bring municipal securities disclosure to the primary market. The new rule required underwriters of municipal securities to obtain and review an "official statement" from the issuer containing the proposed terms of the securities and financial and operating data material to an evaluation of the offering and to send a copy of the official statement to any potential customer in the offering upon request.

In 1994, Rule 15c2-12 was amended to require not only primary market disclosure (the official statement) but also secondary market disclosure (so-called "continuing disclosure"). As with the original rule, the continuing disclosure provisions of Rule 15c2-12 achieve their aim through the regulation of broker-dealers rather than requiring or mandating issuer disclosure or registration, requiring underwriters to obtain from an issuer or obligated person a contractual undertaking to provide annual financial and operating information and to provide notices of certain material events to certain designated dissemination services. This requirement is similar to the reporting requirements for issuers under the Exchange Act, although the required disclosures are narrower in scope and the Rule recognizes a number of differences between municipal issuers and other types of issuers. The SEC has since expanded these continuing disclosure requirements to cover variable rate demand or tender obligations (which in earlier versions of the Rule were exempt) and has twice amended the rule to require disclosure of additional events. The SEC has also demonstrated more recent emphasis on continuing disclosure in its Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), where more than 140 municipal issuers and other obligated persons were subject to Enforcement actions between 2014 and 2016.

After many years of experience and general dissatisfaction with private dissemination services, the MSRB created the EMMA website in 2008, and a year later the SEC designated EMMA as the official repository for municipal securities disclosures. The EMMA system is now widely regarded as an efficient, useful and easily accessible platform for disclosing and obtaining information about an issuer and its publicly traded securities. Particularly for issuers that do not maintain investor relations websites – which is the majority of them – EMMA is the first place investors look to for information.

THE ISSUE

Do statements made through EMMA trigger a "more rigorous liability standard" than the same statements disclosed to investors through other means? It actually depends on a number of circumstances, including whether the statements are directed to investors and what is meant by "other means." It is unlikely, however, that the SEC's Division of Enforcement will focus on or distinguish between the mediums of dissemination as opposed to the content of the information provided.

It has long been recognized that a statement need not be directed specifically at investors to be subject to the antifraud provisions. Contemporaneously with its release of the proposed continuing disclosure amendments in 1994, the SEC issued a "Statement of the Commission Regarding Disclosure Obligations of Municipal Securities Issuers and Others" – known generally as the "interpretive release." An expansive statement of the SEC's view of municipal securities disclosure practices, the interpretive release contained two statements particularly relevant to this discussion. While municipal issuers are not required to comply with continuous reporting and disclosure practices required of public companies, when a municipal issuer does release information to the public "that is reasonably expected to reach investors and the trading markets, those disclosures are subject to the antifraud provisions." Second, even if such statements are not published "for the purposes of informing the securities markets," they may nonetheless give rise to antifraud liability

under the Securities Act and the Exchange Act.

While statements made on EMMA, on an issuer's investor relations web page, in a press release, or on an issuer's general website, can all give rise to antifraud liability, a statement specifically directed to investors (such as through EMMA or on a specific investor relations page) may be more likely to be noticed or reviewed by investors and thus raise greater concern within the SEC's Division of Enforcement. This could be particularly true in the case of material omissions, which is the most typical concern for issuers. We can stipulate that very few issuers make false representations intentionally, whether on EMMA or otherwise, in connection with the purchase or sale of municipal securities. Municipal issuers sometimes face scrutiny, however, when they post completely accurate statements that are alleged to be incomplete for securities law purposes – i.e., statements that omit to state other material facts necessary to make the otherwise accurate facts not misleading in light of the circumstances under which the statements are made.

The way in which a particular statement is published or otherwise communicated to investors can affect the degree to which additional statements are necessary to make the statement not misleading for securities law purposes. Issuers have many reasons to communicate, and by and large the constituents they intend to communicate with are not investors but rather the citizens and residents of their communities. It is not reasonable to expect that every statement published on an issuer's general government website be scrubbed by securities lawyers and examined in depth to ensure that it does not contain a material omission. Antifraud liability under the federal securities laws, however, ordinarily does not turn on where and how a statement is made or posted. Reasonable investors, as well as the SEC, are likely to expect that all statements, whether on EMMA or otherwise, are accurate and complete.

LOOKING AHEAD

The SEC frequently receives requests from institutional investors and industry groups for more disclosure in the municipal market, and the SEC seems sympathetic to that view, even though the instances of defaults in the municipal market are quite low. At this point, the SEC, municipal investors, underwriters and even issuers appear to have largely coalesced behind EMMA as the site for disclosure of issuer information for investors.

Issuers, on the other hand, are often reluctant to post information on EMMA that is not legally or contractually required. Municipal issuers often do not have the resources to maintain a dedicated staff of securities disclosure professionals or to keep a securities lawyer on retainer to assist with secondary securities market disclosure issues including difficult questions of "materiality." Similarly, the accounting and other reporting systems of many municipal issuers are not set up to provide information as quickly or as completely as would typically be required in the corporate market, and for many municipal issuers, particularly small or infrequent issuers, requiring more sophisticated disclosure would impose a substantial burden on the issuers without clearly producing significant benefits. Nonetheless, those statements and other information that is posted on EMMA are unquestionably statements intended for the investment community, are not infrequently reviewed by the SEC, and need to be reviewed by the issuer with that in mind prior to such statements being posted.

The staff legal bulletin Chairman Clayton said he would request will likely clarify the SEC's view on the differences, if any, between communicating with investors through EMMA and communicating with investors through other means. Until such guidance is issued, however, municipal issuers and other obligated persons should assume that the SEC remains focused on continuing disclosure, as evidenced by the MCDC Initiative, and thus they should remain equally focused on the content and completeness of their disclosures.

by Floyd Newton III & Matthew Nichols

August 30, 2019

King & Spalding

SEC Fixed Income Market Structure Advisory Committee (FIMSAC) Meeting.

SEC Fixed Income Market Structure Advisory Committee Meeting

Discussion Panels

- Draft Recommendation for Investor Education Regarding Retail Notes
- Draft Recommendation on Certain Principal Transactions with Advisory Clients
- Updates from the Technology and Electronic Trading Subcommittee and ETFs and Bond Funds Subcommittee
- Content and Timeliness of Municipal Issuer Disclosures
- Credit Ratings: Future Modifications or Status Quo

Opening Statements

In his opening statement, Securities and Exchange Commission (SEC) Chairman Jay Clayton highlighted some of the developments from past Fixed Income Market Structure Advisory Committee (FIMSAC) recommendations and the importance of the recommendation to increase education for retail investors. SEC Commissioner Allison Lee also highlighted the importance of clear disclosure. Division of Trading and Markets Director Brett Redfearn discussed the distinct challenges of the Fixed Income market and thanked the FIMSAC members for their efforts.

Draft Recommendation for Investor Education Regarding Retail Notes

- Susan Sheffield, GM Financial
- Sarah Tucker, Raymond James
- Brian Walker, Incapital
- Brad Winges, Hilltop Securities
- Moderator: Mihir Worah, PIMCO

Winges described the retail note market compared to the other areas of corporate bonds (institutional and intermarket). He said that in contrast to institutional advisors who need liquidity, most retail investors tend to buy and hold and are willing to forgo some liquidity for higher yield. Worah added that as long as investors are aware of the liquidity trade-off, it should be their choice.

Sheffield and Scott Krohn described how retail investors purchase these securities and how retail bonds are used in their company's capital structure. Sheffield stated that GM Financial issued approximately $558 million over last two years with a two- to ten-year maturity. Krohn stated that Verizon has about $1 billion retail bonds outstanding which represents about one percent of its total bond issuance. Sheffield and Krohn explained that retail bonds allow investors to buy these bonds at par on the primary market and could be compared as an alternative to a CD. While these bonds have a call option Sheffiled and Krohn stated their companies have not exercised it to date. Tucker stated that during the last down cycle of interest rates, some issuers exercised the call option but most investors understood this feature.

Walker described the process of issuing the retail bonds, and emphasized that this is the first time retail investors can participate in new issuances of individual companies rather than a collective of secondary bonds in ETFs or bond funds. Walker stated investors make their decision to invest over one week and have the note come due at par. He continued that the corporates distribute to the investors through numerous brokers and dealers but will only have to settle one note.

Tucker said that investors typically purchase these retail notes when they want an individual bond with stated predictable income and maturity, and these investors typically have a specific time in mind when they want the money back to pay for something, such as college tuition. Tucker said she does not see a high volume of trading, especially compared to the institutional market, but that this is not surprising since these notes are most appropriate for buy and hold retail investments. She said that investors are able to build in liquidity over time by laddering the bonds to come to maturity over several years. Tucker stated that while the brokerage transaction cost may initially appear high for investors, she highlighted that there is only an initial brokerage cost and the cost of ownership over time is less because investors are holding to maturity.

Question & Answer

Clayton stated that he wants to ensure advisors understand these retail notes and that investors especially understand the differences in costs compared to institutional notes. Walker stated that investors can compare the cost of retail notes to institutional notes on the Trade Reporting and Compliance Engine (TRACE) but there is no single page comparison. Tucker stated that her firm provides tools for advisors to provide a comparison to show trade-offs. However, Tucker stated that the investors focus on yield and maturity. Walker said that his firm creates their own marketing materials that reiterate the same risks described in the notes' prospectuses that dealers can use to ensure customers are aware of the risks.

Gilbert Garcia of Carcia Hamilton & Associates asked what the typical yield or coupon differential is, whether investors know about TRACE and whether these bonds are traded on the same or different books. Walker stated there is typically a 20-25 basis point coupon differential. Tucker noted that fees in a commission account will be about the same for the primary and secondary market, and that investors know of TRACE and her firm gives links to TRACE and bond facts website on trade confirmations. Tucker added that traders do both institutional and retail and can evaluate both markets.

Larry Harris asked what happens to the survivor option upon secondary transfer and with the note being conditioned on a life, whether life insurance regulators have focused on these. Walker and Tucker stated the survivor option passes with the bond and will be based on the purchaser's life span. Additionally, Tucker explained that insurance companies issue these notes and they go through their analysis.

Horrace Carter asked whether this is different from the inter-note program and whether those issues have been addressed. Winges stated this is not just an inter-note program and with technology developments there are more electronic trading platforms where issuers can issue securities in any structure an investor wants. Winges further said this other market is continuing to grow with the ability to create bespoke bonds, which may have different education needs.

Rich McVey asked the panelists about any downside to the recommendation to enhance education. Tucker stated that there is no downside to education but it needs to be properly framed. Walker stated that any efforts need to be balanced and not overly onerous so they do not restrict their use.

Redfearn referenced Regulation Best Interest and asked how dual-registrants decide whether they

are acting as a broker or advisor. Tucker explained that with a buy and hold investment there is not as much necessary advice, so they may elect to act on a brokerage or commission-based agreement but brokers will continue monitoring the notes. Tucker added that most retail investors can choose their appropriate advice model by purchasing at par with an upfront transaction cost or purchasing less than par with concession done on an agency basis.

The recommendation was unanimously approved.

Draft Recommendation on Certain Principal Transactions with Advisory Clients

- Jude Arena, Bank of America Merrill Lynch
- John Bagley, MSRB
- John Cahalane, Tradeweb
- Chris Ferreri, Hartfield, Titus, and Donnelly
- Craig Noble, Wells Fargo Advisors
- Moderator: Lynn Martin, ICE Data Services

As to whether and how this preliminary recommendation on blind bidding would benefit retail investors, Arena stated that allowing advisor clients to access those bids is a positive but having a different market structure and blind bidding creates unnecessary confusion. Noble stated that this will help with liquidity and that the subcommittee should look to the individual Rule 206 exemption for client advised accounts as to how it helped clients.

The panelists then discussed what needs to be built to implement a blind bidding protocol. Cahalane stated this would require minimal additional work as the platform already has functionality, noting that some customers could bid in the blind but those connecting through API may need additional technology changes. Ferreri stated that the work is straightforward for those parts of the workflow but may be more difficult for those not already in the system. Arena added that most smaller broker-dealers would have to rely on alternative trading systems (ATSs) but larger dealers would decide whether to create their own process or rely on ATSs.

Noble expressed concern that the recommendation only focuses on municipal securities which requires additional coding for all managed accounts. Bagley said he views the recommendation as a positive for providing liquidity but expressed concern that this will make managed accounts even more profitable.

Martin asked whether improvements to best execution would obviate the need to bifurcate the process. Jude stated that a better way forward would be to rely on the best execution and fair and reasonable requirements and have an explicit prohibition on pennying. Bagley said that it would be better to address this problem now rather than wait for an express prohibition on pennying.

Question & Answer

Carter said he thought it would be superior to have one process, but asked whether it is possible to have two. Cahalane replied that it is still possible to have two processes as some clients already bid in the blind, adding that it should be one way or the other but Tradeweb can handle both processes.

Sonali Thiesen asked whether a prohibition on pennying and unsetting 206 would be a better solution from a cost-benefit perspective. Bagley replied that the concern is there is no guarantee or time frame on what will happen with pennying. Noble and Arena said that allowing a blanket waiver to 206 and a prohibition on pennying would allow advisory clients to get access to bids without major changes to market structure. Noble added that a more general exemption, rather than just the

individual exemption for client advised managed accounts, would be a fair process and would help.

The recommendation was approved in a 12-4 vote.

Updates from the Technology and Electronic Trading Subcommittee and ETFs and Bond Funds Subcommittee
Technology and Electronic Trading Subcommittee Update

Richard McVey discussed the two issues of focus for the subcommittee: (1) pennying; and (2) reviewing the comment on FINRA's new issue proposal. On the pennying recommendation, he said the subcommittee is working on adding the discussed language into the recommendation and clarifying the difference between pennying and legitimate last look. As for the FINRA new issue proposal, he explained the committee filed a letter to reiterate the need for this service and clarify its recommendations.

ETFs and Bond Funds Subcommittee Update

Ananth Madhavan stated that the subcommittee's recommendations are timely considering the recent European Systemic Risk Board (ESRB) report on this issue. Additionally, Madhavan discussed the two potential upcoming panels on: (1) the role of authorized participants and potential market structure improvements to deal with step away risk during times of stress; and (2) bond index construction funds which requires frequent predictable trading that leads to non-fundamental trading effects.

Content and Timeliness of Municipal Issuer Disclosures

- Tom Doe, Municipal Market Analytics
- Sheila May, GW&K Investment Management
- Tom McLoughlin, UBS
- Tim Schaefer, Office of the California State Treasurer
- Kendel Taylor, City of Alexandria
- James Wallin, Alliance Bernstein
- Rebecca Olsen, Office of Municipal Securities, SEC

Olsen gave an overview of the regulation of the municipal securities market, saying the municipal market does not have the same regulations as other securities largely due to the broad exemptions from the Securities Act of 1933 and Securities Exchange Act of 1934. In the absence of typical registration and reporting requirements for municipal securities, she said that investors are protected by: (1) enforcement of anti-fraud provision prohibiting deceit, misrepresentation and fraud; (2) registration and regulation of broker-dealers and municipal security dealers; (3) Rule 15c2-12, which provides a basic disclosure framework; (4) registration and regulation of municipal advisors; and (5) SEC guidance.

Schaefer described the information provided to rating agencies, saying that California is unique in that it typically raises $4-6 billion in each the spring and fall and it provides the rating agencies a draft of its Appendix A, which provides material investor information, and will amend Appendix A to reflect the rating agencies' questions before making it public. Taylor said Alexandria typically raises $23-100 million each year, and the disclosures focus on describing the changes from the previous year.

As to whether rating agencies receive additional useful information, Wallin expressed his belief that rating agencies have the advantage of receiving information on an ongoing basis while investors only

receive information when the issuer is in need. However, McLoughlin stated that the primary disclosures are typically sufficient but investors don't receive unaudited interim financial statements. May said that rating agencies receive additional information but most of that information may not be material. Doe added that issuers typically make themselves available to investors but face additional costs associated with providing that information.

Wallin, McLoughlin and May stated that financial reports lose their relevance the later they are published, and in those cases, firms must rely on independent sources and interim information. Wallin and McLoughlin explained their firms will first look for this information on EMMA and then look at the issuers' websites for this important information, but both sources are primarily useful only for institutional investors and vary in their usefulness. May said her firm goes to issuer websites first and then uses EMMA for new documents or event notices.

The panelists discussed whether disclosure practices affect issuers' cost of borrowing. Wallin said that there is anecdotal evidence that the lack of accurate and timely disclosures impacts issuers' borrowing ability, but there is no quantifiable evidence. McLoughlin and Doe stated that there is more demand than supply, so there is no penalty for not disclosing timely, accurate information. McLoughlin noted that smaller issuers don't always see the cause and effect between price and publishing financial information. However, both Taylor and Schaefer stated they believe their disclosure practices help their ability to issue bonds.

Credit Ratings Future Modifications or Status Quo

- Daniel Gates, Moody's Investors Service
- Yann Le Pallec, S&P Global
- Otis Otih, Mars
- Susan Sheffield, GM Financial
- Rachel Wilson, Iron Mountain

Gates stated that the analytical approach for credit rating agencies relies on quality and consistency. He said that investor demand is important for producing high-quality ratings, and added that it is essential for rating agencies to regularly analyze the performance and their methodology to produce the "best" possible ratings. He said that the issuer pay model provides the most rational and easy process to disseminate information.

Le Pallec said that competition for commercial approaches to credit ratings depends on structure, classes, and performance based on investor demand. He stated that rating performance is contingent on the time, class, and methodology, with a rank of risk and stability. He added that review of performance and the path to defaults are important for rating agencies to be transparent and predictable. Le Pallec suggested continuing to operate on the current issuer pay model, as he said it provides the highest level of public transparency and has the least amount of conflicts.

Otih stated that based on his experience with the credit rating process, the system was "smooth" and transparent for Mars to achieve its goals in the debt market. He said there were three credit rating agencies to choose from, and the policies for disclosures were clear. Otih suggested that reform to the current payment model would cause a potential conflict of interest for the relationship between investor and issuer transparency. He recommended not changing the current system, as a change could create the impression that certain agencies were being "favored" by issuers.

Sheffield said that GM has engaged in the unsecured and asset-backed security (ABS) market, which both require a good relationship with rating agencies and investors. She said that GM has a team of analysts that consider the pool of collateral and the historical performance of ratings to ensure a

“smooth” process. Sheffield said GM rotates between S&P Global, DBRS, Moody’s and Fitch to include two of the credit ratings on each transaction report for flexibility and consistency. She added that the issuer payment model, as an alternative to the current model, works “pretty well,” but depends on timing and flexibility for investors, as well as the consideration of fees and will change relationship structures in the process.

Wilson said that issuers respond to what investors need and want through consideration of costs and other dialogue. She noted that the analyst and rating agency relationship depends on fit, metrics and different levels of the process. Wilson stated that she would like to improve the current payment model and is concerned about the benefits.

Question & Answer

Clayton asked about the rigor of covenant-lite loans. Gates said there have been more covenant-lite loans in the market than ever before, and they provide issuers financial flexibility through their tight control. However, he said they do not address concerns of liquidity, but instead offer more leverage for issuers.

Redfearn asked about the pros and cons of sale side research. Sheffield said that sale side research is not helpful in the rating decisions process. She added that at times, there is non-public information that influences decisions and suggested working to create a more transparent process.

Michael Heaney, Chair of FIMSAC, asked about concerns of the multi-pay model. Le Pallec said that in “minority” instances credit rating agencies use the multi-pay model. He said credit rating agencies would have to adopt a transition in models and avoid potential conflict if this were to change. Gates said that a shift to such a model depends on impacts and its usefulness while preventing side effects.

Harris asked about learning from mistakes in the quality of ratings and how the review process works. Gates said that S&P publishes their tables for default rates annually and analyze the defaults for various reasons. He recommended placing ratings at the “right” level, implementing tools to prevent drastic movement of ratings, and maintaining the independence of the rating process. Le Pallec added that it is important to analyze rating transitions, as ratings should not drop more than one notch over a year.

For more information on this event, please click here.

EVENT RECAP: Institutional Fixed Income Roundtable

On Thursday, August 22nd, over 50 fixed income leaders from BDA member firms attended BDA’s Institutional Fixed Income Roundtable at the Ritz-Carlton in Dallas, TX.

Attendees heard from taxable and municipal market experts, engaged in active discussions on fixed income market disintermediation, new liquidity providers, market dynamics and trends, issuance expectations, and the buy-side outlook. Following the Roundtable, participants enjoyed a cocktail and networking reception.

Below is a recap of the key issues discussed at each session.

Fixed Income Overview: Challenges and Opportunities

Discussion Leader: Dan Collins, Managing Director, Head of Fixed Income Market & Portfolio Strategy, Wells Fargo Securities

- Issuance of Treasuries are ramping up, and that trend should continue;
- The impacts of potentially negative rates and a flat-to-inverted yield curve;
- Debt to GDP ratio is concerning, but servicing of the debt is not an issue currently;
- While there are some geopolitical headwinds, there are no reasons to see a recession in the next 12 months

Legislative, Regulatory & Political Update

Discussion Leaders: Kelli McMorrow, Senior VP, Bond Dealers of America; Brett Bolton, VP, Bond Dealers of America

- BDA staff discussed the current political climate and expectations for the 2020 election cycle
- Bolton discussed BDA advocacy actions in response to the Fall 2018 request for guidance regarding private placement activities by municipal advisors
- The BDA response can be viewed here
- Staff also discussed prior meetings with the SEC and the MSRB on the issue, as well as continued work on a second letter to the SEC, and an upcoming Washington, DC fly-in to discuss the request with the SEC and leaders on Capitol Hill highlighting investor protection concerns
- McMorrow provided an update on other legislative and regulatory priorities such as FINRA Rule 4210 and GSE reform. A BDA working group is drafting a white paper on "Main Street" broker-dealer priorities in GSE reform.
- McMorrow and Bolton also gave an update on specific priority issues for the BDA –such as GSE reform, the reinstatement of municipal advance refundings, and rasing the BQ debt limit.

Market Disintermediation/New Liquidity Providers/Buy-Side Trends & Expectations

Discussion Leader: Ken Monahan, VP, Market Structure & Technology, Greenwich Associates

Presentation materials are available here

- Where is the liquidity in the future? And are the sources as distinct as they see?
- Who are the other market participants? And who are the other non-dealer market-makers? And how much of an increasing role are they playing in fixed income?
- Is auto-execution a future goal, or already here?
- This structure is common in FX and Treasuries, but remains an open question as to whether it will succeed in credit.

Bond Dealers of America

August 27, 2019

MSRB Discusses Regulation Best Interest.

MSRB Board Chair Gary Hall and President and CEO Lynnette Kelly recently sat down with Ken Bentsen, CEO of @SIFMA, to discuss Regulation Best Interest, the MSRB's retrospective rule review, mark-up disclosure and more.

Watch here.

MSRB Update Newsletter.

Read about highlights from the August Board meeting, CEO Lynnette Kelly's retirement and new resources and publications in the latest MSRB Update newsletter.

A Hot Job Market Is Causing Labor Pains for State Governments.

Peanut season is nearly upon South Carolina and, like governments across the country, the state has been scrambling to hire.

Its Department of Agriculture is lifting pay for crop inspectors to $13 to $16 an hour from the previous $9.50 to $11.50, and creating an "aide" version of the position that requires less education and experience. It is even tweaking the title to make it sound more appealing: what used to be "temporary inspector" is now a "peanut grading inspector." All this in a bid to find the 125 people it needs to help ensure peanut safety during the September to November harvest.

It is an example of what's happening nationwide. Public agencies that perform crucial functions are struggling to compete as unemployment hovers near its lowest level in a half-century. The public sector has been posting record job openings, and state governments have lost about 20,000 employees since mid-2018, based on Bureau of Labor Statistics data.

Continue reading.

The New York Times

By Jeanna Smialek

Aug. 30, 2019

The Community Reinvestment Act: What Do We Know, and What Do We Need to Know?

Abstract

The Community Reinvestment Act (CRA) was enacted in 1977 to encourage depository institutions to meet the credit needs of their communities. In 2018, the Office of the Comptroller of the Currency put out an advance notice of proposed rulemaking to gather feedback on how the CRA could be modernized. The 1,485 comment letters make clear there is no consensus on what modernization means. We argue that any revision of the regulations would be more effective if it is grounded in facts about current CRA lending. Using 2016 Home Mortgage Disclosure Act data and 2016 Federal Financial Institutions Examination Council loan files, we assess what we know about CRA lending from existing data sources and what we could analyze if we had more data and increased transparency on the data that are already collected.

Download Article.

The Urban Institute

Laurie Goodman, Jun Zhu & John Walsh

August 30, 2019

Muni Bond Demand Withstands Record-Low 30-Year Yield: Invesco

Stephanie Larosiliere, senior municipal strategist at Invesco, examines the impact of a record-low 30-Year yield on the municipal bond market. She speaks with Bloomberg's Taylor Riggs in this week's "Muni Moment" on "Bloomberg Markets."

Watch video.

Bloomberg Markets TV Shows

August 28th, 2019, 8:07 AM PDT

Atlanta Sells Airport Bonds, But Council Has Some Questions On How It Was Done.

Atlanta City Council OK'd the sale of about $700 million in bonds this week on behalf of the airport — and airport revenue will pay off the borrowing. The market considers the airport just about as safe as U.S. Treasury bonds.

But members of Atlanta City Council had some questions about when the bond information was put together and who did it.

So first, the bonds: the yields vary, but for some of the bonds with a maturity date of 10 years, the rate is as low as 1.37% — lower than the rate on 10-year U.S. Treasury bonds. Tax treatment of municipal bonds is a little different from federal bonds, but still, the rate suggests investors think Hartsfield-Jackson Atlanta International Airport is pretty low-risk. The bond rating agencies rate the the airport as having a very strong capacity to meet financial commitments, so that's near the very top of the rating pile.

In a statement, Moody's justified its rating. On up side, there's stable demand for flights in and out of HJIA, which has a "monopoly on air travel to the region." On the down side, a total $4.1 billion in works underway at the airport are in early stages, and costs might go up.

Not important in the rating: noise about a possible state takeover of the airport. Fundamentals of airport economics would be the same, no matter who the owner is.

The bonds will help pay for Concourse T's extension, upgrades to other concourses, modernization and maintenance, a replacement fire station and other things.

But on to Atlanta City Council, which must review and approve the work of the executive branch on

the bond.

Councilmember Antonio Brown said he wanted to have the documents longer before being asked to vote, pointing to a thick stack of hundreds of pages of paper.

That stack had been out for about a week and a half, said city CFO Roosevelt Council, presenting the bond documents to City Council at a Wednesday hearing.

Much of the information, like the general intent of the bond and roughly where the money would be spent is known earlier than that, said Councilmember Howard Shook. Things like the yields on the bonds down to the last decimal, or the date of sale, might not be known with more than a few days' notice. But, still Shook and others commented that there are details about spending and names that they feel arrive to Council uncomfortably late in the process.

"This is the second one that I've voted on, the day of when I'm provided the documentation, the bones of what we're voting on. I'm just not OK continuing to do that," Brown said.

Some of his colleagues piled on questions, mostly about the "transaction team:" the contractors who act as lawyers and advisors on the bond sale.

Like, who picks the team and how much they're paid.

The co-bond counsel are Hunton Andrew Kurth and The Kendall Law Firm. The co-disclosure counsel are Greenberg Traurig and Riddle & Schwartz. The Financial Advisor is Frasca & Associates. The airport consultant is LeighFisher.

Councilmember Natalyn Archibong said she wanted to see the minority- or female-owned business certification for all transaction team firms claiming that status. She was looking at some of the transaction team websites during the meeting and said she wasn't seeing the diversity pieces of all of them.

She also wanted to know how the transaction team is selected.

It's a mix, according to answers given by members of the administration who answered. For some posts, it's via a request-for-proposals process. For bond counsel, proposals are solicited and the city attorney makes the final decision.

Council President Felicia Moore wanted to know how much the team is paid.

Council said he could get her that information. He also said he and his team could communicate more with Councilmembers if they like.

Documents:

Preliminary official statement on the bonds (large file 428 pages)
Federal filings on Atlanta airport revenue bonds

Saporta Report

By Maggie Lee

August 30, 2019

What Will Be the Fallout from Denver Airport's Great Hall P3 Termination?

Dive Brief:

- Moody's Investors Service reported on the credit impact of Denver Airport Enterprise's (DEN) decision to terminate for convenience Great Hall Partners' $1.8 billion contract for renovation of the airport's Jeppesen Terminal and 34 years of concession management. The bond credit rating business believes the move will have minimal negative financial and credit impact for the city and the airport. DEN severed its relationship with Great Hall amid the possibilities of a three-year schedule delay and up to $300 million of change orders.
- Moody's said despite the exposure to higher construction costs as the airport searches for a new contractor, the facility has more than $900 million in liquidity and should easily be able to make an early termination payment to Great Hall, which Moody's estimates will be between $140 million and $180 million, and issue bonds to cover the termination payment and any extra construction costs. Moody's said the exact amount of the termination payment should be finalized closer to Great Hall's official Nov. 12 exit date.
- Moody's said the failed relationship between DEN and Great Hall highlights the risk inherent in using public-private partnerships (P3) for some projects, especially those with the relatively higher risk of "designing for and building in a dynamic operating environment," such as the airport, which has remained open during the project. DEN understood the risks, Moody's said, indicated by its inclusion of a $120 million contingency in Great Hall's contract. Moody's added that P3 projects for construction of new assets are likely to see more success.

Continue reading.

Construction Dive

by Kim Slowey

Aug. 28, 2019

The Multi-Asset QOZB that Combines Entertainment and Real Estate.

How can real estate and a unique entertainment product combine into a Qualified Opportunity Zone Business to deliver long-lasting social

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August 28, 2019

Mobile Sports Betting Is the Moneymaker as More States Legalize.

Some states that disallow mobile wagers, like Mississippi, have brought in less tax revenue than expected from sports gambling

Bets placed via smartphones have rapidly brought New Jersey neck-and-neck with Nevada in the race to be the nation's biggest sports-betting market.

Limits in other states, though, could hamper the nascent industry's growth.

Online gamblers now account for about 80% of all legal wagers on games in New Jersey, which surpassed Nevada for the first time in May in monthly sports bets, according to figures released by the two states. New Jersey legalized sports betting last year, following a Supreme Court ruling that allowed such moves by individual states.

Continue reading.

The Wall Street Journal

By Katherine Sayre

Sept. 2, 2019 1:34 pm ET

Cost of Infrastructure Fixes Is Going Up.

As a stalemate in Washington lingers, unsafe conditions contribute to a rise in property damage

As a stalemate lingers between President Trump and congressional Democrats over moving forward on an infrastructure package, the price of fixing U.S. roads and bridges is going up in dollars and lives.

The number of public transit safety incidents on streets, highways and bridges rose by 13% between 2015 and 2018, in part because of unsafe conditions. The amount of property damage caused by those accidents increased by almost 20%, according to an analysis of the National Transit Database.

Additionally, the National Highway Traffic Safety Administration in 2018 reported 36,750 traffic fatalities on roads, or about 101 deaths a day, up from 97 a day in 2015. The need for road improvements contributed to some of those deaths, experts say.

Continue reading.

The Wall Street Journal

By Likhitha Butchireddygari

Updated Sept. 2, 2019 12:15 pm ET

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Revolving Water Fund Pilots PFS Approach for Water Quality Improvements.

IN BRIEF

IN MAY 2019, THE REVOLVING WATER FUND AND THE CITY OF NEWARK, DELAWARE, ANNOUNCED THE CLOSING of the first ever pay-for-success transaction funding on-farm agricultural restoration activities to reduce nutrient and sediment flow into waterways.

THE REVOLVING WATER FUND POOLS CAPITAL TO SUPPORT UPSTREAM RESTORATIONS. IT AIMS TO QUANTIFY THE POLLUTION REDUCTIONS from these restoration activities, then package and sell the reductions to municipalities in the watershed seeking to cost-effectively comply with water quality standards.

IF NEWARK IS ABLE TO DEMONSTRATE TO REGULATORS THAT THEY HAVE REDUCED THEIR NUTRIENT AND SEDIMENT LOADS, NEWARK WILL PAY BACK THE FUND. The compensation will cover the costs of the project team, fund further restoration activities, and may eventually also pay back future private investors.

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In May 2019, the Revolving Water Fund and the city of Newark, Delaware, announced the closing of the first ever pay-for-success transaction funding on-farm agricultural restoration activities to reduce nutrient and sediment flow into waterways.

The traditional water fund model, which has been used around the world, pools philanthropic and donor capital to support upstream restorations. The Revolving Water Fund (a collaboration between i2 Capital and The Nature Conservancy in Delaware) innovates on this model by also aiming to quantify the pollution reductions from these restoration activities, then packaging and selling the reductions to municipalities in the watershed seeking to cost-effectively comply with water quality

standards enforced under the Clean Water Act.

In the Revolving Water Fund's Newark pilot, capital from the fund pays for on-farm restoration activities upstream in the Brandywine-Christina watershed. After "purchasing" these restoration activities, if Newark is able to demonstrate to regulators that they have reduced their nutrient and sediment loads, Newark will pay back the Revolving Water Fund. The compensation will revolve back into the fund, cover the costs of the project team, fund further restoration activities, and eventually also pay back private investors in the future who may invest if the pilot proves successful.

The Revolving Water Fund was the result of years of cooperation between NGOs and regulators in the Delaware River watershed, as well as strategic infusions of philanthropic and federal grant funding to develop the model and bring it to the pilot stage. If successful, the ability to achieve regulatory compliance for water quality would be a first for the water fund model.

"Our goal is to produce pollution reductions in a way that the per-ton cost of sediment removed is covered by an offtake agreement that is economically viable to the community," said Ashley Allen, founder and CEO of i2 Capital. The Revolving Water Fund team also hopes that increasing regulator confidence in the model, ideally to be validated through the pilot, will create private investor comfort with and interest in the revolving water fund concept.

Watershed-Scale Vision

The Brandywine-Christina watershed, in the southwest region of the Delaware River watershed, covers 565 square miles from Pennsylvania through Delaware. While the area is mainly rural and agricultural, the Brandywine-Christina watershed provides drinking water to over 500,000 people each day. It also faces development pressures from the nearby cities of Wilmington and Philadelphia.

Yet 400 miles of streams in the watershed are impaired, mainly due to agricultural and sediment runoff. This means that cities like Newark, which gets the majority of its water from the Brandywine-Christina, have to spend substantial municipal resources on treating the impaired water so that it is drinkable and complies with water quality regulations. This challenge is common across the Delaware River watershed.

In the face of these water quality challenges, in 2013 the William Penn Foundation launched their Delaware River Watershed Initiative. The Initiative is a $100 million commitment over 10 years to improve water quality in eight subwatersheds that make up the Delaware River watershed. The foundation selected NGOs in each subwatershed to create joint workplans for addressing local goals, such as nutrient reduction and improved water quality.

The Nature Conservancy (TNC) of Delaware and the University of Delaware were selected by William Penn Foundation to be collaborators within the Brandywine-Christina Watershed. Drawing from their experience from engaging with landowners implementing on-farm conservation practices in the watershed, the organizations set out to build the network needed for a revolving water fund to operate.

"One of the challenges [with developing the revolving water fund] is finding enough willing landowners to partner with on implementation of the practices," said Richie Jones, former Delaware state director of TNC. "That's the importance of on-the-ground partners who are building those relationships to implement the work being paid for."

Partnerships established through the Delaware River Watershed Initiative laid the groundwork for the on-the-ground project pipeline that the revolving water fund relies on. This gave i2 Capital the

momentum to apply for a USDA Natural Resource Conservation Service Conservation Innovation Grant (CIG) to support scaled implementation of the model, which they received in 2017. The CIG funding allowed i2 Capital and TNC to bring Quantified Ventures, Environmental Incentives and the Stroud Water Research Center to the project.

“The CIG came at the perfect time, because we had done all the stakeholder outreach, and the political environment and systems were in place, thanks in large part to the William Penn Foundation and its Delaware Watershed Restoration Initiative,” said Jones. The Bunting Foundation provided the startup capital for the revolving fund. Now, through pilot projects like the one with Newark, the team needs to test if they can cover the costs of staffing the program and implementing projects while also generating a return on capital back into the revolving fund.

Regulatory Challenges Create Opportunity

The Revolving Water Fund aims to tap into the regulations in Delaware and Pennsylvania that require municipalities to reduce the nutrient and sediment pollution loads in their waterways. These forms of contamination are regulated through total maximum daily load limits (TMDLs) and municipal separate storm sewer system (MS4) permits. The fund’s argument is that municipalities can achieve their regulatory goals for protecting water quality through conservation activities on agricultural lands. Basically, to stop the water from getting impaired upstream before it reaches the municipality.

“Regulators will be on board with this if you can prove the water fund moves money to the highest-efficiency, lower-cost avenues of compliance, which then gives investors confidence because they know that regulators already understand what we are trying to accomplish,” said Jones.

Regulatory approval of the revolving water fund approach as a way for municipalities to meet their TMDL and MS4 permits is a big step in allowing the model to be replicated more widely. Recognizing this, the Revolving Water Fund team developed a pollution reduction calculator to measure the impact of on-farm conservation activities. This provided a tool for engaging with regulators early on, as the team worked with regulators on several versions before settling on a model that both sides felt comfortable with.

“We are getting the Delaware Department of Natural Resources and Environmental Control [DNREC] and Pennsylvania Department of Environmental Protection, the two regulators, to look at how we are addressing clean water methodologies and recognizing them as consistent with the regulatory parameters that exist or need to be expanded,” said i2’s Allen.

New Ability to Invest Upstream

“Newark has been trying to do source water protection work, but it’s been a little ad hoc,” said Tom Coleman, city manager of Newark. The city had to rely on NGO partners to help them find projects, he said, which is often not the most efficient use of funding.

The city of Newark is home to the University of Delaware and is the third largest city in the state, with a population of over 30,000. The city’s dense urban center has meant that source water protection projects within the city limits are few and far between. In the past, Newark faced a decision between two expensive choices for meeting regulatory requirements: building water treatment systems or implementing source water protection projects on the limited urban land available.

Now the revolving water fund makes it possible for Newark to spend money on projects across state

lines in rural regions of Pennsylvania, rather than use the little land available within the city on projects that would have lesser impact. This new capacity enables Newark to essentially purchase source water protection practices — on agricultural land upstream in the Brandywine-Christina watershed — that are cheaper and more effective than projects on the highly urbanized land within city limits.

“In Newark we could only really do wetland ponds and flood mitigation, and downtown land is very expensive,” said Coleman. “It’s more efficient to look upstream, it adds more tools to our toolbox.”

By buying into the water fund, Newark can access cheaper source water protection practices that reduce runoff on agricultural lands in Pennsylvania, such as cover crops, grass swales and riparian restoration.

“It’s no small feat to have Newark paying for agricultural restoration in Pennsylvania, but we’ve both spent a lot of time working with DNREC to get them comfortable,” Jones said of the city and TNC’s efforts.

The Revolving Water Fund also offers new flexibility for municipalities like Newark by creating a pipeline of projects that a city can pay for based on their water quality needs. Through the pilot, Newark can budget long-term to pay for water quality improvements based on need, rather than their current method of funding projects only when they are available or when funding is available.

“When the Revolving Water Fund started to get fleshed out, we were excited that it would have another organization doing the legwork to find and prioritize the projects and understand their potential water quality improvements,” Coleman said.

Proving the Model
“Proof of concept is where the field [of conservation finance] hasn’t yet had sufficient movement,” said Allen. “Proving out this three-part operation is the precursor to raising a larger fund, which will provide the liquidity and velocity for more projects.”

With the Newark pilot and future pilots, The Revolving Water Fund team wants to prove their model works across a range of contexts and states. But first, a pilot needs to successfully demonstrate the nuts and bolts of a deal – contracts for supply and offtake, regulatory approval, and investment – before the model can be replicated.

“We envision this as a private debt instrument that basically provides the ability to produce a product up-front, with the debt capital providing risk reduction,” said Allen. “In this case, the private investor will take that risk, and the municipality will only pay for the product once it has the assurance that the product will work – that is, it meets regulatory approval, is scoped and will be in the ground.”

Looking Ahead

“We’re in phase one of implementation with the pilots, and the next phase is deploying larger-scale capital,” said Jones. “The opportunity is that we can hopefully aggregate the municipalities that want to do this.”

For example, Jones imagines they could use the revolving fund model to create an aggregated lending facility for a group of municipalities to get a lower interest rate when purchasing restoration activities. Companies that rely heavily on the use of water within the watershed could also be tapped as payors for the revolving fund.

This aggregation could also create opportunities for easier access to the Environmental Protection Agency's State Revolving Funds (SRFs) for clean water projects, as SRFs could lend more to the Revolving Water Fund in a large lump sum. This is easier than giving smaller loans to each individual municipality, since it requires less administration in total.

"It would be interesting to have SRF money involved in this cycle, whether that's on product development or the offtake side, a takeout for initial private investors or (probably more compelling) as liquidity for the municipal offtake," said Allen.

As the Revolving Water Fund proves out its first pilot and looks to further projects, the team sees further applications beyond nutrient reductions.

"The next frontier for the water fund is around climate resilience," said Jones. "How do we build in flood resiliency in watersheds like Brandywine-Christina, and could we use agriculture lands to retain water?"

Conservation Finance Network

by Allegra Wrocklage

August 28, 2019

Chicago Mayor Searches for Answers to Gaping Budget Hole.

Lori Lightfoot says residents should prepare themselves for tough choices as city looks to close a $838 million shortfall

CHICAGO—Mayor Lori Lightfoot warned that residents needed to be prepared for hard choices to tackle an $838 million budget hole, the largest in the city's recent history.

On Thursday evening, Ms. Lightfoot, who in May became the first black woman and first gay mayor of Chicago, said she was open to every possibility for closing the gap. But she said she wanted to avoid hurting low-income residents or risk driving away businesses with overly burdensome taxes.

"I cannot in good faith promise you that I will take any option off the table to tackle this crisis, whether it's through budget reductions or by raising revenue," Ms. Lightfoot said.

Despite a thriving downtown and prosperous North Side, the city's population has been shrinking for years, eroding its tax base.

Chicago has the largest net pension liability of any major U.S. city at $41.7 billion, according to a 2017 analysis by Moody's Investors Service. That estimate surpasses the city's projection of around $30 billion. Moody's rates Chicago's bonds at "junk," or below investment grade.

Ms. Lightfoot said residents should be prepared for painful choices if new sources of revenue, like a new casino proposed for the city, didn't come to fruition.

Ms. Lightfoot said the original budget gap was $1 billion, but as a result of new forecasts and some changes implemented so far—such as crackdowns on worker absenteeism and vendors who fail to deliver—that shortfall has been narrowed to $838 million. A third of the deficit is due to higher pension payments, another third from increased labor costs, a nearly $100 million jump in debt

servicing, and $90 million from lawsuit settlements, she said.

“To put this into perspective, folks, for every dollar you pay to the city, 80 cents goes to pay for the cost of personnel and benefits, along with pensions,” she said.

Laurence Msall, president of the Civic Federation, a business-backed watchdog, said “it is a frightening and dangerous place where the city of Chicago is right now.”

Ms. Lightfoot said she couldn’t rule out raising property taxes, a controversial measure, because her predecessor Rahm Emanuel already increased property and other taxes to fund pensions. Ms. Lightfoot brought up other possibilities for new sources of revenue, like a graduated real-estate transfer tax on expensive homes or some sort of congestion tax.

The mayor said she planned to address the substantial drag on the city’s finances created by its bond and pension liabilities but gave few specifics.

She said the city could save $100 million by refinancing higher-cost debt and another $22 million by curbing short-term borrowing.

She said pension costs are expected to grow by $200 million in 2021 and $400 million the following year, adding that she hoped revenue produced by the legalization of cannabis, set to take effect in January, and the proposed casino would help fill the resulting budget gap. She said cooperation with lawmakers in Springfield would also be key.

Michael Belsky, executive director of the center for municipal finance at the University of Chicago, said the mayor was “very frank and honest about the scope of the problem and that new taxes will be on the table.”

The Wall Street Journal

By Shayndi Raice and Heather Gillers

Updated Aug. 29, 2019 8:53 pm ET

TAX - PENNSYLVANIA

School District of Philadelphia v. Board of Revision of Taxes

Commonwealth Court of Pennsylvania - August 22, 2019 - A.3d - 2019 WL 3948895

City school district sought review of determination by city board of revision of taxes concerning tax assessments of commercial properties. Taxpayers filed motion to quash.

The Court of Common Pleas granted taxpayers’ motion to quash. School district appealed.

The Commonwealth Court held that:

- Purported fact that there were non-commercial or residential properties in city whose tax assessments city school district could have chosen to appeal was not generally known fact and, thus, could not be established by judicial notice;
- School district’s statements explaining its selection process did not constitute incontrovertible admissions and, thus, did not rise to level of judicial admissions; and
- Evidentiary hearing was required to resolve disputed fact of issue whether school district used

monetary threshold that effectively eliminated residential properties from its selection policy.

Editorial: Pension, Bond Lawsuit Should Get Its Day In Court

A Sangamon County Circuit Court judge is expected to decide soon whether to allow an unconventional lawsuit that challenges Illinois' borrowing habits to proceed.

We'll cut to the chase: We hope Judge Jack Davis Jr. allows the case to move forward. Why? About 244 billion reasons. That's how many dollars the financial watchdog group Truth in Accounting estimates Illinois taxpayers eventually will owe due to unfunded pension liabilities, health care obligations and unpaid state bills. The debts have piled up over decades but accelerated since the early 2000s, dragging the state's credit rating to near junk status.

So yes, taxpayers deserve a shot at having someone contest Illinois' tradition of overborrowing. The case is considered a Hail Mary attempt, even though it raises legitimate concerns about the manner in which Illinois politicians have borrowed money in the bond market to balance budgets and pay for operations.

Continue reading.

By THE EDITORIAL BOARD

CHICAGO TRIBUNE

AUG 26, 2019 | 5:50 PM

Illinois Bonds Gain as Judge Denies Petition to Void Debt.

- **Tillman, who sought to file lawsuit, says he plans to appeal**
- **'Risk is taken off' for bondholders, Belle Haven says**

Illinois bonds rallied after a judge denied an effort by the head of a conservative think tank to invalidate more than $14 billion of debt issued by the worst-rated state.

Sangamon County Associate Judge Jack Davis late on Thursday rejected the petition filed by John Tillman, head of the Illinois Policy Institute, and backed by Warlander Asset Management, a New York-based hedge fund, that sought to "restrain and enjoin the disbursement of public funds," according to court documents. Tillman had claimed that Illinois's record pension bond sale in 2003 and debt issued in 2017 were deficit financing that violated the state constitution, which says bonds must be issued for "specific purposes."

"The court finds that to allow the filing of the Complaint would result in an unjustified interference with the application of public funds," Davis wrote in an order on Thursday. "The court finds reasonable grounds do not exist for filing the proposed Complaint."

Tillman said in an emailed statement that he plans to appeal and "strongly" disagrees with the court's decision, adding that it was "premature for the Court to decide the case on the merits at the petition stage."

Some of the bonds targeted by the suit, which had been trading at slightly lower prices than other Illinois securities, gained after the decision. Bonds sold for the pension system that come due in 2033, one of the most actively traded, traded for about 109 cents on the dollar early Friday, up from an average of about 106 cents before the ruling. That cut the yield to about 4.25% from 4.5% on Wednesday.

“There was an inefficiency in the market based on the potential for the bonds being invalidated,” said Brian Steeves, portfolio manager for Belle Haven Investments in Rye Brook, New York. “That risk is taken off the table.”

During a hearing on Aug. 15, Davis had said Warlander backing the case was a distraction, and the issue warranted further review. The judge had said at the time he would issue an order in 14 days.

“Tillman’s proposed Complaint is chock-full of conclusory and argumentative statements describing the financial condition of the state that are irrelevant and which the court must disregard,” Davis wrote on Thursday. “Indeed, it resembles far more of a political stump speech than it does a legal pleading.”

Illinois officials had rejected the suit as politically-motivated and said the borrowings were valid.

Bondholders Nuveen Asset Management LLC and AllianceBernstein LP had alleged that Warlander, which also owns Illinois debt, stood to profit if the case succeeded because the hedge fund purchased credit-default swaps that would pay off if the court forces the state to stop making payments on the 2003 and 2017 debt. An attorney representing Warlander and Tillman acknowledged at an Aug. 15 hearing that the hedge fund bought credit default swaps on the challenged bonds.

Hedge Fund Seeking to Void Illinois Debt Made Wager on Default

The case had been closely watched as litigation is a new risk for investors in the $3.8 trillion U.S. municipal-bond market, long considered a haven given that no state has defaulted since the Great Depression. Borrowers are under increasing scrutiny after high-profile municipal bankruptcies such as the one in Puerto Rico, where a federal oversight board and group of hedge funds want more than $6 billion of bonds declared null and void.

“There was no question that they were” issued legally in Illinois, said Chris Mier, chief strategist at Loop Capital. He said a trial over the bonds would have been “a television soap opera for finance people.”

Mier said the decision is reassuring because the municipal-bond market would not have to deal with the ramifications of another major lawsuit. Puerto Rico’s record-setting bankruptcy has cast doubt over the legal protections investors have in the safe-haven market.

It’s “one less sideshow that market does not need,” Mier said.

Bloomberg Markets

By Shruti Singh

August 29, 2019, 2:56 PM PDT Updated on August 30, 2019, 5:51 AM PDT

— With assistance by Danielle Moran, and Amanda Albright

Illinois Debt Boosted After $14 Billion Bond Challenge Dismissed.

An Illinois judge rejected attempts to question the validity of bonds sold in 2003 and 2017

Illinois municipal bonds rallied Friday after a judge dismissed a petition that sought to restrain state borrowing and prohibit Illinois officials from making any more payments on $14 billion in debt.

After Sangamon County Circuit Court Judge Jack D. Davis II threw out the complaint challenging the validity of $14 billion in Illinois general obligation bonds, their prices rose modestly, according to Municipal Securities Rulemaking Board data. A $7.65 billion bond sold in 2003 to shore up the state's pension funds fetched as much as 108.9 cents on the dollar early Friday, up from 107 cents on Thursday before the ruling.

Those were among the securities that John Tillman, chief executive of the conservative Illinois Policy Institute think tank, had challenged in a lawsuit claiming the state had piled more debt on the state's taxpayers than its constitution allowed.

Mr. Tillman, joined by New York hedge-fund manager Warlander Asset Management LP, said Illinois broke a state rule prohibiting deficit financing by selling debt in 2003 to close a pension gap and in 2017 to pay down government vendors.

Mr. Tillman, a prominent foe of public sector unions in Illinois, had asked the county court for permission to move forward his arguments that the two issuances should be invalidated and further payments to bondholders stopped.

But Judge Davis found no reasonable grounds for the complaint, saying on Thursday it would "result in an unjustified interference with the application of public funds" and draw the courts into political questions that should be left to lawmakers

"Indeed, it resembles far more of a political stump speech than it does a legal pleading," the judge said.

In a statement, Mr. Tillman said he would appeal and disagreed with the conclusion that the validity of bond deals was outside the realm of the judiciary to decide.

His lawsuit revolved around a provision in the Illinois constitution barring the state from taking out long-term debt except for "specific purposes" or to refinance other obligations. If successful, the complaint would have declared the 2003 and 2017 debt sales unconstitutional and unenforceable.

Nuveen Asset Management and AllianceBernstein LP, which own those bonds, came to the state's defense and questioned whether Warlander had placed a short bet in the form of credit default swaps that would pay out if the lawsuit were successful. Under questioning from Judge Davis this month, an attorney for Mr. Tillman said Warlander did indeed own those instruments.

While state and local governments nationwide are grappling with how to cover bond payments, pension benefits and infrastructure needs, few are as strained as Illinois, where state courts have largely barred lawmakers from scaling back retirement obligations.

Illinois has found willing lenders despite its precarious finances, demonstrating how investors' appetite for returns can help governments borrow even with credit ratings teetering above junk territory. Yet analysts have questioned how long the municipal market will continue lending to

Illinois at reasonable rates, especially if the economy dips into recession and the state's tax base shrinks.

No U.S. state has failed to pay bondholders since Arkansas in 1933, although the U.S. island territory of Puerto Rico defaulted in 2016 and was later placed under a court-supervised bankruptcy.

The complaint mirrors efforts by the board supervising Puerto Rico's finances to have certain bonds declared invalid. In January, the board filed court papers arguing that $6 billion in general obligation bonds should be considered worthless because they layered more debt on Puerto Rico than its constitution allowed.

While no court has ruled on those arguments, a bankruptcy-exit framework proposed by the board last month takes them into account and offers a comparatively lower recovery to investors whose claims have been challenged.

The Wall Street Journal

By Andrew Scurria

Aug. 30, 2019 12:24 pm ET

Judge Slams Petition Challenging Illinois Bonds as Political.

CHICAGO — An Illinois judge on Thursday ruled that a petition by taxpayers aiming to challenge the constitutionality of $16 billion of the state's general obligation bonds was political in nature and cannot proceed in court.

Sangamon County Circuit Court Associate Judge Jack Davis II denied the petition filed in July by the head of an Illinois-based conservative think tank, along with an investment firm.

"Indeed, it resembles far more of a political stump speech than it does a legal pleading," the ruling stated. It added that allowing a complaint to be filed "would result in an unjustified interference with the application of public funds."

John Tillman, CEO of the Illinois Policy Institute, and New York-based investment firm Warlander Asset Management, which owns $25 million of unchallenged Illinois bonds, had sought the court's permission to file a taxpayer lawsuit against state officials to stop billions of dollars in future payments on the approximately $14.35 billion of bonds that remain outstanding.

Tillman said the ruling will be appealed.

"It was premature for the court to decide the case on the merits at the petition stage," he said in a statement, adding he was confident he will prevail.

Meanwhile, Democratic Governor J.B. Pritzker's office said it was pleased "the judge repudiated this sham lawsuit brought on by the same far-right actors whose pathological desire to bankrupt the state brought us four years of devastation under (former Republican Governor) Bruce Rauner."

The petition claimed bonds Illinois sold in 2003 and 2017 violated the state constitution because the proceeds were not used to fund specific purposes like capital improvements.

Illinois used proceeds from 2003's $10 billion bond sale for its underfunded employees retirement system. Money from $6 billion of bonds sold in 2017 was used to pay overdue bills that had reached a record-high $16.67 billion as a result of a two-year state budget impasse between Rauner and Democrats who control the legislature.

News of the litigation had pushed yields on the state's bonds higher in the U.S. municipal market, where Illinois already pays the biggest yield penalty among states due to its financial woes and low credit ratings.

Ted Hampton, an analyst at Moody's Investors Service, which rates Illinois one notch above junk, called the ruling a positive development, while noting that an appeal "could still complicate the state's near-term debt issuance plans."

Those plans include $1.2 billion of general obligation bonds to dent the state's big unpaid bill backlog.

By Reuters

Aug. 29, 2019

(Reporting by Karen Pierog in Chicago; Editing by Matthew Lewis and Lisa Shumaker)

- SIFMA Comment Letter: Request for Comment on MSRB Rule G-23 on Activities of Dealers Acting as Financial Advisors
- Muni Groups Disagree on Role-Switching Prohibition.
- FINRA Regulatory Notice 19-28: Guidance Regarding Member Firms' Supervisory Obligations when Participating in Investment-Related Activities with Municipal Clients.
- FINRA Notice Highlights Confusion.
- CDFA Releases Conduit Bond Fee Study.
- Muni-Bond Refinancing Surges as Yields Hold Near a Record Low.
- *Mass v. Franchise Tax Board* – Court of Appeal holds that state statute taxing interest dividends that taxpayers received as a result of holding shares in a regulated investment company that received 12.41% of its interest income from its holdings in California municipal bonds did not run afoul of state constitutional provision that interest on bonds issued by the state or local government in the state was exempt from taxes on income.
- Interesting eminent domain case from the Supreme Court of CA here, if you're into that kind of thing.
- And finally, You Can Spit, But In Light of Recent Events We're Gonna Go Ahead and Skip the Rinse is brought to us this week by *City of Oroville v. Superior Court of Butte County*, in which things went just a little awry down at the dental clinic. I know that I'm going to enjoy an opinion when the first sentence is as follows, "A dental practice suffered damage when raw sewage began spewing from the toilets, sinks, and drains of its building." Crap.

MUNICIPAL ORDINANCE - ALASKA

Club SinRock, LLC v. Municipality of Anchorage, Office of the Municipal Clerk

Supreme Court of Alaska - August 2, 2019 - P.3d - 2019 WL 3519691

Operator of adult cabaret featuring fully nude dancing sought review of a municipal clerk's decision renewing its adult-oriented establishment licenses conditioned on its compliance with municipal code provision prohibiting adult-oriented establishments from operating during early morning hours.

The Superior Court affirmed. Operator appealed.

The Supreme Court held that:

- Municipal closing-hours restriction applied to adult cabarets, and
- The restriction violated state constitutional free speech clause as applied to adult cabarets.

Municipal ordinance prohibiting adult-oriented establishments from operating during early morning hours applied to operator of adult cabaret featuring fully nude dancing; ordinance listed adult-oriented establishments, including adult cabarets, which were then plainly defined to be cabarets featuring topless dancers, strippers, male or female impersonators, or similar entertainers, and no legislative history showed a contrary intent.

Municipal ordinance prohibiting adult-oriented establishments from operating during early morning hours was not narrowly tailored to promote compelling governmental interests of regulating negative effects of adult cabarets on community, including potential increased crime rates, declining property values, disinvestment, decline in economic and pedestrian activity, and harmful effects of cabarets on young girls in community, and therefore the ordinance violated free speech clause of State Constitution as applied to operator of adult cabaret featuring fully nude dancing; there was no evidence, direct or indirect, connecting forced early morning closures with reducing secondary effects.

EMINENT DOMAIN - CALIFORNIA

City of Oroville v. Superior Court of Butte County

Supreme Court of California - August 15, 2019 - P.3d - 2019 WL 3820270 - 19 Cal. Daily Op. Serv. 8139 - 2019 Daily Journal D.A.R. 7729

Commercial property owner brought action against city for inverse condemnation and nuisance arising out of sewer backup.

The Superior Court entered judgment in favor of owner. City petitioned for peremptory writ of mandate. The Court of Appeal denied petition. City petitioned for review.

After grant of review, the Supreme Court held that:

- A court assessing inverse condemnation liability must find more than just a causal connection between the public improvement and the damage to private property; rather, the damage to private property must be substantially caused by an inherent risk presented by the deliberate design, construction, or maintenance of the public improvement; disapproving *California State Automobile Assn. v. City of Palo Alto*, 138 Cal.App.4th 474, 41 Cal.Rptr.3d 503, and
- Invasion of raw sewage into owner's private property was not an inherent risk of city's sewer system as deliberately designed and constructed, and thus such invasion could not support imposition of inverse condemnation liability on city.

ZONING & PLANNING - PENNSYLVANIA

Yannaccone v. Lewis Township Board of Supervisors

Commonwealth Court of Pennsylvania - August 9, 2019 - A.3d - 2019 WL 3755213

Property owner brought action against township governing board for declaratory judgment that zoning ordinance was void, alleging planning committee was not valid planning agency under Municipalities Planning Code (MPC).

Board objected to complaint on grounds including standing. Trial court sustained standing objection. Property owner filed amended complaint asserting he owned land within township. Trial court denied property owner's motion for summary judgment and found board complied with procedural requirements for enacting ordinance. Following trial, the Court of Common Pleas entered judgment in favor of board and denied property owner's subsequent motion for reconsideration. Property owner appealed.

The Commonwealth Court held that:

- MPC did not require planning committee to be created by ordinance;
- Property owner failed to establish planning committee did not actually exist during development of proposed ordinance;
- Membership of planning committee was not improper;
- Planning committee failed to publish or post notice of public meeting;
- Where a challenge to an ordinance is filed within statutory deadline, challenger must only prove a failure to strictly comply with statutory procedure; and
- Statute governing time for appeals from and remedies for procedural defects in land use decisions did not apply to zoning ordinance.

OPEN MEETINGS - OHIO

State ex rel. More Bratenahl v. Village of Bratenahl

Supreme Court of Ohio - August 14, 2019 - N.E.3d - 2019 WL 3806295 - 2019 -Ohio- 3233

A village resident and a community news publication brought an action against the village, its mayor, and various councilmembers, alleging the defendants violated or threatened to violate the Open Meetings Act (OMA) by, among other things, casting secret ballots at an open meeting when selecting the village council president pro tempore, and seeking a declaratory judgment, an injunction, civil forfeiture fees, and court and attorney fees.

The Court of Common Pleas granted the defendants summary judgment. Plaintiffs appealed. The Court of Appeals affirmed. Plaintiffs appealed.

The Supreme Court held that:

- Defendants violated provision of OMA requiring public meetings to be open to the public at all times by electing council president pro tempore by secret ballot;
- Violation of OMA arising from use of secret ballot to elect council president pro tempore was not cured by fact that secret ballot slips were maintained as public records; and
- Question as to whether defendants violated OMA by using secret ballot to elect council's president pro tempore was not rendered moot by fact that president's term had expired.

CITY COUNCILS - NORTH CAROLINA

Matter of Custodial Law Enforcement Recording Sought by City of Greensboro

Court of Appeals of North Carolina - August 6, 2019 - S.E.2d - 2019 WL 3558763

City petitioned for order allowing city council members to view footage from city police officers' body cameras recorded during arrest of several individuals.

The Superior Court issued order allowing council members to view footage but prohibiting them from discussing footage except amongst themselves in the performance of their official duties, and denied city's subsequent request to modify order to allow council members to discuss footage publicly. City appealed.

The Court of Appeals held that:

- Order did not violate council members' First Amendment free speech rights, and
- Order did not impermissibly impair the council's ability to perform its official duties.

Gag order prohibiting city council members from discussing footage from body cameras worn by police officers during arrest of several individuals except amongst themselves in the performance of their official duties did not violate council members' First Amendment free speech rights, where legislature chose not to make body camera footage a public record, and the city had no right to discover footage except by the grace of the legislature through a judicial order.

Gag order prohibiting city council members from discussing footage from body cameras worn by police officers during arrest of several individuals except amongst themselves in the performance of their official duties did not impermissibly impair the council's ability to perform its official duties, where council had no right to footage but was only granted access through court's discretion, and council members were still free to publicly discuss any information about the police encounter learned from other sources.

MUNICIPAL AIRPORTS - MASSACHUSETTS

Stallworth v. Bryant

United States Court of Appeals, Fifth Circuit - August 21, 2019 - F.3d - 2019 WL 3940915

City residents brought action against governor, lieutenant governor, and counties alleging that state law transferring control of airport to new board violated Equal Protection Clause and state law.

Municipal airport authority and its board of commissioners intervened. The United States District Court granted in part plaintiffs' motion to enforce subpoenas served on state legislators, and legislators filed interlocutory appeal.

The Court of Appeals held that residents lacked standing to bring action.

City residents did not have right to elect officials with exclusive authority to select municipal airport commissioners, and thus lacked standing to bring action alleging that state law transferring control of municipal airport from board of commissioners elected by city residents to new board appointed by state, counties, and city violated Equal Protection Clause.

MUNICIPAL CORPORATIONS - ILLINOIS

City of Centralia v. Garland

Appellate Court of Illinois, Fifth District - August 9, 2019 - N.E.3d - 2019 IL App (5th) 180439 - 2019 WL 3759819

City filed complaint against owners of docks located on lake, which city had acquired but which laid outside corporate limits, requesting order allowing city to remove such docks at owners' expense for failure to register docks or pay associated annual permit fees, as required by municipal code.

The Circuit Court granted summary judgment in favor of city. Dock owners appealed.

The Appellate Court of Illinois held that:

- Documents presented by parties were public records, and thus Appellate Court was permitted to take judicial notice of such documents;
- Cities and Villages Act granted city power to properly acquire lake; and
- Provision of municipal code subjecting to jurisdiction of municipality all property that is owned by municipality that lies outside corporate limits and does not lie within corporate limits of any municipality applied to subject lake to city's regulation.

PUBLIC UTILITIES - PENNSYLVANIA

PPL Electric Utilities Corporation v. City of Lancaster

Supreme Court of Pennsylvania - August 20, 2019 - A.3d - 2019 WL 3926456

Public utility sought declaratory and injunctive relief against city, which was a home rule municipality, based on claim that ordinances that city enacted as part of comprehensive program for management of city's rights-of-way were preempted by the Public Utility Code.

Utility filed an application for summary relief. The Commonwealth Court granted in part and denied in part utility's application for summary relief. Utility appealed, and city cross-appealed.

The Supreme Court held that:

- State law preempted, on the basis of field preemption, ordinance provision concerning municipal inspections of utility facilities in municipal rights-of-way for purposes of city code compliance;
- State law preempted, on the basis of field preemption, ordinance provision authorizing city to direct utilities to relocate or remove utility facilities;
- State law preempted, on the basis of field preemption, ordinance provision authorizing city to impose penalties for a utility's violation of any provision of the ordinance concerning management of the city's rights-of-way, so long as the provision did lay in the Public Utility Commission's (PUC) exclusive jurisdiction; and
- State law preempted, on the basis of field preemption, ordinance provision permitting city to impose maintenance fees upon utilities for the occupancy and use of rights of way.

ANNEXATION - VIRGNIA

Bragg Hill Corporation v. City of Fredericksburg

Supreme Court of Virginia - August 15, 2019 - S.E.2d - 2019 WL 3822036

Property owner brought declaratory judgment action against city, seeking a declaration that property owner had a vested right to develop property according to a revised master plan submitted to county prior to annexation of property by city, and that city's change in zoning was void ab initio.

The Circuit Court dismissed the complaint with prejudice. Property owner appealed.

The Supreme Court held that:

- City code provision that rezoned property annexed from county was not void ab initio;
- Because landowner failed to exhaust its administrative remedies, the zoning administrator's decision became a "thing decided" not subject to court challenge; and
- City did not violate any of property owner's procedural due process rights by rezoning land it had annexed from county.

City code provision that rezoned property annexed from county did not exceed the authority granted by enabling statute that allowed a municipality to pass a zoning ordinance that applied to recently annexed land that came into the governing body's jurisdiction, and thus, was not void ab initio; absence of the word "temporary" in city code provision did not render it in conflict with the enabling statute, and even if the enabling statute had mandated a temporary zoning classification for all recently annexed land, the zoning classification imposed by city would have been temporary in the sense it could have been changed by amendment of the applicable zoning ordinance.

Landowner failed to appeal zoning board of appeals decision upholding zoning administrator's determination that property owner did not have a vested right to develop its property according to revised master plan, and thus, because landowner failed to exhaust its administrative remedies, the zoning administrator's decision became a "thing decided" not subject to court challenge.

City did not violate any of property owner's procedural due process rights by rezoning land it had annexed from county; board of zoning appeals (BZA) finding that property owner did not have a vested right in a revised master plan for development of the property became a "thing decided" and final when property owner decided not to appeal the BZA's determination, and even if property did have a vested right, that right would have continued until after annexation and rezoning, and thus, the change in zoning could not have deprived property owner of its alleged property interest.

Muni OS Boilerplate Headscratcher: Price Is 'Priced To The Call Date'?

On July 31, Sarasota County, Florida, priced $10.215 million refunding bonds, with annual tranches ranging from 2020 to 2038. The bonds will be callable on Oct. 1, 2029. There is an asterisk on the official statement indicating that the 3% 2038 tranche, whose dollar price of 101.925, is "priced to the first optional redemption date."

The phrase "priced to the first optional redemption date" is usually associated with yields. This is consistent with the yield-to-worst quoting convention for munis, (YTW) being the lower of yield-t--call (YTC) and yield-to-maturity (YTM). But what does it mean for a dollar price to be "priced to the first optional redemption date"?

Muni professionals' knee-jerk response is that the phrase is clear, until they attempt to explain it.

And then they realize that it is nonsensical.

The phrase, “priced to the first optional redemption date”, is intended for yields, so that they can be converted to dollar prices. Unfortunately, mislabeling dollar prices, i.e. indicating that they are “priced to the first optional redemption date” is surprisingly common in official statements. It is undoubtedly attributable to boilerplating — the same error is passed on by generations of junior associates of investment banks and bond counsels.

To be fair, the Sarasota deal also displays a 2.78% YTC corresponding to the 101.925 dollar price; however, there is no asterisk indicating that 2.78% is a YTC. In even more egregious cases there is only a dollar price, and a footnote indicating that the bond is priced to the call date, without a corresponding YTC.

See, for example, issues by the city of Bridgeport going back for several years — they show dollar prices “priced to the first optional redemption date,” but without the corresponding yields. For those who would like to dig deeper into this problem with official statements, MuniOS.com is a wonderful free resource.

The Municipal Securities Rulemaking Board has been making strides toward increasing transparency and improving disclosure in the muni market. In spite of recognizable advances, there are surprisingly many instances of superfluous and confusing pricing information in official statements. By imposing a standard format, the MSRB could eliminate such sloppiness.

By Andy Kalotay

BY SOURCEMEDIA | MUNICIPAL | 08/26/19 02:24 PM EDT

SIFMA Comment Letter: Request for Comment on MSRB Rule G-23 on Activities of Dealers Acting as Financial Advisors

SUMMARY

SIFMA sent comments to the MSRB on Rule G-23 on Activities of Dealers Acting as Financial Advisors. In connection with the ongoing retrospective review of its rules and guidance, the MSRB is seeking comment on Rule G-23, revisited last in 2011, and its interaction with the more recent municipal advisor regulatory framework and other rules and guidance adopted or updated since then.

SIFMA welcomes a retrospective review of rules to ensure that they reflect current market practices, do not create unwarranted burdens on market participants, and are appropriately harmonized with other rules.

SIFMA applaudes the MSRB’s choice to review Rule G-23 with a goal to appropriately update the rule in light of the adoption of the SEC’s municipal advisory regulatory framework and eliminate any inconsistencies between the two. We share common ground with the MSRB in this goal, and hope our comments are helpful to update the rule to reflect Congress’ intent of municipal advisor regulation and issuer protection. Below are our responses to select questions posed in the Request.

Read the Comment Letter.

Muni Groups Disagree on Role-Switching Prohibition.

Muni market groups are at odds on whether or not a Municipal Securities Rulemaking Board rule that contains a prohibition against financial advisors switching roles and serving as underwriters on the same deal should be tossed.

The MSRB reopened the discussion in May in a retrospective review of its Rule G-23 on activities of financial advisors and a 2011 amendment to that rule that prohibits a dealer from serving as a financial advisor and underwriter on a transaction. In comment letters, stakeholders asked for a plethora of changes to the rule ranging from having it absorbed into other rules, creating new exceptions to its prohibitions, and taking out the term "financial advisor."

Some opposed significantly changing the rule at all.

"NAMA strongly believes that, as amended in 2011, Rule G-23 has been effective in eliminating the conflicts of interest that would arise if a firm acting as municipal advisor to an issuer were to then become the underwriter in the transaction," wrote Susan Gaffney, the National Association of Municipal Advisors' executive director.

Issuers and non-dealer advisory firms generally told the MSRB they oppose major changes to the rule, while groups representing broker-dealers want the board to consider changes that would allow role-switching under certain circumstances.

The Securities Industry and Financial Markets Association wants an exception in the rule that would apply when a dealer MA, after providing issue-specific advice, leaves due to termination or the end of a contract term, and the issuer then hires a new MA.

"Once an issuer engages a successor municipal advisor, the predecessor dealer municipal advisor that provided issue-specific advice should be able to engage in underwriting activities for that issue," SIFMA wrote in its letter.

However, if an issuer does not hire a new MA, then the dealer MA should be subject to a one-year cooling-off period before it could underwrite the transaction, SIFMA proposed.

"We believe that these exceptions would provide clarity to market participants about the obligations, or lack thereof, owed to issuers when a dealer municipal advisor is disengaged after providing issue-specific advice," SIFMA wrote.

It's unclear what would come of the MSRB deciding to eliminate either all of or the role-switching prohibition of Rule G-23, which like all MSRB rule changes would require the approval of the Securities and Exchange Commission. The SEC has said that under federal law a broker-dealer acting as an MA has a fiduciary duty to the issuer with respect to that issue, and "must not take any action inconsistent with its fiduciary duty to the municipal entity."

Underwriters are considered to be engaging in "arm's length" transactions with issuers, and under the MSRB's Rule G-17 on fair dealing provide issuers with disclosures saying so.

Leslie Norwood, a managing director, associate general counsel and head of municipals at SIFMA, told The Bond Buyer that SIFMA believes that the SEC prohibits role-switching relating to an issuance of municipal securities, not all issuances of that issuer.

If the issuer hires a new MA, relevant conflicts of interest are addressed by the presence of a successor MA, Norwood said.

SIFMA also noted in its comment letter that a municipal advisory framework for dealer and non-dealer MAs along with Rule G-23 for dealer financial advisors only has created role-clarity confusion.

In October 2018, PFM, a large non-dealer municipal advisory firm, asked the SEC for interpretive guidance that since it is subject to a fiduciary standard, it can perform certain tasks to facilitate private placements of municipal debt.

SIFMA and BDA sent responses, objecting to the PFM request. Dealers consider such activity to be placement agent activity requiring that a firm be a registered broker-dealer. Dealers complained that allowing MAs to be placement agents, which PFM and NAMA have repeatedly said is not their aim, would essentially benefit only non-dealer MAs because G-23 prohibits dealers with a "financial advisory relationship" with an issuer from acting as a placement agent for that issuance.

"We want to ensure that the rules treat all regulated parties fairly," Norwood said.

BDA wants to consolidate underwriter and MA rulemaking guidance and address the rule's restrictions on private placement.

"We also highlight the need for the MSRB to address G-23's private placement restriction if the SEC acts on the misguided requests for non-dealer MAs to perform placement agent activities," wrote BDA CEO Mike Nicholas in a statement.

NAMA opposes any significant changes to the rule.

"In general, G-23 has been working well since the changes in 2011 and we don't see the need to make significant changes to the rulemaking," Gaffney said.

Gaffney does want to see the MSRB replace any references to "financial advisors" with the term "municipal advisors" in the rule. In the letter, Gaffney writes that NAMA thinks both terms mean the same thing, and want to be sure MSRB also knows that to be true.

"We believe that they mean the same thing, we want to make sure that the MSRB thinks they mean the same thing," Gaffney said. "That change probably should move forward."

SIFMA wants to eliminate the term financial advisor as well.

NAMA said it isn't aware of small and infrequent issuers having problems with hiring MAs and being able to sell their bonds since the 2011 amendment, which is an argument the dealer community has sometimes employed.

NAMA doesn't think Rule G-23 should be eliminated and folded into Rule G-42, which is the core conduct rule for municipal advisors. NAMA believes that Rule G-23 speaks to a specific subset of MAs that are broker-dealers and so that sets it apart from Rule G-42.

NAMA told the MSRB it opposes allowing a firm to resign from being an MA and become the underwriter, even if another MA is hired. Nor does the group support the idea of a cooling-off period.

The Government Finance Officers Association encouraged the MSRB to prohibit role-switching and said that an underwriter's responsibility is to the investor, not the issuer.

“Prohibiting role switching ensures that the issuer is represented throughout the transaction by a municipal advisor whose sole responsibility is to issuers,” wrote Emily Brock, director of GFOA’s federal liaison center.

The MSRB could now choose to propose changes to its rules, or could choose to leave them as they are.

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 08/20/19 02:55 PM EDT

FINRA Notice Highlights Confusion.

A Financial Industry Regulatory Authority notice has highlighted what some market participants say is confusion among broker-dealers on whether they would have to register as municipal advisors in some instances.

Late last week FINRA sent out a notice reminding its members to register as MAs if they engage in investment-related activities with their clients. FINRA regulates broker-dealer firms, and under the Securities and Exchange Commission’s MA registration rule advice about investing the proceeds of municipal bonds is a muni advisory activity in most instances.

“Recent FINRA examinations have found that some member firms are engaged in investment-related activities with municipal clients, but have not registered as municipal advisors and do not have reasonably designed supervisory systems and controls to determine whether they are required to register as municipal advisors,” FINRA said.

The Securities Industry and Financial Market Association said the FINRA notice highlighted the complexities of MA activity rules.

“We appreciate the FINRA reminder, and it highlights the complexities of compliance with this rule set,” said Leslie Norwood, a managing director, associate general counsel and head of municipals at SIFMA.

However, the industry doesn’t see it as a frequent issue.

An MA who did not want to be named said they hadn’t seen a lot of registered broker-dealers participate in unregistered MA activities compared to the early days of Dodd-Frank.

The Dodd-Frank Act required those acting as MAs to register with the Securities and Exchange Commission and the Municipal Securities Rulemaking Board and was intended to mitigate problems involving financial intermediaries providing unregulated advice.

“The question that people ought to ask themselves is, is my firm registered for that type of activity, am I individually registered?” the MA said. They said if that is a no, then they need to find what exemption they are relying on.

Crossover could occur when broker-dealers go to market with a new transaction or the investment of municipal bond proceeds.

The Government Finance Officers Association has said that due to the SEC’s MA rule, brokers may

be considered MAs if they provide advice on investments or bonds proceeds to governments.

If the funds are identifiable as municipal bond proceeds, that broker-dealer would need to have a registered MA involved. The one exemption for that would be if an investment adviser was involved, they said.

Also, broker-dealers need to check to see when opening a new brokerage account whether funds in that account could be co-mingled between bond proceeds and non-bond proceeds. With bond proceeds, broker-dealers would have to comply with MA rules because they're providing advice on municipal products or investments, they said.

"The enforcement is good in giving people a reminder and helping to provide some further indication of the types of activities that people may cross into either knowingly or unknowingly and put themselves in peril around registration," they said.

Robert Zondag, CFO and managing partner at American Deposit Management Co., an independent MA firm, has not seen registered broker-dealers participating in unregistered MA activities, but said there is confusion around MA activities since it's still fairly new compared to other municipal roles.

Zondag said FINRA could have put out the notice to address members already registered in other roles such as broker dealers and investment advisors and not as MAs.

The National Association of Municipal Advisors said FINRA's notice was useful so professionals can understand MA activities in determining if they should register.

"NAMA has been increasingly concerned, in general, with professionals who provide MA services but who are not registered," said Susan Gaffney, NAMA executive director. "While we have seen evidence of this in the non-BD space, this release again highlights this important issue."

Rod Kanter, partner at law firm Bradley, said he hasn't seen many broker-dealers cross the line to unregistered MA activity. However, he said it wasn't unusual for FINRA to put out such notices.

"It's not uncommon for regulatory and similar bodies to alert the market when they spot behavior that they disagree with before taking more aggressive action," Kanter said.

The notice happened shortly before MSRB Rule G-40, on advertising by MAs, went into effect Friday. Rule G-40 is a milestone because it will formally regulate MA advertising for the first time, requiring among other things that advertisements not be misleading and prohibiting MAs from using client testimonials in an advertisement.

"Social media is new for everyone and so it's a matter of understanding the different types of social media your firm might use and what the new requirements are," Zondag said. "It's going to be a new landscape for all firms trying to understand how to best use the new technologies and make sure they comply with the rules."

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 08/23/19 02:36 PM EDT

FINRA Regulatory Notice 19-28: Guidance Regarding Member Firms' Supervisory Obligations when Participating in Investment-Related Activities with Municipal Clients.

Summary

FINRA is issuing this Notice to remind member firms of their supervisory obligations under FINRA Rules 3110 (Supervision) and 3120 (Supervisory Control System) if they hold or transact in customer accounts owned by municipal entities or obligated persons (municipal clients), as defined in Section 15B of the Securities Exchange Act of 1934 (Exchange Act), and participate in investment-related activities with municipal clients, such as recommending or selling non-municipal securities products to such municipal clients. Under these circumstances, member firms are obligated to determine if such activities require registration as a municipal advisor.

Questions concerning this Notice should be directed to:

- Cynthia Friedlander, Senior Director, Fixed Income Regulation, at (202) 728-8133; or
- Victoria Crane, Associate General Counsel, Office of General Counsel, at (202) 728-8104.

View Full Notice

Fitch Ratings Responds to Investors' Muni Debt Questions Following Chapter 9 Ruling.

Fitch Ratings-New York-21 August 2019: Though the First Circuit Court's Chapter 9 ruling centered around a transportation authority in Puerto Rico, the wide-reaching nature of the ruling necessitates a change to how special revenue and 'true sale' municipal debt is analyzed, according to Fitch Ratings during a webinar it held earlier this month.

The webinar followed Fitch's release of a criteria exposure draft that proposes to introduce a ratings cap for special revenue debt and true sale structures relative to a municipality's Issuer Default Rating (IDR). The cap would be a total of up to six notches above the IDR depending on the strength of the legal security, and follows a March First Circuit Court Chapter 9 ruling related to Puerto Rico debt.

The public finance markets by and large were caught by surprise by the landmark ruling, which involved the Puerto Rico Highways & Transportation Authority. 'Since municipal bankruptcies are rare and typically resolved through negotiation, related case law is extremely limited,' said Managing Director Amy Laskey. 'The lack of precedent heightens the importance of the recent court decisions in the Puerto Rico matter.'

Fitch is proposing to apply its amended methodology to true sale structures, even though the First Circuit Decision did not address them. 'The legislative history surrounding the revision of Chapter 9 appeared to provide such a strong case that special revenue bondholders would continue to be paid during the pendency of a bankruptcy as long as pledged revenues were sufficient,' said Laskey. 'Now that the First Circuit's ruling has injected uncertainty into the payment of special revenue debt, we feel compelled to revisit the certainty of other legal protections as well.'

The criteria changes would be expected to affect fewer than 20 ratings. The limited rating impact

results primarily from the very strong credit quality of U.S. municipalities, which are generally rated at least in the 'AA' category. With this strong baseline, a security rating cap of three-to-six notches above the issuer rating is not an actual constraint in the vast majority of cases. Fitch has six U.S. public finance ratings currently on Rating Watch Negative following the court ruling, which it expects to resolve once the criteria report is finalized.

Answers to the questions that Fitch analysts were asked during the webinar are detailed in the special report, 'What Investors Want to Know: Fitch's Proposed Change to the Evaluation of Local Government Security Ratings', which was released today and is available at 'www.fitchratings.com'.

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Additional information is available on www.fitchratings.com

FINRA Reminds Firms Of Potential Municipal Advisor Registration Obligations.

In newly issued guidance, FINRA reminded firms doing business with municipalities to implement appropriate supervisory procedures to avoid conducting unregistered municipal advisory activities.

FINRA stated that the definition of "municipal advisor" is extremely broad and includes any "person recommending an investment strategy to a municipal client regarding how to invest the proceeds from the issuance of municipal securities." FINRA noted that the advice need not be in any way related to transactions in municipal securities and that the standard for registration is extremely low. As a result, a firm providing regular brokerage services to a client that is a municipal entity can cross the line and become a municipal advisor.

FINRA cautioned broker-dealers to implement "reasonably designed" supervisory systems and controls to (i) identify new and existing municipal client accounts and (ii) determine the source of funds deposited into the accounts of such municipal clients. Should a municipal client's account hold the proceeds of a municipal securities offering, FINRA warned, making recommendations as to the investment of those funds may trigger registration as a municipal advisor absent an exemption. Firms seeking to fall outside the scope of municipal advisor registration must implement procedures to prevent personnel from making recommendations as to the investment of proceeds of municipal securities offerings, or fall within an exemption from municipal advisor registration.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Cadwalader, Wickersham & Taft LLP

August 21 2019

CDFA Releases Conduit Bond Fee Study.

Read the Study.

CDFA | Aug. 22, 2019

'It's Just Dirt': Anything Goes in Today's Muni Bond Market

- **Yields on riskiest muni-debt drop to 4%, the lowest on record**
- **That is pushing investors into increasingly exotic deals**

Last month, a risky, new deal hit the municipal-bond market. It came from a small borrower in Colorado that was looking to finance the construction of 1,200 luxury homes in the foothills of the Rocky Mountains.

It was an odd time for such a project. Denver's decade-long housing boom was beginning to show signs of cooling and, moreover, rival developers had already raised record sums to turn vast tracts of land into new communities. "There's no houses to see," said Nicholas Foley, a municipal-bond fund manager at Segall Bryant & Hamill in Denver. "It's just dirt."

No matter. The buy orders poured in anyways and, in the end, about $20 million worth of bonds had been sold for yields as low as 4.75% on 30-year maturities — similar to the rates that investors once only reserved for relatively risk-free market behemoths like California or New York.

Continue reading.

Bloomberg Markets

By Amanda Albright

August 21, 2019, 2:00 AM PDT Updated on August 21, 2019, 6:34 AM PDT

Muni-Bond Refinancing Surges as Yields Hold Near a Record Low.

- **'Whole conversation with the issuer community has been reset'**
- **30-year yield hit 1.9% last week, lowest since at least 2011**

Like homeowners racing to lock in lower interest rates, state and local governments in August sold $8.5 billion in bonds to refinance outstanding debt, the fastest pace since October, according to data

compiled by Bloomberg. That's because the costs for governments to borrow have plummeted in the last month, when yields fell after the Federal Reserve cut rates for the first time in more than a decade on concern about a global economic slowdown and stock market swings increased the allure of the safest assets.

"The whole conversation with the issuer community has been reset in the last 30-days," Charles Peck, head of public finance at Wells Fargo & Co., said in an interview on Bloomberg TV.

"Most of 2019 has been characterized by a lack of a sense of urgency in the issuer community to get to market in anticipating that rates will stay at these crazy low levels," Peck said. "All of that changed when the 30-year Treasury rate hit 2%, tax-exempt rates hit the lowest point in almost every tenor and reinvestment rates are at their highest point in recent memory."

Refunding Boom
The jump is a welcome shift for Wall Street underwriters and mutual-funds that have cash they need to invest. Both have been eager for new bond deals since the pace slowed after the 2017 tax-cut law eliminated a refinancing tactic that accounted for billions of dollars of new bond sales each year.

Sweta Singh, a portfolio manager at Wilkins Investment Counsel, Inc. said that it's a "no brainier" for issuers to refinance since both tax-exempt and taxable rates are so low. Yields on 30-yearbenchmark bonds last week dropped to as little as 1.9%, the lowest since at least 2011, according to Bloomberg's BVAL index. It's currently about 1.93%.

"Whether it's new money or refunding, it absolutely makes sense for the issuer to come to market knowing these rate levels and how much demand there is," she said. "It completely makes sense."

Bloomberg Markets

By Danielle Moran

August 22, 2019, 10:30 AM PDT

— *With assistance by Taylor Riggs*

Fitch Rtgs: New Lease Accounting Won't Affect Not-For-Profit Hospital Rtgs

Fitch Ratings-New York-22 August 2019: The Financial Accounting Standards Board's new accounting standard for operating leases is not expected to have an effect on the vast majority of Fitch-rated not-for-profit hospital and health system ratings, says Fitch Ratings, because Fitch currently includes operating leases in its debt-equivalent calculations.

Pursuant to the new standard, which took effect Dec. 15, 2018, operating leases must be reported on the balance sheet as an asset and a liability, consistent with the current treatment of capital leases. Under the old standard, operating leases, such as hospital equipment and building leases, were considered an operational expense and were only recorded as such under the income statement, while absent on the balance sheet. In contrast, capital leases were recorded as an asset with the related debt captured under debt or other liabilities on the balance sheet. This resulted in what Fitch believes was an understatement of liabilities on the balance sheet.

Early on in January 2018, Fitch incorporated operating leases as a debt-equivalent liability in our

assessment of leverage profiles with the publication of the revised U.S. Not-For-Profit Hospitals and Health Systems Rating Criteria. Under the criteria, Fitch uses a 5.0x multiple to capitalize annual operating lease charges to create a debt-equivalent figure to capture the effect the new lease accounting standard will have on Fitch-rated hospitals and health systems. This figure is included in Fitch's core leverage metrics and is currently used to evaluate total long-term liabilities and leverage. For the most part, our use of the 5.0x multiple compares similarly or conservatively to the new standard, based on a sampling of unaudited financial statements of hospitals and health systems in recent interim periods.

The accounting change was implemented in order to align the treatment of operating and capital leases and improve financial reporting transparency and disclosure. As hospitals and health systems typically lease facilities as a cost effective strategy rather than purchasing these facilities themselves, the change in lease accounting is expected to have a significant effect on the long-term debt profiles of these organizations, especially for large health care systems with multiple leased facilities across numerous states.

Fitch's treatment of operating leases incorporates all operating leases in our debt-equivalent calculation, inclusive of short-term leases. As such, our initial analysis indicates that the Fitch-calculated figure is fairing more conservatively compared with expected debt-equivalents reported under the new standard, although there may be exceptions as additional rated entities report on the accounting change.

Reported leverage medians of Fitch-rated hospitals and health care systems based on the new standard are expected to generally remain unchanged or possibly even slightly improve over the Fitch-estimated figure, assuming all other factors remain constant, given permitted exclusions of short-term operating leases under the new standard. Hospitals and health systems are likely to have more information and disclosures in their 2019 audits that will shed more light on the calculation of operating leases and discount rates used in estimations.

State Revenues Were Weak in The Fourth Quarter of 2018; But Revenue Outlook for FY 2019 Remains Positive

State Tax and Economic Review, 2018 Quarter 4

ABSTRACT
State government tax revenues from major sources declined in the fourth quarter of 2018 compared with the same quarter in 2017, mostly because of declines in state income tax revenues. The declines in income tax collection are partially attributable to the disappearing impact of incentives created under the TCJA to accelerate payments of state and local income taxes into tax year 2017. However, most states saw positive April surprises when income tax returns were filed. Although growth in income tax collections this April was the largest in the past 10 years, the surge should be viewed as a one-time occurrence.

Download the report.

Tax Policy Center

Lucy Dadayan

July 16, 2019

Infrastructure & Surface Transportation Update: Mintz, Levin

With partisanship at a fever pitch, one area of agreement between both parties on Capitol Hill and with President Trump has been the need to address the increasingly fragile state of the nation's infrastructure. However, as summer marches on and with Congress's annual August recess taking lawmakers away from Washington for five weeks – the window of opportunity is, once again, closing as attention is diverted to other matters such as the President's trade agenda and annual appropriations bills. Further, the 2020 election will be underway in earnest in the next few months, and conventional wisdom is that any significant legislative effort like an infrastructure package needs to happen before we are in the throes of an election cycle.

President Trump invited House Speaker Pelosi (D-CA) and Senate Majority Leader Schumer (D-NY) to the White House for talks on infrastructure in late April where they agreed to a $2 trillion infrastructure plan. With some arguing that this amount was insufficient to address the pressing needs of modernizing the nation's infrastructure, the plan has stalled as there was no agreement on how to pay for it. Further, the President indicated that he was unwilling to work with Democrats as long as they were using congressional committee oversight to investigate him. As we all know, those investigations have continued apace.

With all of that said, while we may not see an "infrastructure package" anytime soon, we do expect to see movement on Capitol Hill on infrastructure-related measures such as the surface transportation and Water Resources Development Act (WRDA) reauthorizations.

The current surface transportation bill, the Fixing America's Surface Transportation (FAST) Act of 2015, is set to expire on September 30, 2020. The work of reauthorizing the FAST Act is already underway, with the Senate Environment and Public Works (EPW) Committee unanimously approving their reauthorization bill, the America's Transportation Infrastructure Act of 2019, before departing for the August recess. According to the committee, the bill is the largest highway reauthorization legislation in history, authorizing $287 billion from the Highway Trust Fund over five years. Highlights of the bill include:

- Funding of $5.5 billion over five years for the Nationally Significant Freight and Highway Projects program, $6 billion over five years for new competitive grants for bridges, $500 million annually for new safety incentive programs, and $250 million over five years for a new grant program designed to reduce wildlife-vehicle collisions.
- Further, the bill provides $2.9 billion for the Tribal Transportation Program and $2.1 billion for the Federal Lands Transportation Program over five years.
- With regard to environmental protection and emissions reduction, the bill would invest $4.9 billion over five years in a new resiliency program to protect roads and bridges from natural disasters, $3 billion over five years for the states to support projects aimed at lowering highway-related carbon emissions, and $1 billion over five years in competitive grants for alternative fuel infrastructure.
- The bill also reauthorizes the Diesel Emissions Reduction Act (DERA)program, which supports the reduction of emissions from diesel engines, and the Utilizing Significant Emissions with Innovative Technologies (USE IT) Act to support carbon capture, utilization, and sequestration research.

Senate EPW is, of course, just one of several Senate committees with jurisdiction over surface transportation, with their charge being highways, bridges, and tunnels. The Banking Committee has responsibility for mass transit, the Commerce Committee covers rail and transportation safety, while the Finance Committee handles the trickiest part of all – funding. In the House of Representatives, jurisdiction is more clear-cut with the Ways and Means Committee handling funding, and the

Transportation and Infrastructure Committee covering all other aspects. Each of these committees will be working over the coming months to advance their policy and funding priorities for surface transportation.

In March, the House Transportation and Infrastructure Committee held a hearing on "Aligning Federal Surface Transportation Policy to Meet 21st Century Needs" where Chairman DeFazio (D-OR) noted that September 30, 2020 seems a comfortable distance on the congressional calendar but "we don't have time to spare" in making progress on reauthorization. The House Ways and Means Committee also recently held a hearing on "Our Nation's Crumbling Infrastructure and the Need for Immediate Action."

Some of the issues we'll be watching most closely as surface transportation reauthorization gets underway are the treatment of private activity bonds and efforts to restore advance refunding of such bonds, funding issues associated with the Highway Trust Fund, vehicle safety, and autonomous vehicles, among others.

Also due for reauthorization in 2020 is the Water Resources Development Act (WRDA) that is on a two-year reauthorization schedule unlike the five-year schedule of surface transportation. The most recent WRDA bill was enacted in October 2018 with the America's Water Infrastructure Act. While Congress has not always met the two-year mark on WRDA reauthorization, it has been on a winning streak recently, having enacted reauthorization measures in 2014, 2016, and 2018, and there is a strong desire in Congress to continue meeting the challenge with enactment of a new bill next year.

Although the long-hoped-for infrastructure package seems a remote possibility, our contacts on Capitol Hill regularly express optimism for a surface transportation and WRDA reauthorization before the 2020 deadlines.

by Frank C. Guinta, Christian T. Fjeld, Stephen J. Silveira & R. Neal Martin

Wednesday, August 21, 2019

How High Are Infrastructure Costs? Analyzing Interstate Construction Spending.

lthough the United States spends over $400 billion per year on infrastructure, there is a consensus that infrastructure investment has been on the decline and with it the quality of U.S. infrastructure. Politicians across the ideological spectrum have responded with calls for increased spending on infrastructure to repair this infrastructure deficit. The issue of infrastructure costs is particularly important as calls for increased infrastructure spending are sometimes coupled with prescriptions for dealing with higher perceived costs. However, the scholarship on the cost of infrastructure is lacking.

Leah Brooks of George Washington University and Zachary Liscow of Yale Law School aim to help fill this evidentiary gap by documenting and analyzing spending on new construction of the US Interstate System over the course of the second half of the twentieth century. Interstate highway construction is of particular interest because it is one of the largest infrastructure projects in the American history. In addition, and usefully for their analysis, Interstate highways are a relatively uniform product across space and time, particularly in comparison with other big-ticket items such

as mass transit or airports. This relative uniformity makes for easier comparisons across time and space. At the same time, because states were responsible for construction, there is rich potential for geographic variation.

To analyze Interstate construction spending, Brooks and Liscow digitize annual state-level data on spending from 1956 to the present, and combine these spending per mile ("costs") data with numerous other sources to measure the geographic, political, and legal determinants of costs. While the spending data are at the state level, they observe the precise location of Interstate segments by date of completion, which allows them to undertake more granular analysis.

Brooks and Liscow make two main contributions through this paper:

- They find that spending per mile on Interstate construction increased more than three-fold (in real terms) from the 1960s to the 1980s with inflection point of increase dated to the early 1970s; and that changes in observed geography over time do not explain these changes.
- They provide suggestive evidence of the determinants of the increase in spending per mile. In particular, the increased spending per mile coincides with the rise of "citizen voice" in government decision-making in the early 1970s, while rising incomes and housing prices nearly completely explain the increase in costs statistically.

Read the full paper here»

The Brookings Institution

by Leah Brooks and Zachary Liscow

Monday, August 19, 2019

Untangling Tolls and P3s.

The Alabama Department of Transportation recently released a "Myth Busters" communication in response to recent criticism of the agency's plans to deliver a new bridge and byway project as a public-private partnership. ALDOT's response focuses on common misconceptions about how the tolls will be imposed and why tolls are necessary for this particular project (which is, in fact, being delivered as a toll-revenue P3). However, in light of the recent pushback against tolls in a variety of jurisdictions, including South Florida, it is worth clarifying the relationship between tolls and public/private partnerships.

In brief, tolls and P3s are independent concepts. In fact, most toll roads are not public-private partnerships—in such situations, the government sets and collects tolls itself as a means to pay for the asset. In addition, most recent P3s do not involve tolls—the private developer of an asset is often repaid by the government directly, through annual availability payments, with no tolls imposed on users of the asset. The recent PortMiami Tunnel is an example of a recent P3 that does not involve tolling. It is also worth considering that even if a P3 asset has tolls, the private developer is not necessarily the party receiving the toll revenue–the government may choose to collect tolls on a P3, but keep the toll revenue itself and instead pay the developer an established annual availability payment. A P3 may also be structured in a manner where the private partner bears the type of risks associate with tolls, but no tolls are actually collected from the public—instead, the government will pay the developer a "shadow toll" for each user. The bottom line is that there are many ways to structure a P3 to accomplish the government's objectives, and that tolls need not be part of the

equation.

by Albert E. Dotson, Jr and Eric Singer

August 23 2019

Bilzin Sumberg

Public-Private Partnerships and Dispute Resolution.

We have extensively written about how public-private partnerships ("P3s") offer better, more efficient solutions to public infrastructure needs, and about how, given their effectiveness, they've become a preferred method for funding and managing infrastructure projects in and outside of the U.S. P3s, in short, effectively leverage private funding and expertise with government resources to more efficiently address public needs—often yielding extraordinary results. Yet, while P3s deliver more than just better results than traditional procurement methods tend to, they also incentivize more efficient dispute resolution, too. That is, while ordinary litigation options are typically still on the table, given the long-term arrangements between the parties involved, they tend to seek out faster dispute-resolution options like arbitration, for instance, instead of diving into years of costly, public litigation.

To be sure, P3 teaming arrangements are intricate and complex. A P3 proposer usually consists of a consortium of private entities who, through a special purpose vehicle, submit a proposal to the public entity and, if selected, enter into an agreement with that entity on the one hand, and numerous subcontractors on the other, to address a specific need—such as providing social infrastructure, transportation, or a new utility. From there, the P3 entity would then design, build, finance, operate, and maintain the asset for years to come. Essentially, they remain partners on a single, long-running project, as opposed to typical design-build arrangements where the private-party's interests are short term. So, given the long-term nature of and goals for any given P3 project, the proposer's and public entity's interests tend to be more aligned as both sides have an interest in the project's ongoing success given long-term operations and maintenance contracts are typically part of the deal.

None of that means disputes won't ever happen, of course. Inevitably, they will. The difference here is that each side now has more incentive to resolve their dispute efficiently. So quicker-moving dispute-resolution options like arbitration become more appealing than conventional litigation, especially since parties can (and should) select tribunals ahead of time—including arbitrators with specific expertise on P3 arrangements, as compared to a generalist judges with backlogged dockets. Plus, arbitration proceedings are kept private, are not as jurisdictionally confined (which matters as these projects often involve foreign investors), and are more efficient, as discovery and briefings are streamlined and parties often waive their appeal rights—attributes hardly resembling standard litigation. These practical considerations, among others, drive parties to skip litigation and arbitrate their disputes if (and when) they arise instead.

In short, P3s incentivize not only better project results, but also place the parties in longer-term, more collaborative arrangements that, in turn, nudge them to quickly and effectively resolve their disputes. And that is yet another reason why P3s offer a better path forward.

by Elise Holtzman Gerson, Albert E. Dotson, Jr and Anthony Sirven

August 20 2019

Bilzin Sumberg

The Surprise Bond Sector Which is Unwittingly ESG Compliant.

The US municipal bond market could be an overlooked but strongly developed area for ESG investors to look into, according to a Schroders research paper.

In a white paper, entitled '*Should municipal bonds be a core holding for ESG investors?*', three members of Schroders' bond team looked at inherent characteristics of municipal bonds.

While some US authorities have launched dedicated green bonds, the Schroders report indicates that the $3.8 trillion US municipal bond market is linked to ESG thinking regardless.

'The US municipal market is vital in funding key projects around the country. Many provide the opportunity to allocate to assets aligned with ESG priorities. Municipal debt proceeds often contribute to positive social and environmental improvement.

'State and local governments are essential to developing and maintaining both physical infrastructure (water & sewers, bridges, mass transit, roads & bridges) and social infrastructure (education, health care),' the authors said.

The Schroders team gave the example of a New York City debt issue which was specifically targeted at climate change resilience projects in the wake of Hurricane Sandy.

'The area was damaged due to flooding and storm surge, and the main focus of the funding is to create a network of barriers well above sea level in neighborhoods that are susceptible to flooding. This is just one example of how municipal bonds fund projects around the country that are inherently ESG-focused.'

While the benefits are seemingly evident, the Schroders team said traditional credit analysis should not be jettisoned.

'Working with Schroders' Data Insight Unit, we have developed a proprietary ESG municipal model. It examines and assesses regional, state and local issuers based on 42 unique ESG factors from a variety of sources, including several proprietary metrics.

'As with fundamental municipal bond research, we turn anecdote into evidence while balancing sustainability with valuation. Our ESG model is one of the many tools our analysts use to reach a credit opinion on an issuer.'

Schroders said the munis market has been traditionally popular due to the beneficial tax treatment for investors, as well as the generally high credit quality of the market. 'More recently, investors are seeing the viability of the municipal market as a way to make an impact in communities, instead of traditional philanthropy efforts.'

City Wire

By Chris Sloley

20 Aug, 2019

Municipal Fiscal Prudence: The Overlooked Community Impact Factor

This is the sixth and final article in a series highlighting the most important aspect of municipal bonds: how the projects bonds finance helps the community. It appropriately started with Municipal Bonds: Investing In Our Communities. This piece looks at how fiscally responsible governments have a more positive impact on their communities because they can better meet the needs of those residents.

When thinking about impact factors, fiscal prudence is often overlooked. Yet in the event of fiscal irresponsibility, the negative impacts can be severe to a community and investors alike. Puerto Rico and Detroit are just two recent examples of why fiscal responsibility is an essential factor to consider when investing in municipal bonds.

Investing in municipalities and authorities with initiatives and processes aligning with good governance, such as consistent, prudent, and transparent financial management, can provide stable returns for investors and lower capital costs for communities.

Continue reading.

Forbes

Barnet Sherman

Aug 20, 2019

Environmental Impact Bonds: The Very Welcome New Kid on the Municipal Finance Block

The public finance industry is not well known for breathtaking innovations nor spontaneous breakthroughs. But in the past three years a truly innovative development has occurred: Environmental Impact Bonds (EIBs).

In 2008, the World Bank issued what it called a “green bond.” Before that event, the bond market and the bond buying public probably had some vague understanding that the World Bank used the proceeds of the bonds they issued for all kinds of typical public works projects mostly in developing countries. But the Bank’s “green bond” was a little different. In this case, the World Bank specifically pledged to the bond purchasers that the proceeds of their investments would be invested in “green”, or environmentally beneficial, projects. So, clean water, clean air, etc. These are the type of projects that the bank said it would invest “green bond” buyers’ money in.

In 2019, another type of green bond was launched in Europe. The “Climate Bond Initiative” began offering investors green bonds the proceeds of which were specifically invested in projects to retard climate change. Think rapid transit and similar projects that get people out of thousands of polluting automobiles and off motorcycles, motorbikes, and those ubiquitous tuk-tuks that plague Asian cities.

Now, the rule of thumb in environmental finance is that the lower the payments, the more projects will get done. Is a farmer going to build a fence to keep his cattle from fouling a stream? If it costs $500, probably yes. If it costs $5,000, maybe. If it costs $50,000, definitely not. Are you going to put solar panels on your roof? If your payment is $20 a month, probably. If its $200 a month, maybe. If its $2,000 a month, definitely not.

So, back in 2008, everybody thought that the World Bank's green bonds would have a lower rate of interest than its traditional bonds. The bank would then pass the lower payments on to its developing country borrowers, who, in turn, would be more likely to do more environmentally beneficial projects. Socially Responsible Investors would be willing to accept a lower rate of interest in return for the satisfaction of knowing that their money was creating environmental benefits. What a neat system!

Only it didn't work. The bank's green bonds carried a market rate of interest, not a lower rate. In fact, it was the same interest rate as for the bank's other non-green bonds. So, if the interest rate wasn't going to be lower, what was the point? The point was that investors just wanted to know that their money was being used for environmentally friendly projects. Okay. But that's not how the new EIBs work.

In 2016, DC Water and its advisors, Quantified Ventures (QV) put together a unique $25 million tax-exempt municipal bond that DC Water issued. The proceeds of the new EIB were for green infrastructure projects to reduce the flow of stormwater that was coursing through the sewers of our nation's capital and into the Potomac River.

Green infrastructure involves projects such as rain gardens, bioswales, pervious pavement, constructed wetlands, etc. – as opposed to "gray infrastructure" which are basically, pipes, pumps, machinery, and equipment. DC Water and QV called the instrument an "Environmental Impact Bond." They built into the EIB a unique and brilliant feature: if the stormwater flow reduction were to exceed 41.3 percent, DC Water would pay the investors an additional $3.3 million. But, if the flow reduction is less than 18.6 percent, then the investors will get $3.3 million less interest.

Wait a minute! This looks backwards. Didn't we say up above that the goal was for borrowers to pay the lowest interest rate possible so that they'd be able to do more projects? So, the question now arises: why would DC Water be willing to pay more for success? The answer is because the $25 million green infrastructure project was a demonstration project. If it worked, it would mean that DC Water wouldn't need to spend possibly hundreds of millions more on additional stormwater reduction projects. So, why would DC Water pay its EIB investors an extra $3.3 million? The answer is simple: they are happy to pay out $3.3 million because they might save millions more!

Here in a few succinct words are what B-school newbies would call the "value proposition" for these new EIBs. Let's assume a market rate of 4 percent for high-quality municipal bonds. And let's assume that, much like DC Water, the bond issuing agency's choice is between a green infrastructure or a much more expensive gray infrastructure project. Then:

1. The agency issues bonds for the green infrastructure project paying 5 percent if the project succeeds and 3 percent if the project fails.
2. Investors are willing to accept less if less environmental benefit but have the satisfaction of knowing that they were part of a big green infrastructure effort to improve the environment.
3. Investors are delighted to accept more if the environmental benefit is greater than estimated. They get both the emotional satisfaction and more money.
4. If the project fails, the agency has to spend more money on a new, additional project, but has the satisfaction of saving some money on the failed attempt.

5. If the project succeeds, the agency is delighted to pay the higher interest rate because their alternative would have been far more costly.

What did the investment world think of this Environmental Impact Bond? What did the bond market think about Quantified Ventures' new "Pay for Success" bond? Well, the venerable bible of the municipal bond industry, The Bond Buyer, named the DC Water issue the "2016 Non-Traditional Deal of The Year!"

Does this mean the end of the type of green bonds that the World Bank and other major agencies issue? No. They will still be around. There may be no financial implications to such bonds, but they do, after all, create good will. They do let investors know that the World Bank and the other major agencies are doing the right thing for the environment with the investors' money. As a matter of fact, DC Water is planning on issuing at least $100 million of green bonds in the near future.

Since DC Water's first EIB, Atlanta has gotten into the game with its own $14 million EIB which is the first winner of the "Environmental Impact Bond Challenge," funded by the Rockefeller Foundation in partnership with Neighborly, a San Francisco-based public finance house. Atlanta's is the first publicly offered EIB. The city is using their EIBs to fund innovative green infrastructure projects that will address critical flooding and water quality issues, reduce stormwater runoff, and enhance the quality of life in neighborhoods in Atlanta's Proctor Creek watershed.

Baltimore is another city with combined sewer problems like DC. Baltimore is required by federal and state law to reduce and treat polluted runoff from more than 4,000 acres of pavement and buildings by 2019. Working with the Chesapeake Bay Foundation and Quantified Ventures, Baltimore is planning to issue some $6.2 million of EIBs later this year to finance green infrastructure for stormwater management in some three dozen neighborhoods to help pay to replace hard, paved surfaces with plants, trees, and green spaces to soak up and filter polluted runoff before it reaches streams and winds up in Baltimore Harbor.

So, Green Bonds, Climate Bonds and EIBs have been the major innovations in the municipal finance market over the last decade. Neither Green Bonds nor Climate Bonds have any new financial features; they just have their use in assuring investors that their money is being used to pay for environmentally beneficial projects. But it is the Environmental Improvement Bonds – with their "pay for success" formula – that offer true financial innovation and financial incentives for cities like Washington D.C., Atlanta and Baltimore to address their many water quality challenges. EIBs are, indeed, the very welcome new kid on the environmental finance block.

Water Finance & Management

By Michael Curley

AUGUST 19, 2019

Ransomware Attacks Are Testing Resolve of Cities Across America.

HOUSTON — At the public library in Wilmer, Tex., books were checked out not with the beeps of bar code readers but with the scratches of pen on notebook paper. Out on the street, police officers were literally writing tickets — by hand. When the entire computer network that keeps the small town's bureaucracy afloat was recently hacked, Wilmer was thrown into the digital Dark Ages.

“It’s weird,” said Jennifer Dominguez, a library assistant. “We’ve gone old school.”

This has been the summer of crippling ransomware attacks. Wilmer — a town of almost 5,000 people just south of Dallas — is one of 22 cities across Texas that are simultaneously being held hostage for millions of dollars after a sophisticated hacker, perhaps a group of them, infiltrated their computer systems and encrypted their data. The attack instigated a statewide disaster-style response that includes the National Guard and a widening F.B.I. inquiry.

Continue reading.

The New York Times

By Manny Fernandez, David E. Sanger and Marina Trahan Martinez

Published Aug. 22, 2019

The Record High Price of Some Muni Bonds Erases the Tax Breaks.

- **One-year Treasuries have better after-tax yield, firm says**
- **Those muni yields last week hit new low against Treasuries**

Investors who are paying near record-high prices for the shortest-dated state and local government bonds may think the tax break makes it worthwhile.

It doesn’t.

U.S. Treasuries that mature in one year are providing bigger after-tax yields than traditional municipal debt, AllianceBernstein Holding LP said in its weekly note. That’s because the price run up pushed the yields on one-year tax exempt debt to about 0.91% by Friday’s close, or about 55% of those on Treasuries.

Steep drop in yields wipes out tax advantage of municipal bonds
That measure of relative value is only slightly above what it was earlier last week, when it hit the the lowest since at least 2001, according to data compiled by Bloomberg. The lower the ratio drops, the more pricey the municipal securities are in comparison.

The mutual-fund company said it’s very unusual for the tax advantage of state and local government debt to be non-existent, and it suggested that investors shift some of their cash into short-term Treasuries instead. They said the federal government securities also provide a “modest amount” of recession insurance because that have historically outperformed during economic contractions.

Bloomberg Markets

By Martin Z Braun

August 19, 2019, 9:17 AM PDT

To Succeed In The Global Economy, Cities Must Invest In What Makes Them Unique.

In a converted parking garage turned business incubator and accelerator in downtown Syracuse, N.Y., entrepreneurs and inventors from as far away as Italy and Switzerland are hard at work developing software applications, power systems, and imaging technology for the emerging unmanned systems industry.

The presence of these global innovators represents an early win in a regional strategy to establish the central New York region as a global industry hub, leveraging historic local advantages in electronics, sensors, and defense applications to meet the growing global demand for drones, “internet-of-things” platforms, and other data-driven technologies.

To prosper in the global economy, midsized city-regions are increasingly focused on establishing these distinctive, world-beating industry specializations that leverage local strengths. This includes investing in these specializations, as well as the industrial commons and programming that supports them. It also means strategically orienting export assistance, foreign direct-investment promotion, customer discovery, talent attraction, innovation partnerships, and other global connections to specifically target these local sectors.

Continue reading.

The Brookings Institution

by Rachel Barker, Marek Gootman, and Max Bouchet

August 23, 2019

The City of Stockton Bankruptcy.

During the great recession of 2008, investors saw some of the biggest names in the private sector going under within months – Lehman Brothers and Washington Mutual, to name a few – and many were “bailed out” by the federal government in an attempt to stop the bleeding.

Investors throughout the U.S. and around the world were fearful for the future of their own holdings in the private sector, and the words of Sir John Templeton were more relevant than ever, “Bull markets are born on pessimism, grow on skepticism, mature on optimism and die on euphoria.”

Throughout all the chaos, investors weren’t really concerned about the world of municipal debt. For an ordinary investor, the municipal government is just as secure as the federal government and their investments in municipal debt are almost recession-proof. The commonly held belief amongst many investors is that if the government is struggling to make payments on its obligations, the elected officials will simply increase the taxes to bring back the revenue or any potential shortfalls – until Detroit and Stockton happened. These two municipal bankruptcies were a wake-up call for many investors around the world that municipal debt isn’t recession-proof and that every municipality is different in how it manages its operations and debt.

In this article, we will take a look at the municipal bankruptcy of the City of Stockton and what led to the Chapter 9 filings.

Continue reading.

municipalbonds.com

by Jayden Sangha

Aug 23, 2019

TAX - CALIFORNIA

Mass v. Franchise Tax Board

Court of Appeal, Second District, Division 3, California - August 15, 2019 - Cal.Rptr.3d - 2019 WL 3823675 - 19 Cal. Daily Op. Serv. 8154

Taxpayers filed a complaint for refund of taxes paid on interest dividends that they received as a result of holding shares in a regulated investment company that received 12.41% of its interest income from its holdings in California municipal bonds, which were interest dividends that, taxpayers contended, were exempt from taxation under the state constitution.

The Superior Court determined that the interest dividends were taxable. Taxpayers appealed.

The Court of Appeal held that the statute pursuant to which the interest dividends were taxed did not run afoul of state constitutional provision that interest on bonds issued by the state or local government in the state was exempt from taxes on income.

State statute taxing interest dividends that taxpayers received as a result of holding shares in a regulated investment company that received 12.41% of its interest income from its holdings in California municipal bonds did not run afoul of state constitutional provision that interest on bonds issued by the state or local government in the state was exempt from taxes on income.

U.S. Judge Refuses to Dismiss Lawsuit Over Puerto Rico Pension Law.

SAN JUAN — A lawsuit filed by Puerto Rico's financial oversight board over a new pension and healthcare funding law will move forward after a federal judge on Thursday denied the U.S. commonwealth's motion to dismiss the case.

The litigation, which marked the latest skirmish in an ongoing battle between the board and the government over spending priorities, targets a law that transfers hundreds of millions of dollars in municipal pension and healthcare costs to the bankrupt Puerto Rico government.

U.S. District Court Judge Laura Taylor Swain rejected arguments by the island's government that the lawsuit cites faulty claims based on the 2016 federal PROMESA Act, which created the board and a bankruptcy-like process to restructure about $120 billion of Puerto Rico's debt and pension obligations.

Swain, who is hearing the island's bankruptcy cases, ordered the lawsuit to proceed.

A fiscal 2020 budget passed by Puerto Rico lawmakers included funding for local pensions and health insurance costs to aid cash-strapped municipalities despite warnings from the board that so-

called Law 29, which enabled the move, is inconsistent with its fiscal plan.

The board's lawsuit seeks to void the law, contending it would impair the PROMESA Act by diverting hundreds of millions of dollars Puerto Rico's government could otherwise use to spur economic growth.

Law 29, which was enacted in May by then-Governor Ricardo Rossello, will add $311 million in additional government spending in fiscal 2020 and $1.7 billion through fiscal 2024, according to the lawsuit.

The oversight board sued Rossello and Puerto Rico's fiscal agency in July. Rossello resigned earlier this month in the wake of protests over government corruption and controversial leaked chat messages involving him and close allies. He was eventually replaced by Wanda Vazquez, Puerto Rico's justice secretary.

Following a meeting last week between Vazquez and a group of island mayors, the new governor vowed she will continue to defend the law's validity, according to Carlos Molina, president of the Mayors Federation.

By Reuters

Aug. 22, 2019

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

Sanity Check for Qualified Opportunity Zone Investments.

A deadline is looming to maximize the stepped-up basis afforded to realized capital gains invested in qualified opportunity zone properties and businesses.

To get the full 15 percent step-up in basis, investment must be made by the end of 2019. There has been a corresponding surge of offerings, primarily real estate investment trust-like investments in commercial and residential properties, offered by the same firms that have offered such private offerings in the past and through the same channels. The difference is that these funds are being promoted to individuals who are inexperienced in investing as a limited partner or minority shareholder in a private REIT, or a private equity fund, which could be a disaster both for those advising such investors and those who are managing qualified opportunity zone funds. To avoid making mistakes, here is a sanity check to see if investing in a QOZ property or business makes any sense.

The opportunity zone concept has been around since the Clinton administration; the qualified opportunity zones, however, are new, having been formed in 2018 (based on 2010 census data) by the 2017 Tax Reform Act. The rationale is that private investments, now held in highly appreciated assets, will help economically distressed locations if those private investors: 1) sell their existing assets, and 2) reinvest the proceeds into new or newly renovated properties and new businesses in those locations. To encourage this sale and reinvestment, a deferral of the tax on realized capital gains for up to seven years, a stepped-up basis of up to 15 percent and the exclusion from capital gains of any appreciation on the QOZ investments held for more than 10 years is offered. The details of how a QOZ fund or investment must be managed are too complex to go into here. Suffice it to say,

that qualification depends on strict compliance with the new, and sometimes ambiguous, regulations.

Private investors, individuals or institutions have not sold appreciated assets to invest in distressed communities in the past. Indeed, 75 percent of all private equity investments goes to just three states: Massachusetts, California and New York. This is because they believe they will not get a greater than market rate of return for their investment at equal or lower relative levels of risk by investing in such communities and properties relative to the high tech and biomedical investments that have proven to be such good investments in the past. By offering a significant financial incentive for such an investment, the government is boosting the implied rate of return on the reinvestment of realized gains by allowing the investor to use the amount otherwise needed to pay the tax (anywhere from 15 to 28 percent, plus the 3.8 percent investment tax) for up to seven years, and, if kept in the QOZ investment for more than 10 years, excluding the appreciation on that investment.

What is uncertain is whether any experienced investor will find these financial incentives sufficient to change the way they allocate their investment dollars. What is certain is that many inexperienced investors will be pitched the QOZ funds as a way of deferring capital gains taxes.

1. What are the investor's objectives?

Success is achieving an investor's objectives. The selection of a specific property or business investment as a limited partner or minority equity owner means the investors have a common objective in making the investment. Saving taxes is not an objective; it is just one way of reducing the friction incurred when making an investment. Other objectives include return on investment, security both in withdrawing funds during the 10 years and exiting the fund after 10 years, and the satisfactory results in short and long term.

Whether a QOZ is worth it depends on the specific situation. Since it is so new, QOZ funds are uncertain and may be costly. The advisor must weigh the net benefit to the investor of deferring capital gains against the likely costs and risks of such an investment and educate the investor of those risks and costs. Said a different way, is it worth spending $20,000 in fees over 10 years to save $20,000 of capital gains taxes on a $100,000 gain today, with only a 50/50 chance of getting a positive return on your investment?

2. Is investing in new or rehabilitated property, or growth of a private business, the best way to achieve the Investor's objectives?

To qualify, investments must be realized capital gains that are equity investments in new or rehabilitated property or the growth of a business (sufficient to double the cost basis of the rehab property or growth of the existing business) in the QOZ. Deploying new investment capital into new or existing properties and businesses is not as simple as buying the stock of a publicly traded growth company. The management of the fund and the management of the property or business must work hard together to not waste time and money, and getting that experience and expertise is not cheap. The private investment landscape is littered with the wreckage of properties and businesses that failed less because they were a bad idea, but rather because too much new money came into the firm and not enough talent to deploy it.

3. Does the investor have the right team of professionals?

Because the QOZ program was created by recent legislation, both understanding and complying with the regulations is critical. For example, the calculations in Forms 8949 and 8996 seem

straightforward, but failure to correctly prepare and file these forms in a timely manner is fatal to qualifying for the tax deferral. Additionally, the tax deferral only works to achieve the client's goals if that deferral is leveraged with the rest of the client's planning and administration. The client needs to have access to a financial advisor, a real estate investment advisor, a private equity investment advisor, a CPA and an attorney with corporate and estate planning experience — all of whom are familiar with the requirements and effects of investing in a QOZ fund or business. Relying on just one professional leaves the client open to that professional's blind spots: their natural bias to do what they already know how to do. This includes going with 1031 exchanges for the real estate investment advisor, the promoted QOZ funds for the financial advisor and so on.

4. Is QOZ investment even necessary to achieve the investor's objectives?

There are alternatives to QOZ for deferring realized capital gains, so the client needs to examine whether the QOZ investment is really necessary to achieve their goals. As mentioned above, the 1031 like-kind exchange remains available for real estate investments, but there are other alternatives, including charitable remainder trusts, charitable lead trusts, deferred sales trusts, et al. Each has their own advantages and their own drawbacks, but each should be considered a way of achieving the client's objectives as they may make investing in a QOZ unnecessary.

5. Is what the promoters claim even possible, considering this has never been done before?

Any passive investment in a private equity fund or REIT will be promoted. The claims of the promoters need to be verified as being possible since the newness of this program means that any claims made in their promotional materials is even less likely to be true than the usual "puffing" that goes with promoting a new venture. This is doubly so for QOZ investments. This requires a more detailed investigation into the structure of the fund, the underlying assets, the periodic liquidity and exit strategy, who the managers of the fund or business are, as well as the focus, strategy and terms of the investment and so forth. Even if the offerings comply with the SEC regulations, most commonly Reg A and Reg D, it is very likely that a passive investor will give up most, if not all, control over their investments in the QOZ funds. Before you invest is the time to have second thoughts.

6. Is a QOZ investment currently viable?

Considering the uncertainty of the actual implementation and management of QOZ investments, and the hostility many of the Democratic candidates have toward the 2017 tax cuts in general, is a long-term investment in a QOZ a viable strategy anyway? This depends on the client's objectives, but the viability of QOZ tax deferral in the future needs to be considered. Even if the underlying legislation does not come under attack, the capital gains rates could be changed so that in 2026, when tax on 85 percent of the realized gains invested in the QOZ fund are due, the net tax is greater than if the client has paid the capital gains tax at the 2019 rates to begin with.

The corollary to this question is what will be "Plan B" if the QOZ deferral is no longer a viable option?

7. Is the investor ready to deal with the worst possible outcome?

Is your client really ready to deal with the worst possible outcome? For some, it is the loss of the entire value of the invested gains in the first seven years of the investment. For others, it is being caught up in the social and political blame of gentrification of low-income neighborhoods. Whichever it may be, have you informed your clients of the possible downsides of passively investing in an equity position in a property or business located in economically distressed locations? Do they

understand the risks?

Qualified opportunity zone investments are an important strategy for experienced private investors to leverage their investments in real estate properties and direct equity investments in new and growing businesses. They will need to be as skeptical of the promoted investments as they always should be when making a long-term investment in private equity funds and REITs. For clients who are new to passive or direct investing in such properties and businesses, who suddenly find themselves holding significant realized gains from the liquidation of their business, real estate holdings, or even such things as artwork and other tangible property, investing in a QOZ fund or business is perilous. Expect that QOZ funds, especially the REIT model funds, will be promoted heavily between now and the end of the year to these inexperienced investors. If you are an advisor, these questions will help your clients avoid a mistake. For fund managers, these questions will help you avoid getting saddled with minority investors who turn out to be more trouble than they are worth.

Matthew Erskine Managing partner, Erskine & Erskine LLC

August 16, 2019, 2:45 p.m. EDT

How Opportunity Zones and Co-Working Spaces Joined Forces.

The combination of opportunity zones and shared office space is creating incubators of start-ups and investors in underserved markets.

“There’s a lot of interesting stuff happening around Fort Wayne, but it was all happening within silos,” said Jeff Kingsbury, chief connectivity officer at Ancora, a private real estate firm based in Durham, N.C., that is backing Electric Works. “By creating that kind of center of gravity, we achieve a density, coupled with amenities, that really helps to draw innovation.”

Construction on Electric Works is scheduled to start in the first quarter of 2020, and is expected to take at least 18 months. The co-working component echoes a larger trend that is drawing more entrepreneurs to opportunity zones.

The opportunity zone program, enacted as part of the federal tax overhaul in December 2017, was created to stimulate private investment in economically distressed communities in exchange for a break on the capital gains tax. There are now more than 8,700 such zones nationwide.

Continue reading.

The New York Times

By Tom Acitelli

Published Aug. 20, 2019

Chris Rawley: Agriculture Investing in Opportunity Zones

How can agribusiness capitalize on the Opportunity Zones program? Chris Rawley is founder and

CEO of Fort Worth, TX-based Harvest…

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Opportunity Db

August 21, 2019

TAX - NEW JERSEY

NJ DEP/UFT v. Township of Upper Freehold

Tax Court of New Jersey - July 26, 2019 - N.J.Tax - 2019 WL 3406316

For-profit company sought a local property tax exemption for state-owned golf course and restaurant that it operated.

Company moved for summary judgment.

The Tax Court held that:

- Golf course was exempt from local property tax, and
- Restaurant was exempt from local property tax.

Restaurant on state-owned golf course property operated by for-profit company was exempt from local property tax, where provision of food and beverages was an expected amenity to golf course, restaurant was necessary to success of golf course, restaurant was located directly adjacent to the golf course and received a large percentage of patronage from golfers, and golf course furthered public purpose by providing recreational activity.

Leasing documents between government and for-profit company operating golf course and restaurant on state-owned property did not preclude application for tax-exempt status, even though the lease directed company to "pay all property taxes assessed," where documents also directed payment of taxes "if applicable," and no language in documents expressly precluded application for exemption.

The Gift-Card Budget.

Strapped for cash, state governments are plugging holes using unspent gift cards. Not everyone thinks it's a good idea.

Brenda Mayrack never intended to become an unclaimed-property czar. Even among legal specialties, the field is particularly obscure: During law school at the University of Wisconsin, she remembers hearing only a 10-minute lecture introducing the topic at the end of her trusts-an--estates class. But as the director of Delaware's unclaimed-property office, Mayrack now oversees a fund of $540 million a year, forgotten by people from Paris to San Francisco and then held temporarily by the state.

"You can think of all kinds of examples," says Mayrack. "The parent has an insurance policy, then they die, and no one knows about it." Or, Mayrack says, someone might have lost track of a bank

account, and the records disappeared in a fire or flood. “The only way the beneficiary will know about it is through unclaimed property,” she says. Because that money belongs to the consumer, not the insurance company or the bank, state offices of unclaimed property step in. Delaware’s pot of unclaimed money includes a mix of forgotten securities, uncashed checks, insurance payments, and—more and more often—gift-card money that customers never spent.

As Starbucks and Amazon propelled gift cards into what was in 2018 a $95.7 billion market, the amount of unused money left on them has also grown. Somewhere in the range of $2 billion to $4 billion—experts aren’t exactly sure—will languish on gift cards this year, according to figures provided by the business research firm Mercator Advisory Group. But there’s little consensus as to who owns that cash. While in some regions, companies take it for themselves, an increasing number of state governments seize it as unclaimed property. Much of that money is then directed into government general funds, where states use it to patch up holes in their budgets—a strange and little-noticed chain of monetary custody in which cash intended for a Colorado Office Depot can wind up paying for infrastructure hundreds of miles away.

No state has had more success with this approach than Delaware. “Delaware does have the vast majority of gift-card money,” says Michael Rato, a lawyer who works on unclaimed-property cases—a consequence of the fact that an outsize number of businesses incorporate there. Mayrack estimates that money from unused gift cards is the fourth most common type of unclaimed property her office encounters, after securities, uncashed checks, and accounts-receivable credits; all told, the state’s unclaimed-property fund accounts for 10 percent of its entire annual budget.

Other states are following its lead. Earlier this year, Colorado tightened its rules regarding gift-card money as part of a broader law that also entitled the state, for the first time, to spend unclaimed property in its annual budget. Some lawyers have considered claiming unused money stored in video games and cryptocurrency. As the Trump administration continues to cut federal funding for state programs, legislators desperate to make up the shortfall are turning to a patchwork of forgotten microtransactions you meant to spend on lattes or in-game wardrobe upgrades to help.

Unclaimed-property laws date back to feudal England, when the Crown was quick to seize control of land owned by citizens who had no heirs. In the United States, too, states held on to the property of people who’d died without clear inheritors. But as the majority of unclaimed property shifted from physical objects such as cash and land to assets that lacked clear geographic origins—and, therefore, a clear state to claim them—the law has become more complicated.

“What became trickier is when there was a type of unclaimed property that touched many different states,” Rato says. “When you have something like a share of stock, there are multiple different states that could have a claim.” By the middle of the 20th century, American courts had to decide who gets to control unclaimed money that is, say, left in a bank account: the state where the holder lives, or the state where the bank is incorporated?

In the 1965 case Texas v. New Jersey, the Supreme Court ruled that, if the address of the owner is known, all the unclaimed property should revert to the state of residence. If not, the state of incorporation for the company that holds the property gets the money. That makes Delaware, the site of incorporation for more than 60 percent of public companies, one of the top recipients of unclaimed property across the globe.

Gift cards have been a particular boon. Since few companies retain the addresses of gift-card owners, jurisdiction is almost always awarded to the state of incorporation. And to make sure it gets its due of gift-card proceeds, Delaware has hired private auditors to inspect the books of companies that are not particularly eager to publicize their extra cash. From 2004 to 2014, for instance,

Delaware paid the auditing agency Kelmar Associates $207 million to survey corporations registered within its borders for unclaimed property.

The state is probably right to be vigilant. In recent years, companies have become especially adept at circumventing unclaimed-property laws, according to Mayrack. Many now contract with third-party gift-card businesses based in states, such as Ohio and Virginia, that don't treat unused gift-card money as unclaimed property.

In these states, companies can funnel all unused gift-card money into their own coffers after five years, an expiration period mandated by Congress in 2009. One of the most prolific vendors of gift cards, Starbucks, is based in Washington, a state that says it won't take most gift-card money as unclaimed property—and because of its favorable location, the company made back $60.5 million in unspent gift-card money in 2017.

Even companies based in states with stricter laws are cutting corners just to avoid having their gift-card money seized as unclaimed property. Rather than contracting with legitimate third-party gift-card brands, some have allegedly set up shell companies to stash their unused gift money out of state. In one recent case, Delaware sued Overstock.com for contracting with a company that helped register gift cards out of state, even though Overstock.com—a Delaware company—remained the actual owner of the gift cards. In its complaint, Delaware called these out-of-state holdings a "sham" with the purpose of creating "a false paper trail." A jury agreed, and this past July, Overstock.com was required to pay the state a $7.3 million settlement.

Overstock, for its part, plans to file an appeal in September, telling me, "We did not violate the law." The company also noted that slightly less than 1 percent of its unspent gift-card money belonged to Delaware residents—but because of rules prioritizing the location of incorporation, it paid nearly all of it to the state.

Gift cards alone are not a massive revenue source for any state, but with many regions facing budget cuts, any extra wiggle room helps. Earlier this year, Claire Levy, who served in the Colorado legislature before becoming executive director of the Colorado Center on Law and Policy in 2013, pushed the state's lawmakers to borrow money from its unclaimed-property fund—which had grown to $116 million—in order to pay for affordable housing.

"Colorado chronically has budget issues," Levy tells me. "Public education is pitted against health care, which is pitted against child protective services, on and on and on."

Although some opponents in the Colorado House of Representatives charged that Levy was "spending someone else's money," as one legislator put it to The Colorado Sun, Colorado citizens take back only about 40 percent of unclaimed property within 20 years. In 2015, the nationwide return rate was roughly the same: 42 percent. If the money just sits there, why not use it?

Legal advocates such as Levy see this approach as the future. "Are we just going to continue to just lock that money away and let it pile up and pile up and pile up?" she says. "It just makes no sense when we need to fund housing, when we need to fund mental health care, when we need so many other things taken care of."

Yet an element of the low return rate is self-fulfilling. Without any incentive to do otherwise, some states allocate minimal funds—or none at all—toward notifying consumers that their property is on hold.

"We don't have an outreach budget," says Betty Yee, who oversees unclaimed property in California.

Since taking office in 2015, Yee has pushed the state to devote more resources to returning unclaimed money rather than spend it on government programs if no one reaches out to claim it. “The main objective of the unclaimed-property law is to protect unclaimed-property owners,” she says. “This is not the state’s property.”

Still, spending this money on state programs is a widespread practice. In her research, Levy discovered that the majority of states do spend unclaimed money, either by pouring it directly into the general fund or by putting it toward specific uses, such as housing and infrastructure.

Earlier this year, for instance, Louisiana pulled in $30 million to $40 million worth of unclaimed property to fill a hole in its annual budget. The Kansas legislature, too, decided to spend an extra $4 million from its unclaimed-property holdings. And California has long dumped its $400 million pot of unclaimed property into its general fund, making unclaimed property the state’s fifth-largest revenue source.

Government funding has always been a little bit weird—consider Iowa’s carved-pumpkin tax—but in an era of shrinking budgets, gift-card money has quietly begun bankrolling the month-to-month, year-to-year workings of American states.

THE ATLANTIC

by MICHAEL WATERS

AUGUST 27, 2019

Editorial: DIA Got Out Of A Bad Public-Private Partnership, We Should Stop Getting Into Them.

Denver International Airport is a mess at the moment.

Airport officials terminated a billion-dollar, 30-year, public-private partnership contract with the international giant Ferrovial Airports. It was a drastic move in the middle of a massive renovation of the Jeppesen Terminal.

But it was the right move.

Ferrovial Airports and its affiliated construction team Ferrovial Agroman had recently estimated that the project was going to be delayed by years and cost hundreds of millions of dollars more. Rather than ride out a mediation process to determine who was at fault for the delays and cost overruns, airport officials decided to execute an escape clause in the public-private partnership that gets them out of the deal now and able to move forward on their own.

That option comes with its own costs, which will have to be calculated out in a separate mediation process based in part on a guaranteed return on investment of 4.8 percent on some of the equity Ferruvial had already brought to the project.

But we agree with Kim Day, CEO of the airport, that they needed to regain control of the budget, contracting and scheduling. Day says that without Ferrovial, her team will be able to scale down the scope of the project and deliver it for $770 million, which is far less than what Ferrovial was projecting.

We believe that Kim Day and her team learned hard lessons about a job of this complexity and dealing with a difficult partner. They own up to not acting more aggressively when key personnel were replaced with inadequate substitutes. They admit that for various reasons — including not being told prices for options — they were slow to make design decisions. And they admit that they probably should have cut ties sooner with Ferruvial and the partnership created to manage the project, Great Hall Partners.

We believe they are committed to finishing the scaled-down project within budget.

But because Day insists the problem was the partner they chose and not the fundamentals of the P3 arrangement, we do not think they learned the biggest lesson of all: Public-private partnerships are risky, maybe even dangerous and should be used only when there are truly no other options. We're not even convinced they should be used then.

DIA did not need Great Hall Partners to finance the renovation. Instead, they were seeking expertise in undertaking such a massive project without disrupting airport operations any more than necessary.

This reasoning puzzled us from the start: Why give away so much control to a partner rather than just hiring the expertise you need? Day says they now have that expertise in their COO, and of course, they will retain the plans drawn up by Ferrovial for this project.

But the fundamental lesson learned here is that public-private partnerships give a private for-profit company control over public projects and public dollars. Oversight can be difficult — perhaps made more difficult in this case by a partner headquartered in Spain — and after the contract is signed, private companies can balk at requests for transparency. While cities and states say that these project agreements are great at transferring risk, one need only look at other projects in the area to see that when push comes to shove, these entities would rather take the issue to court than let unforeseen costs eat into their profits.

Thankfully Day and her team had drafted up a contract that included a reasonable escape hatch when disputes arose.

Moving forward, we urge public bodies to look for alternatives to public-private partnerships and if none exist, consider postponing the project until public financing is available.

By THE DENVER POST EDITORIAL BOARD

August 23, 2019 at 3:05 pm

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Leaning on the Land.

More and more communities are considering reviving an old tax idea that's been tried in only a few places.

The Market-Frankford rail line curves past an empty lot in Millbourne, Pa., a piece of land that marks both the rise and fall of the small borough just west of Philadelphia.

A Sears store once stood on the lot. Taxes collected from the store's real estate enriched the treasury of the borough for more than 60 years. The store's tax payments were the single largest source of revenue for Millbourne, enough for its 1,200 residents to have their own full-time police force. But in 1989, Sears decamped from Millbourne, moving one town over to the much larger and more affluent Upper Darby.

Like most municipalities, Millbourne relied heavily on property taxes. The city taxed land and the buildings on top of the land at the same rate, which is typical for cities across the country. And the Sears store was the largest structure in town on the largest parcel—17 acres. "For many years," says Millbourne Mayor Tom Kramer, "that area of land was the meat and potatoes of the borough." But when Sears closed and the building was demolished, Millbourne's property tax revenue all but evaporated.

Millbourne fell into financial ruin. Five years after the store closed, the borough was designated as financially distressed by the state. That made it eligible for additional financial support and debt restructuring, but it was no help to the community's reputation or self-image. The mark would remain on Millbourne's back for 21 years.

The town was unable to lure in new development with tax breaks, so to avoid financial ruin, it leaned on its homeowners to fill the gap in municipal finances. Tax bills skyrocketed between 1993 and 2014. But city leaders ultimately realized the long-term vitality of Millbourne could not be financed by single-family homeowners. High taxes would eventually chase residents away. At the very least, continued increases to property taxes could spark a tax revolt like those that challenged high property rates in California in the 1970s and, closer to home, costly reassessments in Pittsburgh in 2001.

Where Sears once stood, weeds and wildlife have taken over. And from the train platform, the empty lot remains an eyesore in Millbourne. But the gash in the borough's finances has been mended. The

town turned to an old yet radical idea to raise revenue. It enacted a land value tax, levying high rates on the land itself and none at all on the structures built there. The tax burden was shifted. Homeowners saw their tax bills cut nearly by a third. Meanwhile, the Sears property, which still swallows up more than a third of the land in the city, saw its tax bill double.

The land value tax, a 19th-century idea, not only raised necessary funds to keep the city afloat financially, but, as intended, forced landowners to make more productive use of other large properties. A former car dealership and a bowling alley, the second and third largest parcels in Millbourne, are now under development. “It’s sort of a stick-and-carrot approach,” Kramer says.

It’s not an approach that many cities are using at the moment. But it’s an idea that quite a few local governments, most but not all of them in Pennsylvania, are starting to think about.

Property taxes have been levied since the Middle Ages, but generally not in the most efficient manner. Medieval European kings sent tax collectors out to count the number of hearths in private homes, assuming the tally was the best approximation of how many people lived in the house. In 17th-century England, tax collectors counted windows. The idea was that the more windows a property had, the more valuable the property. This clumsy assessment was easily evaded. Property owners simply bricked their windows up. The legacy of this practice can still be seen in London and other industrial centers in England. It had detrimental health implications when the Industrial Revolution drew thousands from the country into the city, where they were often forced to live in windowless buildings with poor circulation.

Meanwhile in the United States, land acquisition was making even some of the Founding Fathers extremely wealthy. George Washington amassed a huge fortune through land speculation across colonies and frontiers. “Tax policy has always encouraged land speculators,” says Ed Dodson, a former market analyst with Fannie Mae and professor at Temple University. “It makes it easy for speculators to acquire and hold land and wait for public-private partnerships to come along with funds to pay them their profit for speculating.”

In 1879, the journalist and political economist Henry George wrote Progress and Poverty, a book challenging the notion that land speculation should reap such large profits. George suggested levying high taxes on land itself, and freeing improvements on the land from taxation. The land taxes would be high enough that an owner would either convert the land into a profit-making enterprise or sell it to someone who would. “The economic value of bare land does not derive from the actions of the owner,” says Joan Youngman, a senior fellow at the Lincoln Institute of Land Policy. “A piece of bare land has value because of the growth of society and the activities around it.” Large landowners, she says, are actually engaging in a form of rent-seeking, buying and sitting on a piece of land at virtually no cost to themselves and waiting for the opportune time to sell after making little or no investment.

George wanted to break that cycle, and his theory was put to the test in the early 20th century in Pennsylvania, when it was used in an effort to break up large undeveloped tracts of land owned by the state’s steel barons, notably Andrew Carnegie and Henry Clay Frick. The state adopted legislation allowing its cities to adopt a land value tax. A handful of them did. Most of them weren’t the pure Henry George variety, under which developed structures escaped any taxation at all. They tended to be two-tiered systems, with buildings taxed but at a much lower rate than land.

Pittsburgh was one of the early adopters. The result was the development of affordable homes for many of the workers in Carnegie’s steel mills. Land value taxes grew in popularity in Pennsylvania well into the mid-1900s. But there was a serious problem. Municipalities seldom bothered to reassess the value of the land. Pittsburgh had to scrap the tax in 2001 after a backlash against land

value reassessments sparked outrage from homeowners. “Pittsburgh went too long without revaluing,” Youngman says. “If you fail to revalue, you’ll have a revolt because you get sticker shock.”

And even though the city had a land value tax system from 1913 to 2001, Pittsburgh still saw the gradual decline of its industrial base in the second half of the 20th century. Steel mills slowed their output after their postwar boom. The accompanying decline in tax revenue wasn’t so much a failure of the land tax system as a failure of local industries to keep pace with foreign competitors as steel-making advanced. Some critics felt the land tax was unjustly blamed for the economic collapse.

The land value tax didn’t fail Pittsburgh as much as the political system did. For decades, city leaders balked at tax assessments, which had been lagging behind the real value of land since the 1940s. Rather than adjust the land assessments to match property values, the city instituted a property tax in 1954 to fill gaps in the budget. As residents continued to leave the city, its tax base continued to dwindle. Yet Pittsburgh’s leaders could not muster the political will to reassess land values. By the mid-1990s, though, the city was forced to reassess property values to help pay for services. When the assessments for 2000-2001 came back, land value taxes jumped 81 percent and taxes on buildings by 43 percent. The new valuations were in line with the actual appreciation of the land. But affluent Pittsburgh residents angered by the steep increases rejected them and filed thousands of tax appeals. The city scrapped its land value tax. “The 2001 abandonment of the split-rate in Pittsburgh,” University of Pennsylvania professor Mark A. Hughes wrote in 2005, “is a compelling example of the limited role that evidence often plays in policy decisions.”

But Pittsburgh didn’t abandon the tax idea completely. Since 1997, the city has used a pure land value tax to assess property within the confines of its central business district. After the Great Recession, downtown construction picked up. In the last 10 years, $8.5 billion in development has either been constructed or planned, according to a report by the Pittsburgh Downtown Partnership.

Meanwhile, California was confronting some of the same problems, but with a different outcome. As the state boomed after World War II, its population tripled. With that rapid growth came a housing crunch that led to rapidly increasing residential property taxes. A tax revolt broke out in the 1970s, and in 1978, voters approved Proposition 13, a ballot measure that rewrote the property tax system in the state. Property taxes were assessed at no more than 1 percent of residential or commercial building value and could only increase 2 percent per year.

Had the property tax reductions been accompanied by a significant land tax, George’s theories might have been given a meaningful test. But land taxes were also kept low, which didn’t promote the best use of property. With property taxes strictly limited, municipalities scrambled to attract car dealers, shopping malls and even parking lots to produce sales tax receipts. Improvements to the land were minimal, and the land itself brought in very little. One of the biggest losers was the state treasury.

But the biggest victim of all was the state’s school system. Prop. 13 constricted the main source for school revenue. The largest state in the nation, with by far the largest economy, fell to 41st in per pupil spending. Recently, some school districts in the state have turned to a revenue scheme almost akin to George’s land value tax. They are placing a flat tax on each parcel of land within a school district boundary, regardless of the improvements made on the land. The city of Oakland began imposing a vacant land tax earlier this year. It taxes owners of vacant lots $6,000 per year, and vacant condominiums $3,000 per year. The money will be used to address affordable housing and homelessness.

While California was struggling with its property tax system, some Pennsylvania cities still depended on a land tax. Harrisburg, the state capital, was using the land tax as a way of revitalizing its

economy. In 1975, as industrial decline and white flight gripped Pennsylvania's rust belt, Harrisburg adopted its two-tiered land value tax. It took some time, but city leaders insisted that taxing vacant land rather than development would revitalize the downtown. There's some evidence they were right. Between the early 1980s and the early 2000s, the number of vacant buildings declined from more than 4,000 to about 500, and the number of businesses increased more than fourfold. Other Pennsylvania cities have followed Harrisburg's lead.

Aliquippa is one of them. A small working-class town west of Pittsburgh along the Ohio River, it was once home to Jones and Laughlin Steel. The J&L plant supported the town and its residents until it shuttered in the 1980s, leaving many of the workers without jobs and the town short on resources. Overnight, the city lost 30 percent of its tax revenue. "The amount of vacant land from the demolition of steel plants," says Joshua Vincent, president of the Center for the Study of Economics, "put extra pressure on out-of-work steel workers and businesses on Main Street." In 1988, Aliquippa adopted a land value tax. From that point on, land was taxed at more than seven times the rate of buildings. The impact was immediate. Tax revenue from land alone jumped from less than one-fifth of city tax revenues to more than 80 percent. It was so successful that the school district followed suit in 1993.

Tom Kramer became mayor of Millbourne in 2009, as the town was slowly emerging from economic distress. He had seen the community's decline first-hand, arriving just as the Sears facility had closed. It was a chance meeting with Dodson, the Temple University professor, that convinced him that a land value tax would be the right fit for Millbourne. Kramer was open to any ideas that would generate the revenue necessary to save the town fiscally, without placing any more burden on single-family homeowners. "The most important thing we needed to do," Kramer says, "was cut the residents' taxes."

Kramer faced strong headwinds from real estate interests. Even when the local political climate supports a land value tax, adoption is difficult. In Pennsylvania, as in most states, state law severely limits the ability of a municipality to make major changes to how it collects taxes. But Pennsylvania may be a straw in the wind.

Cities in most of the country have been forced for decades to compete with each other in offering lucrative tax breaks to lure in developers and businesses. Those schemes leave local governments short on cash to build and maintain infrastructure and services needed for commerce. "Giving these picayune tax breaks makes no sense," Vincent says. In the end, he believes, cities are repeating the mistakes of decades past. "The thing that cities want is someone to build the homes and offices," he says. "And the city is taxing the good part, the building itself." What it needs to tax, in his view, as in George's view more than a century ago, is the fundamental value of the land.

GOVERNING.COM

BY J. BRIAN CHARLES | SEPTEMBER 2019

P3 Showcase: Building Michigan's Infrastructure Through P3s

Lansing, MI | October 31, 2019

Join NCPPP for the latest P3Showcase, Building Michigan's Infrastructure Through P3s, this October. Infrastructure in Michigan and across the country is faced with a growing portfolio of infrastructure challenges, such as roads, bridges, stormwater and wastewater facilities, university

housing, and other social infrastructure, that needs to be built or renovated.

This P3Showcase will offer an advanced and in-depth look at how P3s have been utilized this far and how they can be more widely used in Michigan.

Click here to learn more and to register.

CDFA EDA RLF Training Course - Chicago

September 10-11, 2019 | Chicago, IL

Click here to learn more and to register.

CDFA-Bricker PACE Webinar Series: PACE Transactions

September 11, 2019 | 11:00 AM – 1:00 PM Eastern

Click here to learn more and to register.

CDFA // BNY Mellon Development Finance Webcast Series: Fill In The Gaps with New Markets Tax Credits

Tuesday, September 17, 2019 | 1:00 PM Eastern

Click here to learn more and to register.

Pennsylvania Supreme Court Strikes Down City Ordinance Attempting to Regulate Utilities' Use of Municipal Rights-of-Way.

The Pennsylvania (PA) Supreme Court issued its unanimous decision on August 20 in *PPL Electric Utilities Corp. v. City of Lancaster*, invalidating a municipality's efforts to impose annual fees on utilities to occupy public rights-of-way and adopt inspection, supervision, and enforcement measures underpinning those fees. The PA Supreme Court affirmed that the Public Utility Code (Code) and the authority of the Pennsylvania Public Utility Commission (PUC) to apply and enforce the Code preempt the field on all matters that relate to the regulation of public utilities in the commonwealth. In doing so, the court upheld the longstanding principle that public utilities should be regulated by one statewide agency, namely the PUC.

The litigation culminating in the PA Supreme Court's decision arose from the 2013 enactment of a local ordinance that implemented a comprehensive program for management of municipal rights-o--way. The key provision of the ordinance at issue authorized the City of Lancaster (City) to impose perpetual, annual occupancy fees on utilities for their presence in municipal rights-of-way. The

ordinance also included provisions purporting to grant the City authority to inspect public utility facilities located in the right-of-way, order the relocation of such facilities, and enforce the Code and the ordinance itself.

In 2014, PPL Electric Utilities Corp. (PPL) challenged the ordinance in the Commonwealth Court of Pennsylvania and asserted, among other things, that the Code preempted the ordinance. In an opinion issued on October 15, 2015, the Commonwealth Court agreed, holding, consistent with prior law, that the inspection, supervision, and enforcement provisions of the ordinance unlawfully intrude on the PUC's exclusive jurisdiction over public utility rates, service, and facilities. However, the Commonwealth Court upheld the City's authority to impose the occupancy fee, which it determined was an authorized exercise of the City's home-rule authority to seek reasonable compensation for maintenance expenses associated with rights-of-way used by utilities. The City and PPL both appealed to the PA Supreme Court.

The PA Supreme Court first addressed the City's appeal and held that the Code's comprehensive statutory framework for utility regulation reflects the General Assembly's clear intent "wholly to occupy the field of utility regulation at the state level." The PA Supreme Court explained that in a long line of cases dating back over a century, Pennsylvania has recognized the importance of having a single agency in charge of regulating public utilities so that the public welfare is not adversely affected by public utilities having to navigate different regulations for each locality. In light of that precedent, the PA Supreme Court concluded that Code compliance and enforcement plainly are entrusted to the PUC and the City lacked authority to "step into that domain, even gingerly." Therefore, notwithstanding the City's argument that the ordinance limits local authority by deferring to applicable Code provisions and PUC standards, the PA Supreme Court found that the Commonwealth Court correctly enjoined the City's inspection, supervision and enforcement measures.

On the other hand, the PA Supreme Court reversed the Commonwealth Court's opinion to the extent it allowed the City to impose occupancy fees on utilities. In the appeal, PPL, the PUC, and *amici* represented by Morgan Lewis, emphasized that the ordinance's occupancy fee would generate a local benefit but impose costs that are spread across utilities' multi-municipality customer base. The PA Supreme Court focused on this argument in its opinion and held the Code's preemptive effect applies to the occupancy fee because that fee is "materially congruent" to the state-level PUC assessment that is already reflected in utility rates. The court further reasoned that setting utility rates that reflect local occupancy fees is contrary to the fundamental intent of the Code to provide a "uniform regulatory framework that ensures a level playing field for all utilities and utility subscribers."

by Kenneth M. Kulak, Anthony C. DeCusatis and Brooke E. McGlinn

August 23 2019

Morgan Lewis & Bockius LLP

The View from Washington: A Conversation with the MSRB

In this episode of "The View from Washington," outgoing Municipal Securities Rulemaking Board (MSRB) President and chief executive officer Lynnette Kelly and Chair of the Board Gary Hall sit down with SIFMA President and CEO Kenneth E. Bentsen, Jr. to discuss the landscape for municipal

securities. From the Retrospective Rule Review to moving to the cloud, watch their discussion for insight into the primary regulator of the municipal securities markets and what matters most for the marketplace.

View the conversation.

TYPE: Pennsylvania + Wall
DATE: August 21, 2019
BY: Kenneth E. Bentsen, Jr.
COMMITTEE: Municipal Securities Committee

- GASB Publishes Implementation Guidance On Lease Accounting.
- Bad Wrap: The Woes of Bond Insurers.
- Senate Carbon Capture Bill Gains a House Companion: Squire Patton Boggs
- It's Time for Truth in State and Local Government Finances.
- One of the Most Lucrative Regulatory Jobs in Washington Is Now Open.
- MSRB Podcast: A Conversation About Yield Curves
- GFOA Announces Encore Presentations of 24th Annual Governmental GAAP Update.
- And finally, Unclear on the Concept, Lewis & Clark Edition is brought to us this week by *Lee v. Department of Parks and Recreation*, in which a woman sued after breaking her ankle whilst on a hiking trail (in the untracked wilderness of Marin County, CA, no less). The woman complained that the trail, "contained uneven and protruding stones and depressions.… [and] … also claimed that leaves from a nearby tree shaded and concealed those protrusions and depressions." Surely not. The horror. The horror. When Shade Trees Attack sounds like a sure-fire horror movie smash, said no one ever.

PUBLIC UTILITIES - CALIFORNIA

Winding Creek Solar LLC v. Peterman

United States Court of Appeals, Ninth Circuit - July 29, 2019 - F.3d - 2019 WL 3404216 - 19 Cal. Daily Op. Serv. 7422 - 2019 Daily Journal D.A.R. 7071

Limited liability company (LLC) that was owner and developer of planned solar power facility in California brought action for declaratory and injunctive relief against Commissioners of California Public Utilities Commission (CPUS) in their official capacities, alleging that Public Utility Regulatory Policies Act (PURPA) preempted certain CPUC orders governing wholesale price of energy bought from small facilities such as that planned by LLC.

The United States District Court for the Northern District of California granted owner summary judgment on declaratory claim, but denied injunctive relief in form of granting it contract with state utility company. Both sides appealed.

The Court of Appeals held that:

- PURPA preempted CPUC orders, but
- Injunction requiring CPUC to enter into contract with owner was as-applied challenge reserved to state court.

Public Utility Regulatory Policies Act (PURPA) and its implementing Federal Energy Regulatory Commission (FERC) regulations preempt California Public Utilities Commission (CPUC) orders setting the terms on which California's investor-owned public utilities must enter into long-term, fixed price contracts with facilities qualifying as small power production facilities under PURPA.

After prevailing in federal court in action for declaratory relief against Commissioners of California Public Utilities Commission (CPUC), owner of planned solar power facility was not entitled to injunctive relief in form of contract for utility company to buy energy from it at specific price, since that request was as-applied challenge reserved to state court.

IMMUNITY - CALIFORNIA

Lee v. Department of Parks and Recreation

Court of Appeal, First District, Division 4, California - July 31, 2019 - Cal.Rptr.3d - 2019 WL 3492489 - 19 Cal. Daily Op. Serv. 7539 - 2019 Daily Journal D.A.R. 7235

Pedestrian brought action against Department of Parks and Recreation for premises liability after pedestrian injured herself on campground stairway.

The Superior Court granted summary judgment to Department. Pedestrian appealed.

The Court of Appeal held that:

- Stairway was a "trail" or an integral part of a trail, such that trail immunity applied to Department, but
- Pedestrian's action had reasonable cause, and thus award of defense costs was improper.

Campground stairway was a "trail" or an integral part of a trail, such that trail immunity applied under recreational use immunity statute, precluding pedestrian's premises liability action against Department of Parks and Recreation after pedestrian injured herself on stairway, even though stairway was made of stone steps; stairway was located in wooded region of state park, it was built into path on a hill, it was winding rather than straight, it was made from crude, natural materials, and sign at base of stairway indicated it provided access to hiking trails.

Pedestrian's premises liability action against state Department of Parks and Recreation, seeking damages for injury from pedestrian's fall on campground stairway, had reasonable cause, supporting finding that Department could not recover defense costs under Torts Claims Act, even though court ultimately found that Department had trail immunity from action; no case law addressed dispositive issue of whether stairway was a trail such that trail immunity would apply, and it was by no means certain that a court would determine stairway to be a trail or at least an integral part of one.

PUBLIC MEETINGS - CONNECTICUT

City of Meriden v. Freedom of Information Commission

Appellate Court of Connecticut - August 6, 2019 - A.3d - 191 Conn.App. 648 - 2019 WL 3540512

City sought review of determination by Freedom of Information Commission that gathering of four members of its city council, the city's mayor, and the retiring city manager to discuss the search for

a new city manager violated open meeting requirements of the Freedom of Information Act (FOIA).

The Superior Court dismissed. City appealed.

The Appellate Court held that gathering did not constitute a "meeting" triggering FOIA open meeting requirements.

Gathering of four political leaders of a city council, the city's mayor, and the retiring city manager to discuss the search for a new city manager did not constitute a "meeting" triggering opening meeting requirements of the Freedom of Information Act, where no quorum was present and the gathering did not constitute a hearing or other proceeding.

EMINENT DOMAIN - MARYLAND

Harford County v. Maryland Reclamation Associates, Inc.

Court of Special Appeals of Maryland - August 1, 2019 - A.3d - 2019 WL 3492174

Landowner brought inverse condemnation action against county alleging that county's zoning laws interfered with landowner's investment-backed business expectations to operate a rubble landfill on its property, and that such interference constituted a regulatory taking.

The Circuit Court denied county's motions to dismiss and for summary judgment, after which it entered judgment upon jury verdict of $45,420,076 for landowner. County appealed and landowner cross-appealed.

The Court of Special Appeals held that:

- Landowner exhausted its administrative remedies, but
- Inverse condemnation claim accrued for limitations purposes when county board of appeals denied landowner's requests for variances.

Landowner exhausted its administrative remedies before pursuing inverse condemnation action against county alleging that county's zoning laws effected a regulatory taking by interfering with its investment-backed business expectations to operate a rubble landfill on its property, where landowner sought a ruling from county hearing examiner and county board of appeals that a new zoning law concerning requirements for rubble landfills did not apply to its property, landowner appealed board's decision to trial court, Court of Special Appeals, and Court of Appeals, and landowner then unsuccessfully sought variances to operate a rubble landfill and appealed the denial of variances up to the Court of Appeals.

Landowner's inverse condemnation claim against county, alleging that county's zoning laws effected a regulatory taking by interfering with landowner's investment-backed business expectations to operate a rubble landfill on its property, accrued for limitations purposes when county board of appeals issued its final decision denying landowner's requests for variances to operate a rubble landfill, even though the Court of Appeals had not affirmed or reversed the board's decision; date of board's decision was the date that landowner discovered the alleged taking of its property and, to the extent that a stabilization principle applied, it was abundantly clear on that date that the county would not permit landowner to operate a rubble landfill.

Maryland Department of the Environment's (MDE) decision to not renew landowner's permit to operate a landfill three years after county board of appeals issued its final decision denying

landowner's requests for variances to operate a rubble landfill on its property constituted the continuing effects of a single earlier act, which was insufficient to delay the limitations period for landowner's inverse condemnation claim against county alleging that county's zoning laws effected a regulatory taking by interfering with landowner's investment-backed business expectations to operate a rubble landfill, where MDE's decision was premised entirely on the Court of Appeals' decision affirming the board's earlier denial of the variance requests.

ZONING & PLANNING - PENNSYLVANIA

Vineyard Oil and Gas Company v. North East Township Zoning Hearing Board

Commonwealth Court of Pennsylvania - July 31, 2019 - A.3d - 2019 WL 3432069

Oil and gas company filed action challenging decision of township zoning hearing board granting telecommunications company's application for dimensional variance and special exception, allowing construction of self-supporting cell tower structure on leased property.

The Common Pleas Court entered order affirming decision. Oil and gas company appealed.

The Commonwealth Court of Pennsylvania held that:

- Telecommunications company was not entitled to dimensional variance from township zoning ordinance setback requirements;
- Telecommunications company was not entitled to special exception from township zoning ordinance requiring monopole antenna support structure; and
- Telecommunications company was not entitled under Telecommunications Act (TCA) to grant of dimensional variance and special exception.

Telecommunications company seeking to construct self-supporting cell tower structure on leased property did not have "unnecessary hardship," and thus company was not entitled to dimensional variance from township zoning ordinance setback requirements, notwithstanding fact that stream bisected leased property creating floodplain conditions, where property was currently being productively used for automobile repair business and salvage yard, and property contained septic tank and gas well.

Telecommunications company seeking to construct self-supporting cell tower structure on leased property failed to establish cost of monopole was preclusive, that safety required structure other than monopole, or that self-supporting structure had least adverse practical visual impact, and thus company was not entitled to special exception from township zoning ordinance requiring monopole antenna support structure, in proceedings before zoning hearing board, where testimony was given that self-supporting structure "performs a little better" in terms of withstanding wind, and that company would save company $25,000 with self-supporting structure.

Telecommunications company seeking to construct self-supporting cell tower structure on leased property failed to establish cost of monopole was preclusive, that safety required structure other than monopole, or that self-supporting structure had least adverse practical visual impact, and thus company was not entitled to special exception from township zoning ordinance requiring monopole antenna support structure, in proceedings before zoning hearing board, where testimony was given that self-supporting structure "performs a little better" in terms of withstanding wind, and that company would save company $25,000 with self-supporting structure.

EMINENT DOMAIN - PENNSYLVANIA

Tennessee Gas Pipeline Company, LLC v. Permanent Easement for 7.053 Acres

United States Court of Appeals, Third Circuit - July 23, 2019 - F.3d - 2019 WL 3296581

Natural gas company filed condemnation action under Natural Gas Act (NGA) against landowner to obtain easements over owner's land in order to construct natural gas pipelines.

The United States District Court for the Middle District of Pennsylvania granted gas company's motion for summary judgment as to compensation in part and certified its order for interlocutory appeal.

The Court of Appeals held that:

- NGA's reference to state "practice and procedure" that federal courts should conform to in conducting eminent domain proceedings under NGA requires conformity in procedural matters only;
- Gap existed in federal law with regard to compensation owed to landowners when their land was taken by a private entity under NGA;
- Nationally uniform rule regarding compensation owed to landowners when their land was taken by a private entity under NGA was not necessary;
- Incorporating state law on just compensation as the federal rule for determining compensation owed to landowners when their land was taken by a private entity under NGA would not have frustrated NGA's goals; and
- Fashioning a uniform federal common law to determine just compensation under NGA would have risked upsetting the parties' commercial expectations based upon the already well-developed state property regimes.

The Natural Gas Act's (NGA) reference to state "practice and procedure" that federal courts should conform to in conducting eminent domain proceedings under NGA does not mean that it incorporates state law for the substantive determination of compensation; although some courts have concluded otherwise, this language requires conformity in procedural matters only.

A gap existed in federal law with regard to just compensation for taking of private property by a private entity under Natural Gas Act (NGA), and thus court would apply Kimbell Foods, 99 S.Ct. 1448, standard to determine whether to fashion a uniform national rule to fill in such gap or to incorporate state law as the federal standard; Supreme Court cases governing the determination of just compensation only applied in eminent domain actions brought by federal government, not by private entities, and NGA only provided that state procedural rules should apply in determining just compensation, but did not address what substantive law was applicable.

A nationally uniform rule regarding just compensation for taking of private property by a private entity under Natural Gas Act (NGA) was not necessary, thus weighing in favor of incorporating state law as the federal standard for compensation, rather than fashioning a uniform national rule to fill in gap in NGA regarding compensation; NGA condemnation proceedings were between private parties to which United States was not a party, resulting in weak federal interest, property rights were traditionally an area of state concern, a federal standard would risk muddying elaborate state property rules, NGA contemplated state participation, and federal rules of civil procedure provided a sufficient amount of uniformity in condemnation actions.

Incorporating state law on just compensation for taking of private property as the federal rule for determining compensation owed to landowners for takings by private entities under Natural Gas Act (NGA) would not have frustrated NGA's goals, thus weighing in favor of using state law rather than fashioning a uniform national rule to fill in gap in NGA regarding compensation; only effect of adopting state law was that condemnors might be required to pay more under certain state laws, but purpose of NGA was to regulate transportation of natural gas and the sale thereof and to protect interests of the public, not to protect natural gas companies from additional costs that varying state laws might have imposed.

Fashioning a uniform federal common law to determine just compensation for taking of private property by a private entity under Natural Gas Act (NGA) would have risked upsetting parties' commercial expectations based upon already well-developed state property regimes, thus weighing in favor of incorporating state law as the federal standard for compensation, rather than fashioning a federal rule to fill in gap in NGA regarding compensation; although there already existed an established body of federal law on the issue of just compensation in general, putting parties on notice of the potential application of federal law, property rights were traditionally defined by state law, and a new federal rule would have merely superimposed another layer of property rights.

Bad Wrap: The Woes of Bond Insurers.

Burned by financial crisis, they turned to muni bonds. Ouch

On august 8th two subsidiaries of mbia, an American insurer, sued nine Wall Street firms, alleging misconduct in underwriting bonds issued by Puerto Rico and "wrapped", or guaranteed, by mbia. Lawsuits accusing banks of peddling iffy securities are not rare these days. However, this one is a reminder that "monoline" bond insurers, which briefly played a starring role in the financial crisis of 2008, are, though hardly full of life, still kicking.

Monoline insurers (so called because they focus solely on providing financial guarantees) charge a premium to cover interest and principal payments should bonds default. The industry sprang up in the 1970s, first focusing on municipal debt and later branching out into structured products like mortgage securities. That expansion backfired spectacularly when American house prices crashed. For a few weeks in 2008 the previously obscure monolines—the biggest of which were mbia and New York-based Ambac—became front-page news as fears spread that they might be unable to pay claims on hundreds of billions of dollars of securitised debt.

Rating agencies responded by downgrading monolines' own debt. That did for some of them, given that the business was largely about lending the insurer's aaa rating to the bonds. Ambac filed for bankruptcy and was placed in rehabilitation. mbia avoided going bust but is a shadow of its former self. Both firms remain in run-off, meaning they cannot write new policies, but have big books of existing business. These days, most new policies are written by either Bermuda's Assured Guaranty or New York-based Build America Mutual.

The monolines had hoped that less-ravaged municipal bonds would shore them up. But there too volume tumbled as issuance dwindled and interest rates fell, eroding margins. Josh Esterov of CreditSights, a research firm, reckons the muni-insurance business is a tenth of its pre-crisis size.

Moreover, as the public-finance market shrank it also convulsed. Insurers have suffered bigger-tha--expected losses on muni defaults, from Detroit to Puerto Rico. The latter's bankruptcy in 2017,

designed to help it restructure $120bn of debt and pension obligations, has hit them particularly hard. The $170m net loss under us gaap made by mbia in the latest quarter was largely down to Puerto Rico.

The $720m mbia is seeking from Citigroup, ubs and seven other banks matches the value of claims it has paid out on Puerto Rican contracts. It accuses them of creating “a financial abyss of historic proportions” by urging Puerto Rico to issue “unsustainable” debt, and making false or misleading disclosures on which the insurer relied. The banks’ defence is likely to focus on the fact that bond insurers are hardly unsophisticated; insurers have long advertised their credit-surveillance skills.

All of which suggests that post-crisis bond insurance is not for the faint-hearted. Last year David Einhorn became the latest in a long line of hedge funders to publicly short a bond insurer, calling Assured Guaranty “a melting ice cube”. The firm pooh-poohed the critique, and many clearly think it has navigated the morass well: its share price is 50% above its pre-crisis peak (and 23% higher than when Mr Einhorn weighed in); mbia’s is down by 88%. This has allowed Assured to swoop in on some of the more attractive bits of rivals’ books. It is also diversifying: on August 9th it acquired BlueMountain, a fund manager specialising in collateralised loan obligations—securities backed by leveraged loans, which fared better than mortgage-backed debt in the crisis and remain popular with yield-hungry investors.■

The Economist

Aug 15th 2019

Some Question Public-Private Partnerships Following Airport Project Breakup.

DENVER (CBS4) – A day after Denver International Airport and city officials announced a bombshell breakup with their partners on the Great Hall reconstruction project, questions about what it will cost remain.

Lengthy completion dates and rising costs, first reported by CBS4 Investigator Brian Maass, are partly to blame for the termination.

Denver Mayor Michael Hancock made the decision to cut the losses while also pointing out issues with the process.

“Public-private partnerships… we have to get better at this,” he said. “This is a very valuable and to some extent painful lesson for us to learn.”

Public-private partnerships, also known as P3’s, are relatively new way for local and state governments to fund major projects.

The airport is one example but the Central 70 project, expansion of U.S. 36 and Denver’s commuter rail are other examples.

Paul Teske, Dean of Public Affairs at The University of Colorado Denver who researches changes in urban development and public finance, paying close attention to these deals.

“From the start they are partners in the investment and the private partners are putting some

money in and they are also partners in the revenue so there has to be some sort of revenue which is why highways with tolls are a good example," Teske said

The benefit is that projects can start with smaller up-front costs and little-to-no weight on taxpayers.

The concern, outside of unforeseen issues in development, is government losing a long-term revenue source.

Teske says the question the community needs to ask is who is taking the biggest risk.

"The details are very important and that's why there are not a ton of these, you can't pull a contract off the shelf."

CBS4

By Karen Morfitt

August 14, 2019 at 9:59 pm

Understanding General Obligation Municipal Bonds.

Summary

- Municipal bonds are sold by local and state governments to help fund public projects or municipal government operations, like building new schools or repairing city sewer systems.
- A common mistake some municipal bond investors make is assuming that any general obligation bond issued by a state or local government is backed by the same pledge.
- With high-profile cases like Detroit's bankruptcy and Puerto Rico's effective bankruptcy in 2017, it may seem like GOs frequently default – but that's not the case.

Continue reading.

Charles Schwab

By Cooper J Howard

Aug. 15, 2019

The New Center Offers Bipartisan Solutions To Combat The Widening Infrastructure Funding Gap.

WASHINGTON, Aug. 12, 2019 /PRNewswire/ — The New Center – an organization focused on creating the space for a political center in America – today released a new policy paper entitled, "The Infrastructure Funding Gap." With Washington's continuing impasse over how to fund critically needed infrastructure investment, this paper highlights ways in which leaders on both sides could come together to fill the funding gap.

"The Infrastructure Funding Gap" is the second in The New Center's two-part series examining the

causal factors behind America's decrepit infrastructure. A previous paper, "Infrastructure: A Tangle of Red Tape," explored how excessive regulations and inefficient bureaucratic procedures impede our ability to build new infrastructure.

In this New Center paper, we try to break the logjam where Democrats have been demanding new taxes to invest new public money, while Republicans have pushed more involvement for private sector investors. A grand infrastructure bargain that brings both parties to the center could include:

1. Requiring states to evaluate all potential funding options, including public-private partnerships, to become eligible for federal funding
2. In the short term: Increasing the federal fuel tax for the first time since 1993 and indexing it to inflation, but in the long-term: transitioning from a fuel tax in the short term to a vehicle miles traveled fee in the long term to account for the increasing prevalence of hybrid and electric vehicles
3. Implement an overland freight tax on heavy-duty trucks and rail cars to account for the extra wear these large vehicles impose on our infrastructure
4. Implementing a capital budgeting system for federal infrastructure projects to account for spending that delivers economic return and operating expenses separately
5. Reviving the Obama Administration's Build America Bonds program to stimulate the purchase of municipal bonds and generate extra funding for public infrastructure projects
6. Lifting burdensome regulations on Private Activity Bonds, which are valuable financing tools for projects that benefit private entities while serving a public purpose

"The Infrastructure Funding Gap" is available for download at www.newcenter.org along with several other recent policy proposals.

MSRB Podcast: A Conversation About Yield Curves

The municipal securities market is composed of more than one million unique bonds, each with its own specific structural characteristics, ratings and yields. Market benchmarks such as yield curves, provide sector-specific or broad market information about the general level of municipal interest rates. Not all benchmarks and yield curves are created equal. Hear about how different yield curves are used to evaluate a bond's yield or performance.

Listen to the podcast.

Posted: 4/9/2019

MSRB Announces New Officers and Board Members for FY 2020; Lynnette Kelly Retiring from MSRB.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today announced new officers and members of its Board of Directors who will begin their terms on October 1, 2019. The Board also announced that, after 12 years successfully leading the organization, MSRB President and CEO Lynnette Kelly will be retiring from the organization at the end of the fiscal year.

The 21-member MSRB Board consists of four "classes" with staggered terms, and annually elects a

class in accordance with the Securities Exchange Act of 1934 and MSRB rules. For the first time in the MSRB's history, women make up the entirety of the incoming class and the majority of the full Board.

"Our incoming Board members are just exceptional," said outgoing MSRB Board Chair Gary Hall. "Their diverse perspectives and experience will breathe fresh air into our initiatives for Fiscal Year 2020 and beyond. The impressiveness of these incoming Board members is a real testament to the trailblazing women in our market, including our very own Lynnette Kelly, who has served this organization with distinction for over a decade."

Kelly joined the MSRB in 2007, overseeing the launch of the MSRB's Electronic Municipal Market Access (EMMA®) website, which has transformed the level of transparency in the municipal securities market. Kelly also led the organization through the implementation of a new regulatory framework for municipal advisors after the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

"I am proud of the MSRB's tremendous contributions to the municipal securities market over the past 12 years," Kelly said. "It has been an honor to lead a staff of dedicated, mission-driven colleagues, and I know the MSRB is poised to continue to advance our mandate of ensuring a fair and efficient market."

The Board has appointed Nanette Lawson, Chief Financial Officer, as interim CEO while it conducts a nationwide search for Kelly's replacement. Kelly will serve as a consultant to the Board to help with the transition.

The Board, which has 11 independent public members and 10 members from firms regulated by the MSRB, including broker-dealers, banks and municipal advisors, establishes regulatory policies and oversees the operations of the MSRB. New public members joining the MSRB Board beginning October 1 are: Meredith Hathorn, Managing Partner at Foley & Judell, L.L.P.; Carol Kostik, retired; and Thalia Meehan, retired. Joining the Board as regulated members are: Angelia Schmidt, Managing Director at UBS Financial Services, and Sonia Toledo, Managing Director at Frasca & Associates, LLC. New members were selected from approximately 80 applicants this year.

The MSRB also annually elects officers and announced that Edward Sisk, Managing Director, Head of Public Finance at Bank of America Merrill Lynch, will chair the Board beginning October 1, 2019. Manju Ganeriwala, Treasurer of the Commonwealth of Virginia, will serve as Vice Chair.

In addition to Sisk and Ganeriwala, continuing Board members are Patrick Brett, Robert Brown, Julia Cooper, Caroline Cruise, Joseph Darcy, Ronald Dieckman, Frank Fairman, William Fitzgerald, Jerry Ford, Daniel Kiley, Kemp Lewis, Seema Mohanty, Donna Simonetti and Beth Wolchock.

New MSRB Board Members, Fiscal Year 2020

Meredith Hathorn is a Managing Partner at Foley & Judell, L.L.P., practicing as bond counsel in public finance. Ms. Hathorn began her career at Foley & Judell, L.L.P., first working as a law clerk. She is the president of the Louisiana Chapter of Women in Public Finance and a member and prior Board member and secretary of the National Association of Bond Lawyers (NABL) and the American College of Bond Counsel. Ms. Hathorn has a bachelor's degree from Louisiana State University and juris doctor from Tulane University School of Law.

Carol Kostik is retired and the former deputy comptroller for public finance for the City of New York, where she directed and managed a debt portfolio of over $110 billion. Prior to joining the

Office of the New York City Comptroller in 2006, Ms. Kostik served as the senior vice president and chief financial officer for the New York City Housing Development Corporation. Earlier in her career, she worked in investment banking, rising from public finance associate to vice president at Merrill Lynch & Co. In 2015, she received the Freda Johnson Public Sector Award from the Northeast Women in Public Finance, and in 2010, The Municipal Forum of New York's Public Service Award. Ms. Kostik has a bachelor's degree from Williams College and a master's degree in business administration from Stanford University.

Thalia Meehan is retired and a former portfolio manager and tax-exempt team leader at Putnam Investments. At Putnam Investments, Ms. Meehan built and managed a team of portfolio managers, traders and analysts. She began her career there as senior credit analyst and later worked as head of municipal credit research. Previously, Ms. Meehan worked as a financial analyst at the Colonial Group, Inc. in Boston, Massachusetts. She served on the MSRB's Investor Advisory Group in 2016. She is a board member of Boston Women in Public Finance and an independent director for Safety Insurance Group and Cambridge Bancorp. Ms. Meehan, a Chartered Financial Analyst, has a bachelor's degree in mathematics from Williams College.

Angelia Schmidt is Managing Director and Head of Underwriting at UBS, where she leads the new issue execution for Public Finance tax-exempt and taxable bond transactions. Ms. Schmidt has extensive fixed income capital markets experience, underwriting and distributing products for and to a wide range of issuer and investor clients. Previously, Ms. Schmidt was a Managing Director and Senior Underwriter in the Public Finance group at J.P. Morgan, where she partnered with the banking and sales teams to originate and execute deals for sophisticated issuer clients. Prior to covering municipal issuers in Public Finance, Ms. Schmidt oversaw debt distribution for taxable products in J.P. Morgan's Global Structured Syndicate group. Ms. Schmidt began her career at J.P. Morgan Investment Management, working in the Fixed-Income Applied Research Group. She is a co-founder of UBS's Public Finance Women's Network and is on the firm's Executive Advisory Council for All Bar None. Ms. Schmidt was honored as a 2018 Trailblazing Woman in Public Finance by the Bond Buyer and a 2010 Rising Star by the Women's Bond Club. Ms. Schmidt earned her B.S. in Engineering from Cornell University and her Executive MBA from Columbia University.

Sonia Toledo is Managing Director at Frasca & Associates, LLC, serving as a municipal advisor to a range of large municipal securities issuers. At Frasca & Associates, Ms. Toledo has worked successfully to expand their business to general municipal finance. Prior to her current role, she worked as managing director in the Northeast Public Finance Region at Wells Fargo Securities. Before Wells Fargo Securities, Ms. Toledo served as a managing director at Lehman Brothers and later at Merrill Lynch & Co. She is the vice chair of GrowNYC and member of the Women Entrepreneurs NYC Council. Ms. Toledo has a bachelor's degree from Harvard University and a masters in business administration from Columbia University.

Date: August 6, 2019

Contact: Leah Szarek, Director of Communications
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Municipal CUSIP Request Volume Slows, Ending Six-Month Growth Streak.

NEW YORK, NY, August 15, 2019 – CUSIP Global Services (CGS) today announced the release of its

CUSIP Issuance Trends Report for July 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 declines in CUSIP request volume across most major asset classes in July.

Read Report

GASB Publishes Implementation Guidance On Lease Accounting.

Norwalk, CT, August 15, 2019 — The Governmental Accounting Standards Board (GASB) has issued an Implementation Guide that contains questions and answers about the GASB's new standards on accounting and financial reporting for leases. GASB Implementation Guides are intended to clarify, explain, or elaborate on the requirements of Board pronouncements.

Implementation Guide No. 2019-3, *Leases*, answers many questions about how to apply the provisions of GASB Statement No. 87, Leases, including:

- Scope and applicability
- Determining the term of a lease
- Determining if a lease qualifies for the short-term lease exception
- Recognition, measurement, and disclosure by lessees
- Recognition, measurement, and disclosure by lessors
- Accounting for contracts with multiple components and contract combinations
- Accounting for modifications and terminations of leases, and
- Sale-leasebacks, lease-leasebacks, and intra-entity leases.

The questions and answers contained in GASB Implementation Guides constitute Category B authoritative guidance under generally accepted accounting principles (GAAP). The guidance is applicable to all state and local governments that follow GAAP when preparing their financial statements.

Implementation Guide 2019-3 is available for download at no charge on the GASB website, www.gasb.org. Printed copies will be available through the GASB Store in the coming weeks.

One of the Most Lucrative Regulatory Jobs in Washington Is Now Open.

Municipal-bond regulator searches for new chief, a role where salary exceeds $1 million

One of the highest-paying jobs in public service just became available: heading a small but powerful regulator responsible for overseeing the $4 trillion market for state and local bonds.

The job leading the Municipal Securities Rulemaking Board currently pays more than $1 million. That is roughly six times the salary of the chairman of the Securities and Exchange Commission, which oversees the board—an entity some policy makers have criticized in recent years as too cozy with Wall Street.

Lynnette Kelly, who has headed the industry self-regulator since 2007, plans to retire at the end of September, the MSRB said last week. Ms. Kelly's tenure was marked by improvements to the

transparency of the municipal-bond market, such as the creation of a website where mom-and-pop investors can see pricing data and financial disclosures from the issuers of their bonds.

“We had been filing all the information for 20 years, but nobody could find it to read. EMMA fixed that,” said Ben Watkins, director of Florida’s Division of Bond Finance, referring to the nickname for the board’s website.

Ms. Kelly is among several staffers departing from the board. Lanny Schwartz, the MSRB’s chief regulatory officer since last year, resigned just before the board announced Ms. Kelly’s departure, according to people familiar with the move. And Jennifer Galloway, who had served as the MSRB’s longtime chief communications officer, left last month, the regulator said.

MSRB officials said they are in the early stages of a national search to replace Ms. Kelly. They declined to comment on the additional departures.

The board, which has 21 directors and a full-time staff of about 120, crafts regulations for banks and other firms involved in the sale of bonds by states and localities, such as restrictions on political donations to officials involved in the awarding of bond business. It has no enforcement power.

The SEC and the Financial Industry Regulation Association, another self-regulatory body for the brokerage industry, enforce MSRB rules. The board is funded by industry fees and sets its own budget, including for compensation.

“The MSRB has deployed lots of different tools to reach retail investors, to protect retail investors, to help educate and inform them,” Ms. Kelly, 59 years old, said in an interview last week. “That’s a legacy that will remain and hopefully be built upon.”

Ms. Kelly said she has discussed stepping down for a long time to pursue other opportunities. She declined to elaborate on her plans.

For 2017, the most recent year for which records are available, Ms. Kelly’s salary was $865,397 and she received another $169,966 in other compensation. SEC Chairman Jay Clayton made $165,300 last year.

The MSRB says it benchmarks its salaries to other self-regulators, such as the much-larger FINRA, whose chief executive Robert Cook was expected to receive approximately $2.5 million this year, according to the organization’s annual report.

Congress targeted the MSRB for an overhaul following the financial crisis, after it was slow to speak out against banks’ urging unsophisticated municipalities to enter into complex financial instruments that ultimately soured during the crisis. The 2010 Dodd-Frank financial law gave the board an added mission to protect municipalities and required a majority of its directors to be representatives of the public, with the aim of better insulating the regulator from industry influence.

It also put in place tougher rules on advisers to municipal governments, for example by extending to such firms pay-to-play restrictions that previously applied only to banks.

A decade later, the board came under fire for delays on a new requirement that banks disclose their profits when they buy or sell certain bonds for retail clients. The MSRB completed the rule jointly with Finra only after prodding from the SEC, which signs off on regulations written by both entities. The rule went into effect in 2018.

Some lawmakers say the MSRB remains beholden to banks that underwrite municipal bonds. The

board has appointed to its public board a number of retirees who spent their careers working at large banks. That has made the board reluctant to aggressively regulate the market, its critics in Congress have said.

Sen. John Kennedy (R., La.) said the board is unduly secretive and run by insiders who receive inflated salaries. A former state Treasurer who applied twice to join the board but wasn't selected, Mr. Kennedy said the group remains too insular and opaque in how it selects directors.

"It's like being voted into a fraternity or a sorority," he said.

MSRB officials say they will review their governance practices but haven't committed to making changes.

Mr. Kennedy has introduced legislation aimed at making the MSRB's public directors more independent. The measure has support from Democratic presidential candidate Sen. Elizabeth Warren of Massachusetts, along with Sen. Doug Jones (D., Ala.). Still, it faces a difficult path to becoming law in a gridlocked Congress.

The Wall Street Journal

By Andrew Ackerman and Heather Gillers

Aug. 13, 2019 7:00 am ET

The Bond Buyer: Muni Advocacy Growing and More Focused.

A larger, more focused and more collaborative municipal market lobby has emerged in Washington, as middle-market dealers, bond lawyers and other interests seek more specific and effective representation on muni-specific issues.

That evolution of muni advocacy has been in progression for years, but was further galvanized by the market's collective shock and dismay at the assault on both advance refundings and private activity bonds that commenced during consideration of the 2017 Tax Cuts and Jobs Act. The result has been the growth of Bond Dealers of America, a much more active role for the National Association of Bond Lawyers, and more collaboration than market groups had been accustomed to before.

"I think we're representing an industry," said Mike Nicholas, BDA's chef executive. Nicholas said he believes that broker-dealers see a lot of value in a targeted Washington advocacy strategy that focuses on fixed income issues, even if they also see value in broader financial services lobbying as well.

The numbers seem to back Nicholas' assertion. Since BDA's 2008 founding in the wake of the 2006 merger between the Securities Industry Association and the Bond Market Association, it has grown from just 14 members to more than 70. In July it announced the additions of Chicago-based firms Loop Capital Markets and Mesirow Financial.

In 2008 BDA had two staff and zero outside counsel or lobbying, and today has several staffers and has law firm Nixon Peabody on retainer. The group did recently see Justin Underwood leave for American Bankers Association, and many said that his departure is a loss for the industry.

Simultaneous to BDA's growth has been an apparent withdrawal by the Securities Industry and Financial Markets Association, which the SIA-BMA merger produced. Though the group publicly maintains its commitment to muni issues and does continue to submit comments to regulators on a regular basis, many in the industry saw SIFMA's decision to let go of longtime muni lobbyist and researcher Michael Decker as a clear signal that munis are not a high priority for the group. Decker subsequently formed a "working relationship" with BDA.

About 75% of BDA members are also members of SIFMA for advocacy outside the scope of BDA, because SIFMA covers all markets worldwide and some BDA members have sizable businesses outside of fixed income.

BDA board chair Angelique David, who is executive managing director, COO and general counsel at Chicago-based B.C. Ziegler & Co., said her firm and others see an advantage in BDA's targeted approach.

"A really broad focus may or may not capture those smaller midsize firms," David said, adding that BDA members are able to call the organization at any time and get help from a staff member or lawyer.

She said Ziegler and other BDA member firms see continued value in muni-specific advocacy even though the tax issues no longer rage as hotly as they did in the fall of 2017.

Jessica Giroux, director of government affairs at NABL, also worked at BDA from 2011 until August 2017. She said that muni advocates visiting Capitol Hill earlier in her career generally focused on updates and education about muni issues, with the focus generally on saving taxpayers money with the lower cost of borrowing munis allow.

But industry groups began to coalesce around the tax reform and the threat it posed to munis, she said, including through existing channels such as the Public Finance Network, which is a broad coalition of groups representing all parts of the market. Issuers and muni advisors are also involved, working in concert with the industry where controversy doesn't exist, such as in the push to restore advance refundings.

"It has really brought us all closer together," Giroux said. "We are sharing information."

NABL has itself become noticeably more active in federal advocacy in the past year under its current President Dee Wisor, although the frequent involvement of NABL President-elect Rich Moore in that advocacy suggests the pattern will hold going forward.

An open question is whether the market's efforts, even more focused, will bear fruit in the near future. Many of the priorities of BDA and the other groups, such as an increase to the bank-qualified limit or a restoration of a Build America Bonds-like program, have not materialized despite legislation having been introduced multiple times in the past several years.

Bond Dealers of America

by: Kyle Glazier

August 13, 2019

Fitch Rtgs: US State 2019 Revenues Up Sharply but Sustainability Unclear

Fitch Ratings-US-15 August 2019: US states' revenue collections for fiscal 2019 exceeded expectations for the second consecutive year but growth will likely slow and revenue forecasting will be more challenging, says Fitch Ratings. While some portion of growth reflects the decade-long economic expansion, one-off factors, namely the December 2017 federal tax changes, commonly referred to as the Tax Cuts and Jobs Act (TCJA), and the US Supreme Court's Wayfair v. South Dakota (Wayfair) decision, contributed to the surge in revenues. These one-off factors affected collection trends and may continue to do so, complicating states' revenue forecasting and budget planning. Revenue increases in some states eased budget pressures and contributed to revisions of several Negative Rating Outlooks to Stable but they will not lead directly to rating movement in the short term.

States' median tax collections grew 7.0% yoy in fiscal 2019, exceeding the 5.0% median growth rate for fiscal 2018 based on data from states that have reported fiscal 2019 revenue results. We reviewed publicly available monthly revenue reports for fiscal 2019 (35 states) and fiscal 2018 (39 states). The data excludes the four states that do not use a June 30 fiscal year-end. Fitch used total state revenues if total tax collections were not specifically provided, but in all cases tax revenues were the dominant source of collections.

Continue reading.

Fitch Ratings: Great Hall Termination Will Not Hit DIA or Project's Rating

Fitch Ratings-New York-14 August 2019: The announced termination of the Great Hall public-private partnership terminal redevelopment project at Denver International Airport (DIA) will not adversely affect either the airport's ratings or those tied to the project itself, according to Fitch Ratings.

Fitch's view is based on the decision by the City and County of Denver, CO (Denver), as airport owner and grantor to the project, to apply the termination for convenience option which would result in payments to the developer, Great Hall Partners (GHP), sufficient to repay the remaining bonds outstanding. The airport has a strong financial position and demonstrated market access to defray the termination obligation.

Fitch currently rates DIA 'AA-'/'A+' with a Stable Outlook and carries a 'BBB' rating and Stable Outlook on approximately $189 million of project bonds issued by Public Finance Authority.

Recent monthly construction update reports submitted by GHP were indicating delays that would extend the construction period by at least three years beyond the original completion timetable, which had assumed the redevelopment project becoming fully operational by late 2021. Delays were based on structural conditions tied to compressive strengths of concrete coupled with change orders during the initial construction phase. GHP had determined that concrete samples taken and evaluated in late 2018 indicated lower strength than contractual baseline assumptions. Relief event notices were submitted by both the developer and contractor for unknown structural conditions based on these results. The dispute was clearly reaching an elevated and less collaborative turn as indicated by Denver's rejection of GHP's relief claim, which had requested additional compensation as well as an extension of time for completion.

The Great Hall project was intended to utilize a design-build-operate-finance-maintain project

approach for the refurbishment of the airport's Jeppesen Terminal. DIA had originally opened in 1995 as a larger replacement facility for the previously operated Stapleton Airport. Under the original Great Hall design-build schedule set in late 2017, the project anticipated an approximate 48-month design and construction period followed by a 30-year operating period. Based on the most recent monthly construction project report through June, the completion of the four-phase project was set for late 2024.

At inception, this terminal redevelopment project was viewed to have a lower than typical completion risk profile when compared to other airport public private partnership ventures. The construction work is being led by an experienced joint venture team including Ferrovial with further support from a comprehensive construction security package, which includes payment and performance bonds and liquidated damages. The work solely involved interior areas of the existing main terminal building used for passenger check-in, security screening and baggage processing as well as providing for concession locations. From a financial perspective, the original construction budget was estimated to be $650 million with more than 70% sourced by the airport progress payments, leaving only a modest amount needed for financing and equity contributions.

The dispute and resulting termination decision can be an illustration where even in cases of a strong alignment of interests from all parties to ensure a successful outcome, construction delays can lead to a discord in the partnership. The projected length of the delay, the added costs for remediation, as well as Denver's rejection of the claim for relief, collectively would have created a more speculative level of risk to the repayment on the project bonds issued by the developer. Thus, the termination for convenience option provides the most certain outcome for debt repayment.

On the other hand, Denver faces cost and time exposures in order to replace the contractor and proceed with the redevelopment. While the benefit of an expanded terminal and new concessions will be considerably delayed from the original timetable, Denver will no longer have to share a portion of the concession revenues generated at the main terminal and will also retain longer term flexibility to manage concessions across the entire terminal and multiple concourses serving commercial passengers

Looking ahead, Fitch will monitor the steps taken to effectuate the termination of the partnership and the sources of funds to cover related costs. Denver is one of the nation's largest airport that has a strong revenue risk profile based on robust airline activities and sound airline agreement terms to recover all costs. The financial profile is favourable as evidenced by moderate leverage, stable coverage levels, and solid cash reserves.

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Bank of America Says 'No Way' to Negative Municipal-Bond Yields.

- **State and local debt would have no tax advantages if so**
- **Bank analysts also 'believe the U.S. can avoid negative rates'**

Bank of America Corp., the biggest underwriter of state and local government debt, isn't worried that municipal-bond yields will turn negative, even if they do in other parts of the U.S. fixed-income markets.

Bond yields have been plunging fast, making it seem possible that American investors could actually wind up paying governments to lend them money — as is already happening in Japan and much of Europe because of the escalating trade war with China, concerns about slowing global growth and stock market volatility. The yield on 10-year Treasuries has dropped to about 1.55%, with those on tax-free debt about a quarter percentage point less.

But Bank of America's municipal-bond strategists said in a report Friday that even in the "unlikely" event that taxable debt yields fall below zero in the U.S., those on tax-exempt securities will "stay positive in this cycle."

"We believe the U.S. can avoid negative rates in general," they wrote.

There's a major reason why municipal-bond yields wouldn't go negative, even if that happens to Treasuries: If yields drop below zero, there would be no tax benefits to buying the securities, the bank's analysts said. That's the major reason investors buy them, and without that, they'd likely buy taxable debt instead.

The analysts, however, do expect state and local bond yields to keep falling. They said they now anticipate that 10-year benchmark tax-exempt yields will drop to 1%. They currently yield about 1.23%, the lowest since at least 2011.

Bloomberg Markets

By Amanda Albright

August 16, 2019, 12:54 PM PDT

Munis Join Global Bond Rally as Investors Seek Yield.

R.J. Gallo, senior portfolio manager at Federated Investment Management, discusses municipal bond investment strategy in this week's "Muni Moment" on "Bloomberg Markets." (Source: Bloomberg)

Watch video.

Bloomberg Markets – Muni MomentTV Shows

August 14th, 2019, 9:22 AM PDT

Hedge Fund Seeking to Void Illinois Debt Made Wager on Default.

- **Warlander bought derivatives that would pay if state defaults**
- **Lawyer confirms allegations made by Nuveen, AllianceBernstein**

Warlander Asset Management, the hedge fund seeking to invalidate $14.3 billion of Illinois bonds, bought derivatives that will pay off if the state defaults on the debt.

An attorney for Warlander's co-plaintiff, John Tillman, the chief executive officer of the Illinois Policy Institute, disclosed the firm's derivative wager at a hearing in Springfield on Thursday. That confirms the assertion made by two big bond investors, Nuveen Asset Management LLC and AllianceBernstein, in a brief arguing that the case should be tossed out — saying it raises questions about Warlander's motives.

"Permitting activist investors to litigate against the validity of widely held municipal bonds based on their credit default swap bets could introduce a significant destabilizing force into the municipal markets and harm investors and government entities alike," Nuveen and AllianceBernstin said in their filing on Friday.

The credit default swap market for municipal bonds is thinly traded, given that no state has reneged on its debts since the Great Depression. But the price of those for Illinois have risen since the lawsuit was filed at the start of July: The cost to protect against losses on the state's bonds for five years has jumped by 41 basis points to 186.5 basis points, or $186,500 annually for every $10 million insured, according to IHS Markit.

An Illinois judge Thursday said he needed more time to review Tillman's petition. The complaint claims the state's record pension bond sale in 2003 and debt issued in 2017 were deficit financing prohibited by the state's constitution. Although Warlander is a plaintiff in the case, it didn't petition the court to file a taxpayer complaint.

Illinois taxpayers would save $20 billion in debt service payments if the court finds elected officials violated the constitution, the plaintiffs have said. Warlander has said there's nothing improper about an investment firm having a financial interest in litigation. Warlander previously disclosed they had a financial interest in the case, but didn't provide details about the nature of the interest.

John Thies, Tillman's attorney, didn't disclose the amount of CDS owned by Warlander, and a spokesman for the firm declined to as well.

A credit-default swap contract is similar to insurance on a bond, but the purchaser doesn't need to own any of the underlying debt to buy one. The swap purchaser can buy the bonds after they default and then tender them to the swap seller to get full payment on the contract.

Warlander also owns $25 million of Illinois general-obligation bonds that would be more secure if the firm succeeded in having the other securities invalidated.

Bloomberg Technology

By Martin Z Braun and Shruti Singh

August 15, 2019, 12:44 PM PDT

The Last Recession Crippled U.S. States. But Bondholders Won Big.

- **Even during 2008 chaos, city and state debt delivered gains**
- **Debt rallied Wednesday amid concern about global slowdown**

The last time the U.S. went into a recession, states and cities were left reeling from budget deficits so vast that they slashed their payrolls, cut deeply into spending and even raised taxes to stay afloat.

But bondholders were just fine.

In 2008, when the stock market plunged and the collapse of Lehman Brothers Holdings Inc. unleashed financial havoc worldwide, bonds backed only by states' and cities' promise to repay them still posted a return of 1.5%, according to Bloomberg Barclays indexes. The next year, they returned nearly 10%. That wasn't an anomaly. In 2001 — when the economy was roiled by the bursting of the dot-com bubble — the state and local debt rallied, with returns of 5% that year and 9% in 2002.

Continue reading.

Bloomberg Markets

By Amanda Albright

August 14, 2019, 10:24 AM PDT

Investor Behind Illinois Bond Suit Made Short Bet Tied to Case, Funds Claim.

- **Nuveen, AllianceBernstein say Warlander bought default swaps**
- **Warlander filed lawsuit seeking to void Illinois debt in court**

A hedge fund that filed a lawsuit seeking to have $14.3 billion of Illinois bonds invalidated in court stands to reap enormous profit if the case succeeds and the state defaults on the debt, Nuveen Asset Management LLC and AllianceBernstein LP alleged in a court filing.

New York City-based Warlander Asset Management purchased credit-default swaps that will pay off if the lawsuit causes a default, according to Nuveen and AllianceBernstein, which together own about $2 billion of Illinois bonds, including those challenged in the case.

"Permitting activist investors to litigate against the validity of widely held municipal bonds based on their credit-default swap bets could introduce a significant destabilizing force into the municipal markets and harm investors and government entities alike," Nuveen and AllianceBernstein said in a brief filed Friday in Illinois Circuit Court.

Warlander said in a filing Tuesday that there's nothing improper about an investment firm having a

financial interest in litigation and called the funds' friend of-the-court brief an "unjustified attack." The filing didn't provide details about the nature of that financial interest.

Warlander and the chief executive officer of the Illinois Policy Institute, a conservative think tank, sued Illinois Governor J.B. Pritzker on July 1, saying the state's 2003 pension bonds and 2017 debt sold to pay bills were deficit financings prohibited by the state constitution. Both issues were done before Pritzker took office this year.

Warlander, which owns $25 million of Illinois general-obligation bonds that would be more secure if the firm succeeded in having the other securities invalidated, disclosed in a footnote in its complaint that it also had a "separate financial interest" in the litigation. That separate financial interest involves credit default swaps "well in excess of its nominal $25 million bond position," Nuveen and AllianceBernstein said, without providing specific evidence.

Warlander's financial interest has no bearing on a Thursday hearing in circuit court of Sangamon County on whether John Tillman, the CEO of the Illinois Policy Institute, has standing to file a taxpayer complaint, the hedge fund said in its court filing. Although Warlander is a plaintiff in the case it didn't petition the court to file a taxpayer complaint.

"Though Warlander's motives are not an issue, they are of no malice to the state. A complaint can hardly be 'malicious' when its goal is both to require the state's elected officials to act within the bounds of its constitution and to relieve the state of $20 billion in debt service obligations — which would clearly benefit the state."

Nuveen and Alliance Bernstein want the court to require Warlander to disclose the nature, terms and extent of its separate financial interest "so that the court can determine whether the petition is filed not to vindicate the interests of Illinois taxpayers but to allow an out-of-state hedge fund to create a default and profit from the swaps," Nuveen and AllianceBernstein said.

If Warlander's true financial interest lies in creating a default so it can profit, then the lawsuit was filed with a "malicious or ulterior purpose" and the court should reject it, Nuveen and AllianceBernstein said.

A credit-default swap contract is similar to insurance on a bond, but the purchaser doesn't need to own any of the underlying debt to buy one. The swap purchaser can buy the bonds after they default and then tender them to the swap seller to get full payment on the contract.

Credit-default swaps on Illinois general-obligation bonds exceeded $300 million at the end of June, according to International Swaps and Derivatives Association data. The cost to protect against losses on Illinois bonds for five years has jumped 41 basis points since July 1 to 186.5 basis points, or $186,500 annually for every $10 million insured, according to IHS Markit.

The lawsuit has already impaired Illinois bond prices and made it difficult for the state to issue new securities, the funds said.

The spread on Illinois' 2003 and 2017 general obligation bonds rose to 182 basis points from 134 basis points, and the trading price dropped relative to the broad market, after the Warlander suit was filed, according to Nuveen and AllianceBernstein. Benchmark Illinois bonds are trading with a 3.03% yield, the highest among 20 states tracked by Bloomberg, and about 172 basis points more than top-rated debt, according to Bloomberg data.

Holders of the bonds had a paper loss of $574 million after the lawsuit was filed, the funds said. Illinois postponed until the fall a general-obligation bond sale to pay more bills.

Warlander's suit is based on an incorrect reading of the Illinois constitution, Nuveen and AllianceBernstein said. Article nine, section nine of the constitution says the state may issue long-term debt only to finance "specific purposes" if approved by three-fifths of the legislature or by popular referendum.

A "specific purpose" refers to a description, not a limitation on the power to incur debt, the funds said. The three-fifths vote requirements acts as a limitation on the ability to borrow.

Using bond money to cover general expenses, speculate in the market, or pay past-due bills isn't a "specific purpose" for incurring state debt, but rather another name for deficit financing, Warlander said in its original complaint.

The drafters of Illinois' 1970 Constitution didn't intend to allow the state to incur unlimited general obligation debt for any purpose, the hedge fund said.

Bloomberg Markets

By Martin Z Braun

August 12, 2019, 3:38 PM PDT Updated on August 13, 2019, 12:12 PM PDT

Amid Concerns of a Recession, Pension Plan Returns Fall Short.

After two straight years of beating expectations, pension investment earnings have slightly dipped thanks in part to fears of a trade war.

Public pension plans are missing their investment earnings expectations for the first time in three years, a development that could strain future state and local budgets amid rising concerns that the national economy is slowing.

Plans with more than $1 billion in assets earned a median return of 6.79 percent for the fiscal year ending June 30, according to the firm Wilshire Trust Universe Comparison Service. That's below those plans' median long-term expected rate of return of 7.25 percent.

Pension plans rely heavily on investment earnings because annual payments from current employees and governments aren't enough to cover yearly payouts to retirees. As it stands, roughly 80 cents on every dollar paid out to retirees comes from investment income.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | AUGUST 16, 2019 AT 4:00 AM

S&P: Jolted By California Wildfires, Re/Insurers Recalibrate Their Risk Appetite.

The back-to-back devastating California wildfires of 2017-2018 caught the property-casualty

re/insurance sector by surprise with the intensity and frequency of the losses and challenging the sector's understanding of this hazard. Nevertheless, in view of most re/insurers' robust capitalization, these wildfires in conjunction with other catastrophe losses had limited impact on their creditworthiness.

Historically, the re/insurance sector has mostly focused on the primary perils such as U.S. hurricanes, tornadoes, and earthquakes, which in the past have been major causes of property-catastrophe risk and losses. The events of 2017-2018 highlighted the increasing risk from secondary perils such as California wildfires, which have increased in frequency and severity. Eight of the most destructive fires occurred in the past two years, and five of the seven largest fires and 10 of the top 20 most destructive fires occurred after 2009. However, it took the events of 2017-2018 for the industry to start paying the kind of attention this peril deserves.

The modeling for California wildfires has been challenged by a number of factors. Climate change is one but not the only factor contributing to the increase in risk, with increasing frequency and severity of dry weather and extended droughts heightening the risk of wildfires. In addition, the level of urbanization, and population and economic asset density, which are close to or encroaching on the wildlands (commonly referred to as wildland-urban interface [WUI]), have been growing, which makes for a catastrophic event when these high-density areas, potentially with expensive properties, are hit. The recent updates to the model targeted a higher level of sophistication for the primary causes of wildfires, resulting in higher frequency and severity of estimated losses. However, challenges persist in understanding this type of peril.

Continue reading.

White House OZ Council Releases List of Federal Programs Favoring OZs.

Click here to read the list.

Senate Carbon Capture Bill Gains a House Companion: Squire Patton Boggs

Earlier this month, we described Senate Bill 1763, which would authorize a new type of exempt facility bond to be issued for "qualified carbon capture facilities." Well, on July 19, 2019, freshman House Republican Tim Burchett of Tennessee proposed the Carbon Capture Improvement Act, H.R. 3861, the text of which is identical to the Senate Bill.[1] However, unlike the Senate Bill that has bipartisan sponsorship, Burchett is (for now) the sole sponsor of the companion House Bill.

This isn't the only carbon capture-related bill with both Senate and House support. The Senate has already passed the Utilizing Significant Emissions with Innovated Technologies Act, nicknamed the "USE IT Act." The USE IT Act supports the development of carbon capture technology through the establishment of: technology prizes, research and development programs to promote existing and new technologies for the transformation of carbon dioxide generated by industrial processes, a carbon capture, utilization and sequestration report, permitting guidance, and regional permitting task force, among other things, research into carbon dioxide utilization and direct air capture, to facilitate the permitting and development of carbon capture, utilization, and sequestration projects and carbon dioxide pipelines. The USE IT Act similarly has a House counterpart, H.R. 1166, which has been referred to the House Subcommittee on Water, Oceans, and Wildlife. With carbon capture

technology on Congress' mind, and companion bills for tax-exempt bonds for carbon capture facilities pending in the House and Senate, the chances for a legislative change seem to be growing stronger.

[1] If you're one of those people needs to see it to believe it, click here to see a blackline of the House Bill against the Senate Bill.

The Public Finance Tax Blog

By Taylor Klavan on August 13, 2019

Squire Patton Boggs

Opportunity Zones Could Provide Major Boost for Clean Energy, Sustainable Development.

When Darren Walker, president of the Ford Foundation, a $13 billion foundation guided by a vision for social justice, and Steve Mnuchin, President Donald Trump's treasury secretary, agree that the Opportunity Zones program is the biggest economic development opportunity in 50 years, it's worth taking a closer look.

A provision of the Tax Cuts and Jobs Act of 2017, the Opportunity Zones (OZone) program seeks to spur investment of patient capital in low- and moderate-income communities across the United States. The program allows investors to delay or avoid paying capital gains taxes if they invest in Qualified Opportunity Funds that then invest within Census tracts designated as Opportunity Zones.

Market watchers are predicting $200 to $300 billion in investment in the nation's 8,700-plus OZones. And federal rules have made it clear that green economy projects — such as local power generation, microgrids, EV charging stations and energy storage — are eligible for OZone investment.

Continue reading.

greenbiz.com

by Julia Parzen and Graham Richard

Wednesday, August 14, 2019 – 1:28am

2018 NADB Green Bond Impact Report.

Read the report.

North American Development Bank | Aug. 15

USDA Invests in Rural Water and Wastewater Infrastructure in 24 States.

Investments will Benefit 133,000 Residents in Rural Communities

WASHINGTON, Aug. 8, 2019 – U.S. Department of Agriculture (USDA) Rural Utilities Service Administrator Chad Rupe today announced that USDA is investing $135 million in 49 projects to improve rural water infrastructure in 24 states (PDF, 170 KB).

"Under the leadership of President Trump and Agriculture Secretary Perdue, USDA continues to partner with rural communities to address their current and long-term water needs," Rupe said. "Modernizing water infrastructure will yield key health benefits and help spur economic growth – making rural places even more attractive to live and work."

USDA is making the investments through the Water and Waste Disposal Loan and Grant program. Rural cities and towns, water districts and other eligible entities can use the funds for drinking water, stormwater drainage and waste disposal systems in rural communities with 10,000 or fewer residents.

Below are examples of projects announced today that show how USDA is partnering to improve rural water and wastewater infrastructure.

- The city of Portsmouth, Iowa, will use a $300,000 loan to replace a water tower and part of the city's distribution system. The updates will eliminate water losses and will improve water pressure throughout the community. They also will provide a reliable, affordable water system for Portsmouth's residents and businesses.
- The Charlotte Harbor Water Association in Punta Gorda, Fla., will use a $7.1 million loan and a $5.4 million grant to replace approximately 86,000 linear feet of water mains along with appropriate valves, fittings, fire hydrants and other equipment.
- Northport, Wash., is receiving a $115,000 loan and a $345,000 grant to improve its water filtration system. The improvements will lower the levels of manganese and nitrates in drinking water.

USDA is announcing investments today in Alabama, Florida, Georgia, Iowa, Illinois, Indiana, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Montana, North Carolina, New Mexico, New York, Nevada, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Utah, Washington and West Virginia.

USDA had $2.9 billion available for USDA Water and Environmental Program loans and grants at the beginning of fiscal year 2019. USDA will make additional funding announcements in coming weeks.

View the interactive RD Apply tool or contact one of USDA Rural Development's state or field offices for application or eligibility information.

In April 2017, President Donald J. Trump established the Interagency Task Force on Agriculture and Rural Prosperity to identify legislative, regulatory and policy changes that could promote agriculture and prosperity in rural communities. In January 2018, Secretary Perdue presented the Task Force's findings to President Trump. These findings included 31 recommendations to align the federal government with state, local and tribal governments to take advantage of opportunities that exist in rural America. Increasing investments in rural infrastructure is a key recommendation of the task force.

To view the report in its entirety, please view the Report to the President of the United States from the Task Force on Agriculture and Rural Prosperity (PDF, 5.4 MB). In addition, to view the

categories of the recommendations, please view the Rural Prosperity infographic (PDF, 190 KB).

USDA Rural Development provides loans and grants to help expand economic opportunities and create jobs in rural areas. This assistance supports infrastructure improvements; business development; housing; community facilities such as schools, public safety and health care; and high-speed internet access in rural areas. For more information, visit www.rd.usda.gov.

Release & Contact Info
Press Release
Release No. 0118.19
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U.S. Department of Commerce Announces Availability of $587 Million to Aid Communities Impacted by Natural Disasters.

WASHINGTON – U.S. Secretary of Commerce Wilbur Ross today announced that the Department's Economic Development Administration (EDA) has published the Fiscal Year 2019 (FY2019) Disaster Supplemental Notice of Funding Opportunity (NOFO) making $587 million available to eligible grantees in communities impacted by Presidentially declared natural disasters in 2018, and floods and tornadoes in 2019.

"The Trump Administration and the Department of Commerce understand the challenges faced by American cities and towns devastated by recent natural disasters and are committed to helping them recover," said Secretary of Commerce Wilbur Ross. "The funding announced today will help ensure that communities impacted by disaster can rebuild and fuel growth for the future."

EDA disaster grants are made by its Regional Offices under the agency's Economic Adjustment Assistance (EAA) Program, which enables EDA to make awards that support a wide range of construction and non-construction activities in areas which experience sudden and prolonged severe economic dislocation. The submission of applications should be based on long-term, regionally-oriented, and collaborative development strategies that foster economic growth and resilience.

Eligible applicants under the EAA program include a(n): (i) District Organization of an EDA-designated Economic Development District (EDD); (ii) Indian Tribe or a consortium of Indian Tribes; (iii) State, county, city, or other political subdivision of a State, including a special purpose unit of a State or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; (iv) institution of higher education or a consortium of institutions of higher education; or (v) public or private non-profit organization or association acting in cooperation with officials of a political subdivision of a State. EDA is not authorized to provide EAA grants to individuals or for-profit entities.

There are no application deadlines and the agency will accept proposals on a rolling basis until the publication of a new Disaster Supplemental NOFO, cancellation of this NOFO, or all funds are obligated. Disaster recovery projects must be consistent with the U.S. Department of Commerce Disaster Recovery Investment Priorities.

For more information, please visit the EDA and Disaster Recovery page.

EDA Update

Tuesday, August 13, 2019

New Jersey Law Expands Eligibility Criteria for Designating Redevelopment Areas: Day Pitney

On August 9, New Jersey Gov. Phil Murphy signed into law AB 1700/SB 1583 (the Law), which amends the Local Redevelopment and Housing Law (LRHL) to address some of the shortcomings of the existing criteria for designating areas as being in need of redevelopment. The Law expands the eligibility criteria for designating areas in need of redevelopment by including certain shopping malls, office parks and other commercial properties.

New Jersey has long been a suburban state in which many shopping malls and office parks have been constructed over the past several decades. At one time, office parks and shopping malls were thriving and contributed to the state's prosperity. However, due to changing demographics, technology and shopping habits, many office parks and shopping malls have become outdated, obsolete or vacant.

The LRHL provides municipalities with an opportunity to designate properties that satisfy certain criteria as areas in need of redevelopment. Until this recent amendment, the LRHL did not specifically include certain commercial properties, such as shopping malls and office parks. The amendment to the LRHL expands criterion (b) of N.J.S.A. 40A:12A-5 to include the discontinuance or abandonment of buildings used for retail, shopping malls and office parks, as well as buildings with significant vacancies for at least two consecutive years. By expanding the types of properties that can be designated as areas in need of redevelopment, the amendment offers the opportunity for municipalities and developers to redevelop such properties by using the incentives offered through redevelopment under the LRHL, such as payments in lieu of taxes (PILOTs) or redevelopment area bonds.

The Law expands the potential reach of the LRHL, providing developers with an opportunity to address the rising vacancies in office parks and shopping malls and allowing municipalities to address lost ratables based on the high vacancy rates. This alert serves only as a summary of the Law. For more information or questions, please contact the authors or any member of the Day Pitney land use team.

Publisher: Day Pitney Alert

August 15, 2019

Day Pitney Author(s) Craig M. Gianetti Thomas J. Malman Nicole M. Magdziak

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How Risk-Sharing Policies Affect the Costs and Risks of Public Pension Plans.

Risk sharing is an important component of today's public pension system, as the state and local governments strive to balance growing pension costs and risks as well as the competitiveness of compensation to public employees. In traditional public sector defined benefit (DB) plans, the employer bears nearly all investment risk, longevity risk, and inflation risk during both working and retirement years. On the other hand, the employee tends to be the one absorbing these risks in

traditional defined contribution (DC) plans. Under this dilemma, risk-sharing mechanisms such as contingent cost-of-living adjustments (COLAs), contingent employee contributions, and hybrid DB-DC plans, were created.

However, risk sharing has not been widely used in the U.S. public pension plans. Current examples include COLAs in South Dakota Retirement System that depend **partly** on plan funded status, COLAs in Wisconsin Retirement System that depend on investment performance, and employee contributions in Pennsylvania State Employees' Retirement System that depend **partly** on investment performance. Nevertheless, many variants and alternative approaches to risk sharing are possible. It brings a sense of urgency to understand how risk-sharing mechanisms affect costs and risks to pension plans, governmental employers, workers and retirees.

In this paper, Don Boyd, Gang Chen and Yimeng Yin (Center for Policy Research, Rockefeller College, University at Albany) examine the impacts of selected risk-sharing policies on employers and plan members, using a model that simulates a pension fund's year-by-year finances taking investment return volatility into account (i.e., a stochastic simulation model). The pension plan they model has demographic characteristics of a stylized typical U.S. public pension plan. They assume that it has reached a steady state, with new members each year replacing leaving members in a way that keeps the plan's overall demographic structure stable; this assumption greatly simplifies their calculations while still allowing valuable insights.

The authors' simulation results are preliminary but informative. Their main conclusions are:

- The contingent COLA policies examined in the paper, reduce the volatility of employer contributions only marginally. The impact of these policies is more significant during dramatic market downturns than during more normal market conditions.
- The examined contingent COLAs could create a significant benefit risk for retirees. During downturns, retirees could experience low benefits during retirement. The acceptance of contingent COLA policies depends on the risk tolerance and risk preference of plan members and policymakers.
- The examined contingent employee contributions policy, styled after policies in Pennsylvania state retirement systems, also has relatively little impact on employer contribution volatility and total employer cost.
- In some instances, introduction of a risk-sharing policy when a plan is deeply underfunded may be less about reducing risk and more about reducing cost. Employers may utilize the interaction between risk-sharing mechanisms and other plan policies to further reduce cost. For example, the funded-ratio-triggered COLA policies can create incentive for employers to seek a lower discount rate: the lower discount rate would result in higher actuarial liability and a lower funded ratio, making COLAs less likely to be triggered and therefore reducing future benefit payouts. It also could make it easier for a plan to take less investment risk.Read the full paper here»

The Brookings Institute

by Donald Boyd, Gang Chen, and Yimeng Yin

Monday, August 12, 2019

How One City Saved $5 Million by Routing School Buses with an Algorithm.

The Boston Public School District held a contest to determine the best solution for busing around

25,000 students to school every day. The winning algorithm improved the efficiency of the routes in The yellow school bus has remained largely unchanged since it first debuted in 1939. But while the buses look the same, their routes have grown infinitely more complex in the past 80 years, as the number of students, schools, and road systems grow and change.

Drawing bus routes for Boston Public Schools involves challenges unique to the city. BPS allows parents to select their child's school from a list of about ten options, in an effort to reduce inequalities that might result from isolating students to their neighborhoods. While this represents a greater level of choice than most cities, the resulting bus routes can be meandering and complicated.

Compounding that challenge is the fact that BPS provides more bus services than most other districts. All elementary school students who attend schools more than a mile from their home are offered yellow bus service to one of over 220 schools, and many live much farther than that. Some schools draw students from more than 20 different zip codes. Each of those schools also had different start times, between 7:15 and 9:30 a.m., so buses might have to visit multiple schools for pick up and drop off.

Continue reading.

Route Fifty

By Emma Coleman

AUGUST 12, 2019

Municipal Finance Data Forum Midwest.

9:00 AM ET Thursday, October 3, 2019

XBRL US Meeting || Northern Illinois University, Naperville Campus, 1120 E. Diehl Rd, Naperville, IL

Sponsored & Hosted by:
Northern Illinois University's Center for Governmental Studies

Join this half-day forum on how data standardization is changing the face of municipal financial reporting.

Hear public sector and financial data standards experts discuss how standardizing reported data can improve the efficiency of disclosures by U.S. state and local governments. This forum will feature speakers from the Bond Buyer, the Illinois Office of the Controller (IOC), Northern Illinois University Center for Governmental Studies, Truth In Accounting, Will County, and more.

This event is free to attend but requires advance registration. Seating is limited.

Click here to learn more and to register.

Local Income Taxes in 2019.

Key Findings

- Local income taxes are imposed by 4,964 taxing jurisdictions across 17 states, with a heavy concentration in Rust Belt states, particularly Ohio and Pennsylvania.
- Depending on the state, local income taxes may be levied by counties, municipalities, school districts, or special districts, with most levied by municipalities (3,816) and school districts (954).
- Six states rely on income taxes for more than 10 percent of local tax collections, while the local income taxes in five states capture more than 1 percent of adjusted gross income.
- Nonresidents are sometimes subject to a lower rate than residents, or not taxed at all, in recognition that they receive fewer benefits than do residents.
- In different states, local income taxes are levied on all income, earned income, or interest and dividend income. Some jurisdictions impose payroll taxes or dollar-denominated employment or occupational privilege taxes in lieu of a traditional income tax.
- While most local income taxes are low, they often have broad bases and are difficult to avoid, which can discourage economic activity or drive out mobile workers or businesses. Officials should also be careful not to impose excessive compliance costs through complexities within their local tax regimes.

Continue reading.

Tax Foundation

by Jared Walczak

July 30, 2019

Nick Andrews: Renewable Energy Production in Opportunity Zones

Can Opportunity Zones be leveraged for biorefinery development and renewable fuel production? Nick Andrews is founder and CEO of Scottsdale,

Read More »

Opportunity Db

August 14, 2019

TAX - ILLINOIS

In re County Treasurer

Appellate Court of Illinois, Second District - July 24, 2019 - N.E.3d - 2019 IL App (2d) 180727 - 2019 WL 3409680

Purchaser of property at tax sale filed petition for issuance of tax deed and finding of sale in error.

The Circuit Court granted petition. County treasurer appealed.

The Appellate Court held that:

- Purchaser of property at tax sale was not entitled to sale in error, and
- Water sanitation district was not municipality that could be incorporated into municipal-lien provision of statute providing for sale in error remedy.

Purchaser of property at tax sale was not entitled to sale in error pursuant to water sanitation district's lien on property; statutory municipal-lien provision limited sale in error remedy to county, city, village or incorporated town liens, not liens from special district, and lien stemmed from unpaid usage fees owed by former property owner, not from public funds advanced to take care of abandoned or hazardous property or to promote safety and welfare of community at large.

Water sanitation district was not municipality that could be incorporated into municipal-lien provision of statute providing for sale in error remedy to purchaser of tax-sale property; water sanitation district provided singular service, wastewater-treatment services, to community, and did not have broad police and welfare powers characteristic of counties, cities, villages or incorporated towns, entities which were specifically listed in statute.

Public Finance Partner - Chicago

Are you a Chicago public finance partner seeking to continue to grow your practice? If so, let's connect to discuss our Am Law 200 law firm client that boasts a marquee public finance practice as well as a rate structure that is conducive to growing your client base. This attractive opportunity also offers you the potential to grow public finance work with existing firm clients in Chicago. This exclusive search is being conducted for our Mid-West headquartered client with a public finance practice comprised of over 40 attorneys nationwide who devote their time to representing the full range of participants in the municipal bond and municipal finance markets. The firm also has the strengths you need in key ancillary areas such as tax and securities to provide the range of support necessary to continue to build a sophisticated bond practice. Management is committed to ensuring the continued growth of its talented public finance team, and you will have the support required at all levels firm-wide, including stellar associate talent. While this firm has a national geographic platform, its culture definitely reflects its Mid-West roots. Members of this collegial group of bond lawyers work collaboratively across offices and are eager to share their expertise amongst their team – whether that be to assist in a transaction or to help market to a potential client. The firm's growing Chicago office possesses top talent in a variety of practice areas including corporate, litigation, intellectual property, real estate, regulatory and environmental. All inquiries will remain confidential.

Thank you for your interest in a position with one of our clients. Your information will be reviewed by a recruiter; however, because of the large volume of inquiries that we receive for our positions, we are not able to respond directly to all applicants. Please note that your resume submission is confidential, and your materials will not be sent to a client without your prior written consent.

Are you a Chicago public finance partner seeking to continue to grow your practice? If so, let's connect to discuss our Am Law 200 law firm client that boasts a marquee public finance practice as well as a rate structure that is conducive to growing your client base. This attractive opportunity also offers you the potential to grow public finance work with existing firm clients in Chicago.

This exclusive search is being conducted for our Mid-West headquartered client with a public finance practice comprised of over 40 attorneys nationwide who devote their time to representing the full range of participants in the municipal bond and municipal finance markets. The firm also has the strengths you need in key ancillary areas such as tax and securities to provide the range of support necessary to continue to build a sophisticated bond practice. Management is committed to ensuring the continued growth of its talented public finance team, and you will have the support required at all levels firm-wide, including stellar associate talent.

While this firm has a national geographic platform, its culture definitely reflects its Mid-West roots. Members of this collegial group of bond lawyers work collaboratively across offices and are eager to share their expertise amongst their team – whether that be to assist in a transaction or to help market to a potential client. The firm's growing Chicago office possesses top talent in a variety of practice areas including corporate, litigation, intellectual property, real estate, regulatory and environmental.

All inquiries will remain confidential.

http://www.carpenterlegalsearch.com/jobs.asp?id=2274

Municipal Bonds: A Positive Impact In Addressing Homelessness

This is the fifth article in a series highlighting the most important aspect of municipal bonds: how the projects bonds finance helps the community. It appropriately started with Municipal Bonds: Investing In Our Communities. This piece looks at how municipal bonds address difficult social issue by financing impactful programs that benefit people and their communities.

Projects contributing to thriving communities, including those that encourage positive and beneficial interactions with schools, libraries, hospitals, fire stations, public transportation networks, affordable public housing and parks are all part of what makes a community great for its residents.

But some residents in the community are not part of it. The issue of homelessness affects nearly every municipality, large or small, across the nation. Homelessness is defined as people living in "places not meant for human habitation." That's an almost unbearably antiseptic way of saying people are living anywhere a modicum of shelter can be found—in tents, cars, parks, train or bus terminals or just in doorways on the streets.

Continue reading.

Forbes

Barnet Sherman

Aug 13, 2019, 10:20am

TAX - PENNSYLVANIA

In re Coatesville Area School District

Commonwealth Court of Pennsylvania - August 7, 2019 - A.3d - 2019 WL 3642979

City school district and city sought judicial review of county board of assessment's grant of a partial real estate tax exemption in separate actions.

After the trial court issued identical orders under separate docket numbers affirming the board's decision, city, school district, and owner of the property appealed. Following remand by the Commonwealth Court, the Court of Common Pleas issued two essentially identical, but differently captioned decisions and orders. The district and property owner appealed one decision, but neither city nor property owner appealed the other decision.

The Commonwealth Court held that appeal of the trial court decision was precluded by the unappealed essentially identical decision.

Appeal of trial court decision regarding a property tax exemption was precluded by an unappealed essentially identical trial court decision, even though one action had been commenced by a city and the other by city school district, where the district had intervened in the city's case, fully participated in a joint trial, the issue in city's case was identical to the district's case, no party appealed the action brought by the city, and only one tax assessment was permitted on the property.

GFOA Announces Encore Presentations of 24th Annual Governmental GAAP Update.

GFOA's 24th Annual Governmental GAAP Update web-stream event will take place from **1:00 to 5:00 pm (Eastern) on November 7, 2019**, with encore presentations on **December 5, 2019**, and **January 16, 2020**. Take advantage of early and group registration discounts. Earn 4 CPE credits with your participation.

Learn More

EPA Clears the Way for Much Needed Funds for Water and Sewer Repairs in Puerto Rico.

San Juan, Puerto Rico – The U.S. Environmental Protection Agency (EPA) and Puerto Rico Aqueduct and Sewer Authority (PRASA) announced the restructuring of more than 200 delinquent loans—totaling approximately $571 million in principal—owed to Puerto Rico's clean water and drinking water State Revolving Fund (SRF) programs. This restructuring clears the way for the commonwealth's idled SRF programs to once again provide critically needed funding to improve Puerto Rico's water and sewer systems, create local jobs, and ensure that the people of Puerto Rico have safe and clean water.

PRASA provides drinking water to 97% of Puerto Rico's 3.2 million people and sewer service to more than half of the Island's communities. The lack of access to funding from the SRF programs has been a major obstacle to making water infrastructure repairs and improvements across the commonwealth.

"EPA is pleased that Puerto Rico's SRFs are back on track and able to provide critically important funding for clean and safe water," said EPA Administrator Andrew Wheeler. "With this loan restructuring, EPA is protecting taxpayer dollars while ensuring that funding is available for water

infrastructure projects that will help build a stronger, safer, and healthier Puerto Rico."

"After nearly two years, Puerto Rico is still dealing with the aftermath of Hurricanes Irma and Maria, which devastated portions of Puerto Rico's infrastructure and highlighted the critical need for lasting and sustainable improvements in Puerto Rico," said EPA Regional Administrator Pete Lopez. "Empowering PRASA to once again receive state revolving funds is part of EPA's comprehensive and continuing efforts to help Puerto Rico recover. We are dedicated to helping Puerto Rico rebuild stronger and better."

After many years of successful repayment, PRASA was unable to meet its SRF loan repayment obligations as of July 1, 2016. Since then, the loans have been in forbearance while EPA and key Puerto Rican authorities have worked in good faith with PRASA to develop a restructuring agreement for PRASA's debt. EPA's SRF experts played a key role in facilitating the discussion and resolution.

The finalization of the restructuring agreement will ensure the repayment of PRASA's SRF loans, and PRASA will be eligible to apply for financial assistance from the Puerto Rico SRFs, which will help ensure the continued protection of public health and the environment for the residents of Puerto Rico. The sound management of the state programs has ensured that the SRFs remain at the forefront of funding innovative solutions for treating wastewater, providing safe drinking water, addressing stormwater runoff, tackling non-point source pollution, and addressing a multitude of other environmental and public health issues facing this nation.

Background

Under the Clean Water and Drinking Water State Revolving Fund programs, EPA provides funding to all 50 states and Puerto Rico to capitalize SRF loan programs. The states contribute an additional 20% to match the federal grants. The Puerto Rico Department of Natural and Environmental Resources (DNER) and the Puerto Rico Infrastructure Financing Authority (PRIFA) administer the clean water SRF; the Puerto Rico Department of Health (DOH) and PRIFA administer the drinking water SRF.

The 51 SRF programs function like infrastructure banks by providing low-interest loans to eligible recipients for drinking water and clean water infrastructure projects. As the loan principal and interest are repaid over time, it allows the state drinking and clean water funds to be recycled or "revolve." As money is returned to a state's revolving loan fund, the state makes new loans to other eligible recipients.

With more than 30 years of federal capitalization grants and state contributions, approximately $80 billion has been invested into these programs. According to EPA's estimate of national drinking water and wastewater needs, over $743 billion is needed for water infrastructure improvements. Through loan repayments and investment earnings, the SRFs have leveraged the $80 billion capital investment to provide more than $170 billion in financial assistance to over 39,900 water quality infrastructure projects and 14,500 drinking water projects across the country.

08/12/2019

Contact Information:
Tayler Covington (covington.tayler@epa.gov)
212-637-3662

Puerto Rico Restructures 200 Delinquent State Revolving Fund Loans.

The loans will total approximately $571 million in principal

The U.S. EPA and Puerto Rico Aqueduct and Sewer Authority (PRASA) will restructure more than 200 delinquent loans for Puerto Rico's clean water and drinking water State Revolving Fund (SRF) programs. This funding will aid in flooding relief from the aftermath of Hurricanes Irma and Maria. According to an EPA news release, the restructured loans will total approximately $571 million in principal.

"After nearly two years, Puerto Rico is still dealing with the aftermath of Hurricanes Irma and Maria, which devastated portions of Puerto Rico's infrastructure and highlighted the critical need for lasting and sustainable improvements in Puerto Rico," said EPA Regional Administrator Pete Lopez, according to the EPA. "Empowering PRASA to once again receive state revolving funds is part of EPA's comprehensive and continuing efforts to help Puerto Rico recover. We are dedicated to helping Puerto Rico rebuild stronger and better."

Hurricane Irma was named the most powerful hurricane ever recorded in the Atlantic Ocean outside the Caribbean and Gulf of Mexico. The storm made its first landfall on Barbuda in the Caribbean Sept. 6, 2017, moving over Saint Martin and hitting Antigua, as well. Days after Irma hit the U.S., recovery efforts began. Hurricane Maria hit the country of Puerto Rico in September 2017, as well. The hurricane hit Sept. 20 and 21, and hit the Dominican Republic shortly after.

This restructuring will provide funding to improve Puerto Rico's water and sewer systems, and also ensure Puerto Rico residents have clean and safe water, according to the EPA.

"EPA is pleased that Puerto Rico's SRFs are back on track and able to provide critically important funding for clean and safe water," said EPA Administrator Andrew Wheeler, according to the EPA news release. "With this loan restructuring, EPA is protecting taxpayer dollars while ensuring that funding is available for water infrastructure projects that will help build a stronger, safer, and healthier Puerto Rico."

The PRASA provides drinking water to 97% of Puerto Rico's 3.2 million residents and also sewer services to more than half of the residents. According to the EPA, the lack of access to funding has hindered the Island from making water infrastructure repairs and improvements.

The PRASA was unable to meet SRF loan repayment obligations July 1, 2016. EPA and Puerto Rican authorities have worked with PRASA to develop the restructuring agreement for PRASA's debit while the loans have been in forbearance.

AUG 14, 2019

It's Time for Truth in State and Local Government Finances.

Imagine your business could treat borrowings as revenues, avoid cost recognition by not paying expenses and report less debt than actually owed.

Fortunately, accounting for private-sector enterprises doesn't enable such activities. But accounting

for state and local governments does, and with big consequences.

The Financial Accounting Standards Board (FASB), which governs financial reporting by private-sector enterprises, requires accrual accounting and truthful reporting of liabilities. Under FASB, borrowings aren't revenues, costs must be accrued whether or not paid, revenues are recognized as earned, and retirement liabilities can't be understated. But the Governmental Accounting Standards Board (GASB), which governs financial reporting by state and local governments, doesn't impose accrual accounting and permits aggressive assumptions for valuing retirement obligations. As a result, state and local officials aren't prevented from reporting balanced budgets, and sometimes even surpluses, that would pass the test of traditional accounting methods.

For example, Chicago used proceeds from the sale of 75 years of parking meter revenues to plug a single year's budget shortfall; last year California's budget ignored more than half of the actuarial costs of insurance subsidies provided retired state employees (adding to $85 billion of liabilities already accumulated from non-recognition of previous such costs). And pension costs that today are crowding out state and local services all across the country would've been identified more than a decade ago as addressable threats to government budgets but for GASB rules permitting public pension funds to underreport the real size of pension promises.

Today, state and local governments are using GASB's permissive rules to report unfunded pension liabilities at just one quarter of the $4 trillion the same liabilities are valued by the Federal Reserve's Financial Accounts of the United States.

Budgets enabled by GASB's permissiveness can produce painful consequences. For example, despite record tax revenues and a 30 percent income tax increase, the school district serving Sacramento is laying off teachers because money is being diverted to past retirement promises whose true size and underfunded nature had been hidden by GASB's permissive rules. Under FASB-type rules, those costs would've been made visible when incurred, in time to act on them and well before they started crushing classroom budgets.

The key to reforming GASB lies in its chair, who is the only full-time GASB board member. At FASB, all board members serve full time and are required to sever connections with firms or institutions they served before joining FASB's board. But GASB board members other than the chair are part time and may be employed by other organizations, including state and local governments. As a result, at GASB it has been much easier for the regulated to control their regulator. But that can change if GASB's next chair is a reformer and independent of state and local governments.

GASB's chair is selected by the 18 trustees of the not-for-profit Financial Accounting Foundation (FAF) — Charles Noski is the chairman and Diane Rubin is the vice chair. Later this year they will appoint a new chair for a seven-year term. They have the sole power to install a reform-oriented GASB chair who is independent of state and local governments. Some state and local governments will resist such a voice, but just as private-sector firms are not given a veto over the FASB officials who regulate their accounting, neither should state and local governments.

The federal government has a strong interest in GASB requiring state and local governments to account truthfully for their financial activities because states provide the lion's share of domestic services, including public education, public safety and infrastructure. The next recession will expose those state and local governments that have used GASB's permissive rules to cover up deep financial problems, potentially forcing the federal government to step in to finance core public services.

State and local governments spend more than $3 trillion per year, compensate nearly 20 million public employees, and provide the vast majority of domestic government services to more than 325

million Americans. GASB's rules permit state and local government financial statements to bury facts that eventually produce devastating consequences for critical public services and taxpayers. FAF trustees should select a reform-minded GASB chair who is independent of state and local governments.

George P. Shultz is a former U.S. secretary of state, labor and Treasury; a distinguished fellow at Stanford University's Hoover Institution; and author of "Thinking about the Future." David G. Crane is a lecturer in Public Policy at Stanford University and president of Govern for California.

The San Francisco Chronicle

By George P. Shultz and David G. Crane

Aug. 16, 2019

Associate Attorney – Tampa, FL

Nabors, Giblin & Nickerson, P.A., a leader in public finance law in the State of Florida, is seeking an associate attorney with experience in corporate and/or real estate transactions for its Tampa office. Competitive compensation and benefits package and no billable hours. More information about the firm can be found at www.ngnlaw.com. Please direct inquiries in confidence to Chris Traber at ctraber@ngn-tampa.com.

- GFOA 24th Annual Governmental GAAP Update.
- GASB Webinar: Implementation Guides for Fiduciary Activities and Leases
- Fitch U.S. Water and Sewer Utilities Rating Criteria Revision.
- NFMA Advanced Seminar on Healthcare.
- Evaluating Local Government Security Ratings: Fitch Webinar
- End-of-Year Tax Planning for LIHTC Properties.
- And finally, These Darn Grandkids Are Killing Me is brought to us this week by *Bailey v. City of Pearl*, which recounts the following sequence of events, "Bailey and his wife, Bertha, went to their grandson's baseball game at the Pearl youth ballpark." That's nice. The elderly couple enjoyed the game and returned to their car for the ride home. A true slice of heartwarming Americana. "Bailey was driving, and Bertha was in the passenger seat. The Baileys' vehicle collided with the gate in such a manner that the gate 'speared' the cab of the vehicle, striking Bertha in the head. She was taken to the hospital but died eleven days later." Wow. That got dark in a hurry.

STORMWATER UTILITY FEES - ILLINOIS

Green v. Village of Winnetka

Appellate Court of Illinois, First District, Sixth Division - July 26, 2019 - N.E.3d - 2019 IL App (1st) 182153 - 2019 WL 3416733

After the Appellate Court reversed and remanded dismissal of initial declaratory judgment action brought by resident against village, alleging that village's stormwater utility fee was actually a tax

that violated state constitution and municipal code, parties cross-moved for summary judgment.

The Circuit Court granted summary judgment in favor of village. Resident appealed.

The Appellate Court held that stormwater utility charge imposed by village was fee, and was not unconstitutional tax.

Stormwater utility charge imposed on village residents in order to maintain stormwater system was a fee, and not an unconstitutional tax; although resident, who brought action against village challenging such charge, argued that charge was a real property tax not properly assessed against valuation of property and that utility system was of general use to entire village, and thus fee to finance it was tax, fact that charge was assessed upon real property did not automatically render it a tax, and while charge paid for system to be used by all residents, existing system would experience decline in service absent improvements, and village engineer's statement that amount of impervious area on property was directly related to owner's use of stormwater system justified assessing fee based on amount of impervious area on property.

APPORTIONMENT - MICHIGAN

Taxpayers for Michigan Constitutional Government v. Department of Technology , Management and Budget

Court of Appeals of Michigan - July 30, 2019 - N.W.2d - 2019 WL 3432064

Taxpayer organization brought action against state, state departments of technology, management and budget, and office of auditor general, to enforce state constitutional amendment requiring state to apportion certain percentage of spending to local government.

The Court of Appeals held that:

- Taxpayer organization had standing to bring action;
- Classification of state spending paid to local governments, pursuant to constitutional amendment governing state school funding, as spending paid to local government did not violate Headlee Amendment;
- State spending on public school academies (PSAs) constituted spending on units of local government under Headlee Amendment;
- State spending to fund new mandates could not be included in calculation of proportion of total state spending paid to units of local government under Headlee Amendment; and
- Mandamus was appropriate remedy for taxpayer organization to enforce Headlee Amendment.

Taxpayer organization, comprised of both individual residents of state and cities within state, had standing to bring action against state, state departments of technology, management and budget, and office of auditor general, to enforce constitutional amendment requiring state to apportion certain percentage of spending to local government, where "any taxpayer" of state had standing to bring suit under amendment.

Plain language of section of Headlee Amendment prohibiting reduction in proportion of state spending paid to units of local government did not guarantee that any individual local unit of government would receive same amount of funds year to year, but rather prohibited reduction in proportion of "total state spending paid to all units of Local Government," and thus classification of state spending paid to local governments, pursuant to constitutional amendment governing state

school funding, as spending paid to local government did not violate Headlee Amendment.

Public school academies (PSAs) were "school districts" for purposes of calculating state funding of education, and thus state spending on PSAs constituted spending on units of local government under state constitutional amendment requiring state to apportion certain percentage of spending to local government; revised school code provided that PSAs were school districts for purposes of constitutional amendment governing state school funding, and school aid statute included PSAs in definition of "district."

Allowing state spending used to fund new state mandates, under section of Headlee Amendment requiring state to pay increased necessary coasts of new mandates, to be included in calculation of proportion of total state spending paid to units of local government, under section of Headlee Amendment prohibiting state from reducing proportion of state spending paid to local governments, would allow funding for new mandates to serve conflicting purposes of funding new mandates, but de-funding existing local services, and thus state spending to fund new mandates could not be included in calculation of proportion of total state spending paid to units of local government.

Mandamus was appropriate remedy for taxpayer organization in action against state and state departments to enforce state constitutional amendment requiring state to apportion certain percentage of spending to local government; statute implementing amendment established state's ministerial duty to collect, report, and place on public record information regarding state's compliance with amendment.

IMMUNITY - MISSISSIPPI

Bailey v. City of Pearl

Court of Appeals of Mississippi - July 30, 2019 - So.3d - 2019 WL 3423383

Spouse and heirs of passenger who was killed when vehicle collided with open city park gate brought wrongful death action against city.

The Circuit Court granted city's motion to dismiss on the ground of governmental immunity. Passenger's spouse appealed.

The Court of Appeals held that:

- City's decisions related to design and construction of park were discretionary functions to which immunity applied;
- City's adoption of safety protocols for public's use of park was discretionary function to which immunity applied; but
- City's allegedly negligent maintenance of park was not a discretionary function to which immunity applied.

City's decisions relating to design and construction of park, including provision of safe ingress and egress to park, selection of design and installation of park gate, acquisition of proper equipment to secure gate, and provision of adequate lighting involved public policy considerations, and, thus, city was immune from claims that city's alleged negligence in construction and design of park caused death of passenger when vehicle collided with gate.

City's adoption of safety protocols for public's use of park was discretionary function, and, thus, city was immune from claim that allegedly inadequate safety protocols caused death of passenger whose

vehicle collided with open gate; adoption of safety protocols was an exercise of city's rule-making authority.

City was not immune from claims that its alleged failure to secure park gate, have an apparatus that would secure the gate, or mark and warn of dangerous condition presented by unsecured gate caused death of passenger whose vehicle collided with open gate; city's performance of park maintenance was not a discretionary function related to or flowing from a social, economic, or political policy.

EMINENT DOMAIN - PENNSYLVANIA

Griffith v. Millcreek Township

Commonwealth Court of Pennsylvania - July 30, 2019 - A.3d - 2019 WL 3417015

Landowners, who were forced to abandon their home after massive landslide of trees and soils fell along boundary of property, filed petition for appointment of a board of viewers, alleging that township's design, construction, review, acceptance, operation, and/or maintenance of subdivision's storm water system caused landslide on property, rendered their home uninhabitable, and constituted de facto taking.

The Court of Common Pleas overruled township's preliminary objections and granted landowners' petition. Township appealed.

The Commonwealth Court held that township's design, construction, review, acceptance, operation, and/or maintenance of subdivision's storm water system, which allegedly caused landslide, did not constitute de facto taking of landowners' property; although township imposed conditions on system and was responsible for system's maintenance, and was aware that system discharged into ravine adjacent to landowners' property, there was no evidence that township knew its acts would cause landslide, or turned a blind eye to such likelihood, let alone one that would destroy landowners' home.

MUNICIPAL ORDINANCE - PENNSYLVANIA

Pennsylvania Restaurant and Lodging Association v. City of Pittsburgh

Supreme Court of Pennsylvania - July 17, 2019 - A.3d - 2019 WL 3216519

Objectors brought action for declaratory and injunctive relief based on their challenge to home-rule municipality's ordinance mandating that certain employers provide paid sick leave to their employees and city's ordinance that imposed training obligations upon building owners and their employees in furtherance of disaster preparedness, counterterrorism, and related concerns.

The Court of Common Pleas invalidated both ordinances. City appealed. The Commonwealth Court affirmed. City sought appellate review.

The Supreme Court held that:

- City's status as a home-rule municipality did not preclude it from attempting to resort to the Second Class Cities Code (SCCC) as authority for its ordinance;
- Disease Control and Prevention Law (DCPL) provided basis for authority of city to enact sick-leave

ordinance;
- The SCCC did not provide authority for city to enact the disaster-preparedness ordinance;
- Provision of statutes on powers of home-rule municipalities concerning the power of such municipalities to enact ordinances relating to building codes and safety regulations did not provide authority for city to enact the disaster-preparedness ordinance; and
- Emergency Code did not provide authority for city to enact the disaster-preparedness ordinance.

Municipality's status as a home-rule municipality did not preclude it from attempting to resort to the Second Class Cities Code (SCCC) as authority for its ordinance mandating that certain employers provide paid sick leave to their employees and its ordinance that imposed training obligations upon building owners and their employees in furtherance of disaster preparedness, counterterrorism, and related concerns; the "business exclusion" provision of statutes governing home-rule municipalities, which allowed municipal regulation of business when expressly provided by statutes applicable to any class or all classes of municipality, ensured that a home-rule municipality could invoke the authority that any municipality in the Commonwealth had been granted.

Disease Control and Prevention Law's (DCPL) provision allowing municipalities that had departments of health to enact ordinances relating to disease prevention and control provided basis for authority of home-rule municipality to enact ordinance mandating that certain employers provide their employees with paid sick leave; municipality was served by county health department, and ordinance bore a direct nexus with public health.

Fitch U.S. Water and Sewer Utilities Rating Criteria Revision.

To more clearly communicate credit opinions and facilitate a more forward-looking, predictable approach to ratings, Fitch Ratings has revised its U.S. Water and Sewer Rating Criteria. These revisions will facilitate a more forward-looking, predictable approach to ratings and better highlight differences among credits in the same category.

Anticipated Rating Impact is Limited
Assuming current credit characteristics are maintained, Fitch estimates approximately 10% of the ratings covered by the criteria will be affected, with slightly more upgrades than downgrades anticipated. Criteria-driven rating changes will be dependent on the finalization of criteria after assessing comments received during the exposure draft period.

Experienced Analytical Judgment
Fitch's ratings will continue to be based on the judgment of a team of experienced analysts, rather than on weighted assessments or model-based outcomes.

Subfactor Assessments More Focused
The subfactor assessments relating to the three key rating drivers have been refined to provide an enhanced focus on elements most important in determining credit quality.

Clearer Communication of Credit Opinions
The goal of the revised criteria is to communicate Fitch's credit analysis more clearly, presenting both high-level categorical assessments of key rating drivers along with well-defined opinions about both rating conclusions and the underlying fundamentals.

Rating Changes More Predictable
The revised criteria more clearly define and communicate Fitch's expectations of the range of

performance.

New Through-the-Cycle Tool
Known as FAST, this tool highlights how cycles affect utilities differently, and will be publicly available with a select group of issuer data during the criteria comment period.

- Exposure Draft: U.S. Water and Sewer Utilities Rating Criteria
- Rating Criteria User Guide
- Sample New issue Report
- Overview of the Exposure Draft: U.S. Water and Sewer Rating Criteria
- FAST for Water and Sewer

End-of-Year Tax Planning for LIHTC Properties.

With five months remaining in the year, it is time to start thinking about tax-planning strategies, especially for owners of low-income housing tax credit (LIHTC) properties. Outlined below are some items to consider as 2020 approaches.

Bonus Depreciation

Internal Revenue Code (IRC) Section 168(k) governs bonus depreciation for qualified property, which is property with a recovery period of 20 years or less. For LIHTC property owners, site improvements and personal property are the most common examples. Per the Tax Cuts and Jobs Act (TCJA) passed at the end of 2017, 100 percent of the depreciable basis of qualifying property placed in service after Sept. 27, 2017, and before Jan. 1, 2023, can now be expensed.

It should be noted that there is still property subject to the old bonus depreciation rules. Per IRC Section 168(k)(8), qualified property acquired before Sept. 28, 2017, and placed in service after Sept. 27, 2017, can be expensed up to the following applicable percentages:

- In service in 2018: 40 percent
- In service in 2019: 30 percent
- In service after 2019: 0 percent

Owners should ensure that qualifying property is in service before the end of 2019. By doing so, 100 percent of the property can be expensed, or 30 percent if the property is subject to the old rules. Additionally, if the qualifying property is expected to be placed in service near the end of the year, measures can be taken so that the property is in fact placed in service before year-end in order to take advantage of the accelerated deduction in 2019 rather than having to wait until 2020. For property under the old rules, this will allow a 30 percent deduction instead of no bonus deprecation whatsoever.

Cost-Segregation Study

Related to bonus depreciation is the matter of cost-segregation studies. A cost-segregation study is performed by a specialist who reviews architectural drawings, plans and other such documentation to identify assets that might typically be grouped with buildings and reclassifies them as different asset classes. The advantage of doing so is the identification of assets with shorter depreciable lives and thus a benefit from accelerated depreciation.

For example, if a LIHTC property owner obtains a cost-segregation study in the same year in which the property is placed in service, then the owner may be able to use shorter depreciable lives, including the possibility of using bonus depreciation on the qualified property identified in the study. However, cost segregation is not necessarily required when an owner acquires or constructs new property; it also applies to previously acquired or constructed property. A caveat to this is that if too much time has elapsed from when the property was placed in service, there may not be enough remaining adjusted basis of the assets to warrant a study–i.e., the cost of the study would exceed the benefit of any additional depreciation deductions.

Tenant Lease-Up

Per IRC Section 42(f)(2), the first-year tax credit is calculated by determining the average applicable fraction using the applicable fractions at the close of each month of the first year of the credit period. To maximize the first-year tax credits, two important items should be considered: meeting the minimum set-aside, otherwise no credits can be claimed; and meeting the target applicable fraction to ensure that the credits promised to the investor are delivered.

Consider a hypothetical building comprised of 100 percent LIHTC units in the first year of its credit period. All units are of equal floor space, thus the applicable fraction is equivalent for both the unit and floor space fractions. Furthermore, the 40-at-60 minimum set-aside has been elected and the property reached its target applicable fraction (100 percent) in December with an average applicable fraction of 67.5 percent for the year. The minimum set-aside has been met, therefore, credits can be claimed for the first year. Additionally, 67.5 percent of the annual credit allocation can be claimed for the first year, but the investor requires 70 percent of the annual allocation in the first year of the credit period. In this scenario, the investor may apply a "downward timing adjuster" and reduce the next equity contribution to account for the late delivery of credits.

To avoid this situation, an owner should ensure that units are leased up as early as possible. Furthermore, units not leased up by Dec. 31 cannot count toward the calculation of the first-year credits. These units could trigger "two-thirds credits" (i.e., "15-year credits"). Now the owner may need to consider electing to defer the start of the credit period to the following year on Form 8609.

The timing of placing the building in service should also be considered. Per Revenue Ruling 2004-82, a LIHTC unit must be in service for a full month, even though the unit only needs to have been initially qualified as low-income by the last day of the month. If a unit is not in service on the first day of the month, then it cannot generate credits for that month. To illustrate, if construction on a building is completed Dec. 3 and despite the fact that every unit is occupied by a qualified household before Dec. 31, none of the units would be qualified for the month of December. The minimum set-aside would not be met; LIHTCs cannot be claimed and the start of the credit period would need to be deferred. This would have been avoided if the building was placed in service Dec. 1.

The 2018 Consolidated Appropriations Act created a new minimum set-aside on Form 8609, which is known as the average-income test or income averaging. This set-aside requires that 40 percent or more of the residential units in a property must be both rent restricted and occupied by households whose income does not exceed the limitation designated by the owner. Additionally, the average of the income limitation designations must not be more than 60 percent of the area median income (AMI) using 20 percent, 30 percent, 40 percent, 50 percent, 60 percent, 70 percent or 80 percent designations. For example, if an owner designates a unit at 80 percent, then the unit must be occupied by a household whose income at initial occupancy is no greater than 80 percent of AMI and is charged rent at or below the applicable rent limit for the 80 percent AMI level. However, an owner must ensure that the average-income test is passed before the end of the first year of the credit period. If a property places in service late in the year, the owner may need to consider

deferring the start of the credit period to allow enough time to pass the average-income test. Otherwise, there is the risk of not being able to claim credits at all.

Casualty Loss

When a unit is damaged by a casualty loss (e.g., fire or flood) rendering it uninhabitable, IRC Section 42(j)(4)(E) provides a reprieve from tax credit recapture as long as the damage is repaired within a reasonable period. However, per IRC Section 42(c)(1), the qualified basis of a building for any year is equal to product of the applicable fraction at the end of the year and the eligible basis. If a fire occurs in a unit Dec. 25 and if the unit is not repaired/restored before Jan. 1, then the unit will not generate any credits for the entire year because it is excluded from the building's qualified basis at Dec. 31. The owner of a LIHTC property damaged by a casualty loss must repair any damaged units and place them back in service before the end of the year to avoid a loss of credits for the year.

Electing Real Property Trade or Business

With the passing of the TCJA, entities taxed as partnerships are now subject to the business interest expense limitation imposed by IRC Section 163(j). That is, business interest expense can be deducted up to only 30 percent of adjusted taxable income. However, by electing to be treated as a real property trade or business (RPTOB), a LIHTC partnership can avoid this limitation in exchange for depreciating its buildings using the alternative depreciation system (ADS). For buildings placed in service before Jan. 1, 2018, the depreciable life is 40 years versus 27.5 years under the general depreciation system. For buildings placed in service after Dec. 31, 2017, the ADS life is 30 years in lieu of 40.

Once the RPTOB election is made, it is irrevocable, but the election can be deferred until a future year. In this situation, tax planning becomes extremely important. A LIHTC property owner should confer with its investor and tax professional on whether making the election for the upcoming year will yield the best tax benefits or if forgoing the election is still the most optimal position.

What has been discussed above is by no means an exhaustive list. LIHTC property owners should seek out the advice of their tax professionals to ensure that they get the most out of their investments in LIHTC properties.

Novogradac

Published by Scot Keller on Tuesday, August 6, 2019

When to Consider a Public-Private Partnership Engagement.

Whenever there is a new government project coming, there is a question about alternative funding resources or public-private partnerships (P3). It has become common for public officials to determine whether a project is suitable for a P3 engagement, especially when the project is critical and lacks sufficient funding. Usually, complex projects requiring unique expertise are suitable for a P3.

Very often the SPI Team receives inquiries from public officials about an upcoming project. Their questions are almost always about alternative funding sources or public-private partnerships (P3s). These officials usually are trying to determine whether a particular project is suitable for a P3 engagement. Since the question has become so common, it seems appropriate to discuss how P3

decisions are best made.

The most common reason to consider a public-private partnership is when government officials need to launch critical projects but lack the financial resources. However, there are numerous other reasons as well.

When projects are complex and require unique expertise, it is wise to collaborate with experienced and trusted private-sector partners. And, when shifting the risk of on-time, on-budget delivery of a major initiative is a priority, it is reasonable to consider a partnership. Because public officials continually strive to meet public needs and maintain public assets with inadequate budgets and resources, P3s have become very common. That trend will not be reversed any time soon because public funds are scarce and federal funding assistance, especially for infrastructure initiatives, is either inadequate or nonexistent.

But, because P3 procurements are not yet common delivery methods in all jurisdictional levels of government, public officials who will be responsible for successful outcomes should seek answers and best practices. And, it all starts with posing the correct questions.

To determine whether a P3 is the best method for procuring a project, public agencies typically evaluate why a collaborative effort with private-sector investment is being considered. One answer could be because the project is large and complex and shifting some of the delivery risk is prudent. Another reason might be that, because of the complexity, certain types of expertise and experience are required that the public entity lacks. It may be that there is a preference for having another party responsible for ongoing operations and maintenance of the public asset after it is completed. Financial assistance is a primary reason that critical projects often require a private-sector partner.

If those questions are answered affirmatively, the next step is to consider the project's anticipated costs. Most P3 engagements are tied to large public projects, usually in the $100 million cost range. But, there are numerous ways to make smaller projects attractive to private-sector contractors and alternative funding sources.

Public officials throughout the country have found innovative ways to consolidate small and similar projects so their contracting opportunities are of interest to experienced private-sector firms. Successful consolidations have included merging a number of bridge repair projects, packaging urban revitalization projects, or bundling construction of multiple public school campuses into one project.

Experienced private-sector partners are drawn to partnering opportunities that require capital investments but only if a revenue model is developed for repayment of the initial capital over a period of time. Usually, the last, and perhaps the most important, question is whether or not a revenue repayment model can be created.

Myriad ways are available to structure repayment models. For instance, if a private firm constructs a courthouse, delivers a performing arts center, or builds a new terminal at an airport, repayment funds could come from a lease agreement or from revenue generated through a parking garage or retail outlets inside the new public asset. A revenue model also could include a dedicated revenue stream that results from increased tax revenues or savings because of efficiencies tied to the project. Some municipal leaders have repaid capital investments from the sale of non-revenue producing public assets. Many ways exist to structure repayment over a long period of time.

The P3 process also includes many ways to attract alternative funding. If a region has been designated as an 'Opportunity Zone', private-sector contractors will be interested in investing in

public projects because of tax benefit incentives. Opportunity Zone designations are abundant throughout the country. Public agencies located within these regions should definitely promote the tax benefits available through public-private partnerships. Some smaller P3 projects have included capital investment from nonprofit organizations, regional banks, and crowdfunding programs.

One of the last considerations is whether or not there a political champion to lead the project. If so, the question to ask is whether the project can flourish over the long term, even if and when the political champion leaves office. It's important to secure internal support and it is wise to designate additional project champions.

When these basic questions are answered, it is almost always clear whether or not a P3 is the best option for project delivery. Collaborative initiatives and public-private partnerships are destined to become the norm, so addressing basic questions and considering all options are critical components of success.

Born2Invest

By Mary Scott Nabers

August 6, 2019

Everything You Need to Know About the Municipal Securities Rulemaking Board.

The municipal bond market is worth nearly four trillion dollars and directly supports municipal infrastructure that Americans use every day. Despite its size and importance, the market has relatively little oversight compared to other asset classes, such as stocks, options and futures. In fact, the Securities and Exchange Commission (SEC) described the market as "too opaque" as recently as 2012.

The Municipal Securities Rulemaking Board, or MSRB, is a Congressionally-chartered, self-regulated organization responsible for protecting investors, state and local government issuers, other municipal entities and the public interest by promoting a fair and efficient market. Since its inception, the organization has addressed these concerns.

Let's take a closer look at the MSRB and how it impacts the muni bond market on a day-to-day basis.

Continue reading.

municipalbonds.com

by Justin Kuepper

Aug 07, 2019

Bond Insurer MBIA Sues Banks Over Defaulted Puerto Rico bonds.

Aug 8 (Reuters) – Bond insurance company MBIA Inc sued several financial institutions on Thursday

over their role in underwriting billions of dollars of Puerto Rico bonds that eventually went into default.

The lawsuit filed in superior court in San Juan claimed the banks “inflicted a financial tragedy” on the now-bankrupt U.S. commonwealth by urging it to issue “unsustainable” debt.

“That debt bankrupted the commonwealth and its agencies while the banks enriched themselves through massive fees,” the lawsuit stated.

Puerto Rico filed for bankruptcy in 2017 to restructure about $120 billion of debt and pension obligations.

According to the lawsuit, major banks underwrote more than $66 billion of bonds issued between 2001 and 2014 by Puerto Rico and its agencies, earning hundreds of millions of dollars in fees. The defendants are: UBS Financial Services Inc, UBS Securities LLC, Citigroup Global Markets Inc, Goldman Sachs & Co LLC, J.P. Morgan Securities LLC, Morgan Stanley & Co LLC; Merrill Lynch, Pierce, Fenner & Smith Inc; RBC Capital Markets LLC, and Santander Securities LLC.

MBIA argued that these underwriters failed to do their due diligence on Puerto Rico bonds, which led to disclosures that were “materially false or misleading” and upon which its unit, National Public Finance Guarantee Corporation, relied upon when it decided to insure the debt.

A request for comment from J.P. Morgan was not immediately answered. Representatives of the other banks declined to comment on the lawsuit.

National insured more than $11 billion of Puerto Rico debt. Subsequent defaults led the insurer to make as of July 1 over $720 million in claims payments that the lawsuit seeks to recover in damages from the banks.

The same banks were sued by Puerto Rico’s federally created fiscal oversight board in May for allegedly aiding and abetting the island’s “clearly insolvent” government to issue debt.

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

MBIA Sues Nine Puerto Rico Bond Underwriters.

Bond insurers MBIA Insurance Corp. and National Public Finance Guarantee Corp. sued nine Wall Street firms on Thursday for their actions while underwriting Puerto Rico bonds.

MBIA (MBI) and its subsidiary National are seeking at least $720 million from UBS Financial Services, UBS Securities, Citigroup Global Markets, Goldman Sachs (GS), J.P. Morgan Securities, Morgan Stanley (MS), Bank of America (BAC) as successor to Merrill Lynch, RBC Capital Markets, and Santander Securities.

The bond insurers filed their suit in the Court of the First Instance, Superior Court of San Juan, in Puerto Rico.

Essentially, the insurers argued that the financial firms provided them incomplete and misleading information about the Puerto Rico issuers’ financial conditions prior to the insurers agreeing to

insure the bonds.

Official Statements are examples of this information. The insurers said that under federal securities laws the issuers were required to investigate the information in the official statements. “The banks did not scrutinize these materials as they assured the market they would,” the insurers said.

In the documents the financial firms handed to the insurers prior to the bond sales, “the issuers’ debt service coverage ratios were overstated, and they had not spent and likely would not spend their funds as represented.”

“Just like the commonwealth and the people of Puerto Rico, National was misled by the underwriters of the commonwealth’s bonds,” said Bill Fallon, chief executive officer of MBIA (MBI).

In their suit, the insurers acknowledge that they have no statutory claims against the financial firms. They say their suit is under “doctrina de actos propios” (doctrine of proper acts) and the doctrine of unilateral declaration of will. Both have roots in Spanish law, which still underpin much of Puerto Rico’s local laws.

All the defending firms in this case were offered a chance to provide a statement to The Bond Buyer. They all failed to do so or said they had no comment.

The financial firms were underwriters for Puerto Rico public sector bonds.

National has paid over $720 million in claims on its insured Puerto Rico bonds and is expecting to pay out hundreds of millions of dollars more. This is the origin of the insurers’ claim for at least $720 million.

National insured more than $11 billion of Puerto Rico bonds. National said it insured the bonds when they were issued from 2001 to 2007.

The doctrina de actos propios “is designed to protect ‘legitimate expectations’ and ‘good faith’ and to ‘prohibit … behavior that would result in an unreasonable interference with a legitimately created trust relationship, that allowed the other party to reasonably rely on the original conduct,’” the insurers said in its suit.

The claim of unilateral declaration of will applies when “’a person might have an obligation towards another person, as long as their intention is clear, arises from a suitable judiciary act and is not contrary to the law, the moral or the public order,’” the insurers said, quoting from a 2014 court decision.

The insurers’ losses wouldn’t be so large if Puerto Rico and its Oversight Board had chosen to observe basic principles of municipal finance since the bankruptcy, said Chapman Strategic Advisors Managing Director James Spiotto. Spiotto pointed to Puerto Rico and the board’s unwillingness to observe guarantees for paying special revenues in bankruptcy and the Puerto Rico Constitution’s priority on paying general obligation interest.

If these were followed, the insurers would probably be less interested in launching their lawsuit against the financial firms, Spiotto said.

Vicente & Cuebas and Selendy & Gay are the law firms representing the insurers.

By Robert Slavin

BY SOURCEMEDIA | MUNICIPAL | 08/08/19 04:14 PM EDT

National and MBIA Insurance File Lawsuit Against Wall Street Banks for Misconduct as Underwriters in Puerto Rico's Fiscal Crisis.

SAN JUAN, Puerto Rico, Aug. 8, 2019 /PRNewswire/ — Today, National Public Finance Guarantee Corporation and MBIA Insurance Corporation (collectively, "National" or "Plaintiffs") filed suit in the Court of First Instance, Superior Court of San Juan, Puerto Rico, against eight major Wall Street banks to hold them accountable for inequitable conduct in Puerto Rico's municipal bond market that contributed to Puerto Rico's economic collapse.

Plaintiffs are bond insurers that have been presented with, and fully honored, over a billion dollars in claims after the municipal debt underwritten by the banks became unsustainable on their terms for the Commonwealth and its agencies and they defaulted on their obligations. The lawsuit names as defendants UBS Financial Services, Inc.; UBS Securities LLC; Citigroup Global Markets Inc.; Goldman Sachs & Co. LLC; J.P. Morgan Securities LLC; Morgan Stanley & Co. LLC; Merrill Lynch, Pierce, Fenner & Smith Inc.; RBC Capital Markets LLC; and Santander Securities LLC.

Each bank underwrote one or more bonds issued by each of the Commonwealth, the Puerto Rico Electric Power Authority, the Puerto Rico Highways and Transportation Authority, and the Puerto Rico Sales Tax Financing Corporation. The Complaint alleges that, for over a decade, these banks urged Puerto Rico and its agencies to issue massive amounts of this debt, allowing the banks to profit from underwriting and selling the bonds, as well as from related interest rate swap, refinancing and other transactions. In their capacity as underwriters, the banks had a fundamental 'gatekeeper' responsibility that assured the markets that these municipal bonds could be repaid. But, as shown by a Special Investigation Report prepared for Puerto Rico's Financial Oversight and Management Board, the banks did not conduct appropriate due diligence, resulting in key disclosures being materially false or misleading. These diligence failures concealed essential facts that would have demonstrated that the debt was not sustainable and could not be repaid in accordance with its terms.

This debt burden ultimately forced the Commonwealth from the municipal markets, leaving it and its public institutions—like power utilities, hospitals, schools, and essential infrastructure on which millions of Puerto Ricans rely—in financial distress. Bond insurers like National have paid billions of dollars in claims payments to date, while uninsured municipal bond investors, including many Puerto Ricans, have suffered huge losses.

"We are honored to represent National in this litigation," said Philippe Selendy, founding partner of Selendy & Gay, counsel for National and former lead counsel for the Federal Housing Finance Agency in its RMBS litigations. "As alleged in the Complaint: 'El legado de la conducta injusta de los bancos afectará a Puerto Rico por generacione. Éstos no solo desatendieron su obligación de actuar como celosos guardianes, sino que se aprovecharon de las circunstancias imperantes en Puerto Rico, llevando a Puerto Rico directamente a su crisis actual. Mientras los bancos se enriquecían, le infligían graves daños al Gobierno de Puerto Rico y a sus ciudadanos, al igual que a National. Deben por tanto responder por esta conducta ilícita.'"[i] [English translations have been made available in the endnotes].

The Complaint is based upon two equitable doctrines of Puerto Rican law—doctrina de actos propios and declaración unilateral de la voluntad.

According to Federico Hernández Denton, former Chief Justice of the Supreme Court of Puerto Rico and counsel for National, "The Complaint alleges: '[L]os Demandados, por medio de sus actos, le garantizaron a los demandantes que habían realizado investigaciones completas y razonables de los términos de los bonos que los demandantes aseguraron, y éstos de buena fe confiaron en dichas representaciones, al emitir sus seguros. Pero los Demandados frustraron las expectativas legítimas y de buena fe de los demandantes, al no llevar a cabo esas investigaciones y en torno a la veracidad y de las representaciones que hicieron en las solicitudes de seguro….Estas circunstancias extraordinarias ameritan que se aplique la doctrina de actos propios y/o de declaración unilateral de la voluntad.'"[ii]

In the face of the bonds' defaults, National has paid every cent of every claim on its policies—over a billion dollars—to cover the losses of insured investors.

"Just like the Commonwealth, and the people of Puerto Rico, National was misled by the underwriters of the Commonwealth's bonds," said Bill Fallon, CEO of MBIA Inc., the parent company of the Plaintiffs.

"This time of turmoil should be the occasion for rebuilding. National insured its first Puerto Rico government bond more than 30 years ago and to date has insured more than $15.7 billion of debt for Puerto Rico issuers," Fallon added. "Our insurance has helped Puerto Rico raise the money to build schools and hospitals and other vital public services. We're proud of that. The future of Puerto Rico and the integrity and transparency of the capital markets demand that the underwriters be held accountable."

Philippe Selendy, awarded "Litigator of the Year, Grand Prize" by The American Lawyer, has recovered over $35 billion for his public and private clients. Lauded by the Financial Times as "The Man Who Took on Wall Street," AmLaw reported that the Federal Housing Finance Agency "hit the jackpot" when it hired Mr. Selendy to lead its "litigation assault on Wall Street" that recovered billions for taxpayers in the aftermath of the Great Recession.

Retired Chief Justice of the Supreme Court of Puerto Rico, Federico Hernández Denton has over 50 years of expertise in law practice and litigation. He was Chief Justice of the Supreme Court of Puerto Rico (2004-2014), when he retired from the Court after presiding the Judicial Branch of Puerto Rico. Upon his retirement, he was appointed by the U.S. District Court of Puerto Rico as a Constitutional Lawyer of the Monitor of the Puerto Rico Police Commission.

MBIA Inc., headquartered in Purchase, New York is a holding company whose subsidiaries provide financial guarantee insurance for the public and structured finance markets.

National Public Finance Guarantee is a wholly owned subsidiary of MBIA Inc. and independently capitalized with $3.8 billion in claims-paying resources as of June 30, 2019.

The Complaint is available here.

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[i] "'The legacy of the banks' unjust conduct will affect Puerto Rico for generations. The banks not only disregarded their gatekeeping role but exploited it, leading Puerto Rico straight into its current crisis. While the banks enriched themselves, they caused great damage to the Commonwealth, its people, and National. They should now bear the costs of their inequitable conduct.'"

[ii] "'Defendants through their acts assured National that they were conducting reasonable investigations regarding the terms of the bonds that National insured, and National relied on those

acts in issuing its insurance. But Defendants frustrated National's legitimate, good faith expectations by choosing not to conduct those investigations and utterly failing to ensure that they had confirmed the truthfulness and completeness of the integral materials in the insurance applications….These extraordinary circumstances warrant application of doctrina de actos propios and/or the unilateral declaration of will.'"

How To Beat The Risk Of Negative Yields.

As the $14.5 trillion in global negative yielding bonds grows, what kind of maneuvering should you be doing?

First off, we older investors will never forget the Y2K scare and the disaster that never happened. Right now many investors are as worried about negative yields happening in the U.S. as we were worried about our computers in 1999 being unable to digest the changeover to 2000.

I quote the August 5 Barron's, which in turn quoted BofA Merrill Lynch Research: "Net buying in global bond funds is on pace to reach a "staggering record" of $455 billion in 2019, which compares with the $1.7 trillion of inflows over the past ten years."

For 2019, U.S. bond fund inflows have been huge. Investors have sold stocks for the safety of bond funds. You can look up the Lipper Fund Flows or Yardeni Research's excellent flow of funds charts to see the magnitude of this shift.

The point is, if we approach zero percent interest rates or heaven forbid, go to negative rates, my guesstimate is the money flows into bond funds of all types will become a tsunami.

Study the Vanguard Total International Bond Index Fund (VTIBX) with $131.6 billion under management. Its website states the fund has a 0.13% expense ratio and as of August 1, a 0.45% 30-day SEC yield. The yield is beyond paltry, I agree. But the near-term proposition looks even worse. As more investors flock to the fund, more bonds will be purchased at lower yields and even negative yields. Looking at the fund's largest holding, Bundesrepublic, Deutschland 0.25% maturing Feb. 15, 2029 which presently yields -0.538% this trend is not your friend.

We Baby Boomers have lived through unthinkable market occurrences. So the Central Bankers bringing negative yields to our bond market won't be any surprise.

What should you do? If ever there was a time to leave bond funds and switch to individual bonds, it's now. Granted, with a flat yield curve with 2-year U.S. Treasurys yielding 1.74% and the 10-year at 1.84% you aren't getting paid to extend your maturities. But swim against the current and do it anyway. Load up on 5-9 year bonds. If this wave hits our shores your one-year CDs or two-year corporate bond yields will quickly evaporate.

Your risk in switching to individual bonds is minimal. The Federal Reserve isn't going to do any harm. In fact, expect lower bond yields for a protracted time as global investors push and shove to invest in our bond market where U.S. yields out strip theirs by a mile. And, the slowdown in the global economy will keep a lid on rates.

If you are looking for taxable income, invest in corporate names like Motorola Solutions, Biogen, Constellation Brands, Delta Airlines and Citigroup. Find the right maturities for your portfolio and spread them out.

Municipal bonds are another story. The flood of money in June, July and August has swamped the market. Add to that the massive maturities, coupon interest and calls; maybe waiting to invest in September if you are a first-time muni investor is a good idea. For others, when your munis are called or mature redeploy your funds—don't wait for higher rates this year—it's not going to happen.

My favorite municipal bond sectors remain airport revenue bonds issued by the top ten largest U.S. airports. Also the largest, most active harbor bonds are a favorite even though tonnage is down due to the trade war with China. Stay away from small cities and counties, small hospitals and utilities. Cyberattacks are occurring fast and furious on the smallest, most vulnerable and least likely to employ the latest in cyber security.

There is a lot happening. Generating portfolio income is getting harder. Bond funds will not be your easy way out. As money flows into both domestic and foreign bonds funds, you can potentially get stuck earning a few measly basis points or no basis points. The paradigm has shifted.

Forbes

by Marilyn Cohen

Aug 5, 2019

Evaluating Local Government Security Ratings: Fitch Webinar

WHEN: August 07, 2019 3:00pm EDT

ABOUT THE EVENT

Join Fitch for a discussion on proposed revisions to evaluating securities relative to the related government's issuer default rating.

Speakers:

- Amy Laskey – Managing Director, US Public Finance
- Arlene Bohner – Senior Director, US Public Finance

View On-Demand

Which Places Pay the Most in Property Taxes?

Property taxes are an important tool to help finance state and local governments. In fiscal year 2016, property taxes comprised 31.5 percent of total state and local tax collections in the United States, more than any other source of tax revenue. In that same year, property taxes accounted for 46 percent of localities' revenue from their own sources, and 27 percent of overall local government revenue.[1]

Median property taxes paid vary widely among the 50 states. The lowest bills in the country are in 13 counties with median property taxes of less than $200 a year. This group is made up of three counties in Alaska (Aleutians East Borough, Kusivlak Census Area, and Southeast Fairbanks Census

Area), seven parishes in Louisiana (Allen, Avoyelles, Bienville, East Feliciana, Madison, Red River, and Winn), Alabama's Choctaw County, New Mexico's Harding County, and Kenedy County in Texas. The next-lowest median property tax is $215 in Lamar County, Alabama, near the Mississippi border and about halfway up the state.

The five counties with the highest median property tax payments all have bills exceeding $10,000—Bergen and Essex Counties in New Jersey, and Nassau, Rockland, and Westchester Counties in New York. All five of these counties are located near New York City.

Continue reading.

The Tax Foundation

Janelle Cammenga

August 7, 2019

Opportunity Zone Fund Tax Accounting Considerations.

What are some of the most important tax accounting considerations when forming and managing an Opportunity Zone Fund?

Valerie Grunduski is a real estate tax accounting specialist and leads Plante Moran's Opportunity Zones practice.

Click the play button below to listen to my conversation with Valerie.

Episode Highlights

- Tax considerations when creating a Qualified Opportunity Fund.
- Accounting firm services that fund managers should consider when forming and managing an Opportunity Zone fund.
- Mistakes that QOFs sometimes make in projecting IRRs in Opportunity Zones.
- The right and wrong way to structure debt, and the consequences of improperly structured debt.
- Why OZ funds that don't require debt financing may want to consider it anyway.
- The importance of having a 31-month safe harbor business plan.
- How Section 1231 gains are treated in Opportunity Zone investing.
- Exit considerations for multi-asset funds.

Play

Opportunity Db

By Jimmy Atkinson

August 7, 2019

Moody's Operating Lease and Pension Interest Rates.

Operating Lease and Pension Interest Rates – July 2019

07 Aug 2019 | Market Outlook

Tribunal Upholds Tax Department's Denial of Sales Tax Exemption on Hotel Developer's Excess Purchases for IDA Project.

The New York State Tax Appeals Tribunal has affirmed a determination that a hotel developer, acting as a designated agent of a New York State industrial development agency ("IDA"), was not entitled to a sales and use tax exemption for purchases it made to construct a hotel at a cost in excess of the amounts it had estimated in its application for IDA tax benefits. Matter of Jefferson Hotel Associates LLC, DTA No. 827618 (N.Y.S. Tax App. Trib., June 27, 2019). The Tribunal's decision makes clear that a developer that incurs costs beyond the estimates in its IDA application must amend its application in order to claim the excess sales tax exemption amounts.

Background. In June 2012, Jefferson Hotel Associates LLC ("Jefferson Associates") applied for financial assistance through an upstate New York IDA to construct a hotel in Monroe County, New York. As is common for IDA projects, the application sought a real property tax abatement, a mortgage recording tax exemption and, as relevant to the dispute, a sales and use tax exemption.

The application required that Jefferson Associates estimate the costs of construction to determine the amount of the anticipated sales tax exemption. Jefferson Associates provided the IDA with an estimated sales tax benefit of approximately $223,000. The IDA accepted the application, approving the appointment of Jefferson Associates as the IDA's agent for purposes of the hotel project and issuing a letter authorizing Jefferson Associates to make purchases free of sales tax. That letter also stated that the "[t]otal costs of the project cannot exceed the project costs" that Jefferson Associates estimated in its IDA application.

The IDA agent letter was thereafter extended twice (in December 2012 and February 2014), with each extension containing the same $223,000 estimated sales tax exemption amount. Subsequently, Jefferson Associates filed with the Department of Taxation and Finance reports of IDA sales tax exemptions, but now reported a total sales tax exemption of approximately $253,000, about $30,000 more than it had previously estimated.

In February 2015, the IDA issued a Demand Letter to Jefferson Associates seeking repayment of the excess $30,000 in sales tax. Subsequently, in November 2015, the Department itself issued a Notice and Demand seeking payment of the $30,000, plus interest. Jefferson Associates paid the amount sought and, following the Department's denial of its refund request, filed a Petition with the Division of Tax Appeals.

Relevant statutory amendments. Directly relevant to the dispute were amendments to the New York General Municipal Law, effective March 28, 2013, that significantly changed the way IDAs could allow sales tax exemption benefits. Under those amendments, IDAs were now required to recapture sales tax exemption benefits "in excess of the amounts authorized" and to remit those amounts to the Department. In addition, the amendments authorized the Department to assess tax, penalties, and interest if the excess amounts were not paid over to the IDA. The new law applied to any amendment of a project made on or after March 28, 2013, that involved "additional funds or

benefits." Gen. Mun. Law § 875. The developer argued that the new law was inapplicable because there were no amendments of the hotel project after March 28, 2013, and that, even if the new law did apply, it did not limit the sales tax exemption to the estimate in its application.

ALJ determination. An ALJ held that the excess sales tax amount was properly subject to repayment and that the new law applied because the February 2014 project extension was an amendment that conferred additional benefits after the effective date of the new law. The ALJ also concluded that the extensions of the sales tax exemption letter issued by the IDA, made after March 28, 2013, specifically identified the lower $223,000 exemption amount, which capped the allowable exemption amount.

Tribunal decision. The Tribunal affirmed the ALJ determination in its entirety. It noted that each of the IDA letters stated that the total project costs "cannot exceed" the estimated project costs, and found that it was reasonable to limit the benefit to the estimated sales tax exemption amount. It also concluded that the new law that imposed the limitation was applicable, finding that the extension of the developer's IDA agency appointment through June 30, 2014, was "an amendment . . . involving additional funds or benefits" to the hotel project under the new law.

ADDITIONAL INSIGHTS

The developer had pointed out that limiting the sales tax exemption was inconsistent with the IDA's broad authorization for the developer to make all necessary purchases for the project. However, the Tribunal noted that the 2013 amendments to the General Municipal Law were put in place to enable the IDA to control the costs of a project. The Tribunal also stated that the developer's recourse would have been to "amend the [IDA] project," which the developer did not do. The Tribunal found that the 2014 extension of the IDA agency was "an amendment . . . involving additional funds or benefits," with the alleged "benefit" being the extension of the time for the developer to make purchases free of sales tax. The decision does not address whether the legislative history for the General Municipal Law amendments indicated an intent to treat an extension of an IDA project as an "additional benefit" within the meaning of the new law.

by Irwin M. Slomka

August 5 2019

Morrison & Foerster LLP

TAX - LOUISIANA

Community Associates, Inc. v. Taylor

Court of Appeal of Louisiana, Fourth Circuit - July 31, 2019 - So.3d - 2019 WL 3470941 - 2019-0242 (La.App. 4 Cir. 7/31/19)

Former owner filed petition to annul tax sales of multiple lots, and tax sale purchaser filed reconventional demand to quiet tax title of all lots.

The Civil District Court entered judgment confirming tax sales, and order granting purchaser's ex parte motion to amend judgment, requesting correction of municipal addresses of property. Former owner appealed.

The Court of Appeal held that:

- Amended judgment was a nullity;
- Post-tax sale notice was sufficient to satisfy due process rights of former owner as to sale of certain lots;
- Evidence was insufficient to conclude that notice was sufficient to satisfy due process rights of former owner as to tax sale of certain lots; and
- Amended judgment did not accurately reflect purchaser's ownership interest in certain lots.

Amended judgment, providing that original judgment confirming tax sales of several lots listed incorrect municipal addresses for lots, was a nullity, in action by former owner of lots against tax sale purchaser, seeking to annul tax sales of lots, even though amended judgment only sought to correct a clerical error, where trial court signed amended judgment ex parte, without consent of former owner.

Post-tax sale notice was sufficient to satisfy due process rights of former owner as to sale of certain lots, where notice was sent within three-years of filing and recording of tax deed for such lots.

Evidence was insufficient to conclude that notice was sufficient to satisfy due process rights of former owner as to tax sale of certain lots, in action by former owner of lots against tax sale purchaser, seeking to annul tax sales, where record lacked documentation of any pre-tax sale or post-tax sale notice as to such lots.

Amended judgment, declaring that tax sale purchaser was sole heir of certain lots, did not accurately reflect purchaser's ownership interest, in action by former owner of lots against purchaser, seeking annulment of tax sales, where tax sale deed conveyed 75 percent interest in such lots to purchaser.

GFOA 24th Annual Governmental GAAP Update.

24th Annual Governmental GAAP Update

Training Type: Web-Streaming

Date and Time: Nov 7 2019 – 1:00pm to 5:00pm EST

CPE Credits: 4

Member Price: $180.00
Non-Member Price: $195.00

Prerequisite: Knowledge of state and local governmental accounting and financial reporting.

Speakers:

- David A. Vaudt – Chairman, Governmental Accounting Standards Board
- Stephen J. Gauthier – Former Director of Technical Services, GFOA
- Stephen W. Blann – Owner / Director of Governmental Audit Quality, Rehmann, LLC
- Michele Mark Levine – Director, Technical Services, GFOA
- Todd Buikema – Assistant Director of Publications, Technical Services, GFOA
- Peg Hartnett – Assistant Director for TrainingAssistant Director for Training, Technical Services, GFOA

Who Will Benefit: State and local governmental accounting and financial reporting professionals, state and local government CFOs, and auditors of state and local governments.

Program Description: Government Finance Officers Association (GFOA) will offer its 24th Annual Governmental GAAP Update on November 7, 2019, December 5, 2019, and again on January 16, 2020, using the latest video and audio streaming technology. The seminar offers an incomparable opportunity to learn everything you need to know about the most recent developments in accounting and financial reporting for state and local governments from the convenience of your own computer! Enjoy all the benefits of the highest quality continuing professional education without the time and expense of travel!

Participate in interactive exercises to test your knowledge of the material being presented. Receive immediate feedback to your questions during the program from GFOA's Technical Services staff.

KEY TOPICS

- Overview of GASB standards becoming effective in FYEs 2019, 2020, and beyond.
- GASB 91, *Conduit Debt Obligations*, including assessment of issuer commitments to support debt service payments and proper accounting and reporting for "lease-like" associated arrangements
- In-depth discussions of extensive new implementation guidance:
  – Fiduciary activities, including identifying fiduciary component units, assessing a government's control of and administrative involvement with resources, and accounting and reporting of the new custodial funds.
  – Leases, including identification of contracts covered by the new leases standards, determination of a lease term, measurement of new intangible right-to-use lease assets and lease liabilities by lessee governments, accounting by lessor governments, and new note disclosure requirements.
- 2019 Update to GASB's Comprehensive Implementation Guide.
- Discussion of GASB's current agenda and several recently-issued documents for public comment that will affect the future of governmental accounting and financial reporting for years to come!
- Audit update including the new Yellow Book

Seminar Objectives:

Participants in this year's GAAP Update should achieve a practical knowledge of:

- GASB 91, *Conduit Debt Obligations*
- GASB Implementation Guide 2019-1, *Implementation Guidance Update-2019*
- GASB Implementation Guide 2019-2, *Fiduciary Activities*
- GASB Implementation Guide 2019-3, *Leases*
- Exposure draft of proposed standards
- Subscription-based Information Technology Arrangements
- Public-Private and Public-Public Partnerships and Availability Payment Arrangements
- Deferred Compensation Plans
- Omnibus
- Updates on the new Yellow Book and other audit matters affecting governments
- Updates on other major GASB projects

GAAP Update FAQs

Other Documents:

- Brochure

TAX - TEXAS

Odyssey 2020 Academy, Inc. v. Galveston Central Appraisal District

Court of Appeals of Texas, Houston (14th Dist.) - July 23, 2019 - S.W.3d - 2019 WL 3294991

Open-enrollment charter school that had leased a property for its campus from a private entity sought judicial review of the decision of appraisal district's administrative review board denying school's request for ad valorem tax exemption.

The District Court granted board's motion for summary judgment. School appealed.

The Court of Appeals held that:

- Property owned by private entity and leased to school was not public property, and
- Statute governing seizure of charter school property purchased or leased with funds received by a charter holder upon revocation of charter, did not apply to school's request tax exemption.

Property owned by private entity and leased to open-enrollment public charter school using it exclusively as a public school was not "public property," as required for exemption from ad valorem property taxation; the property was privately owned, the private owners possessed legal title, school signed a sublease agreement knowing the property was privately owned, and school agreed to pay all ad valorem taxes assessed on the privately-owned property.

Statute governing seizure of charter school property purchased or leased with funds received by a charter holder upon revocation of charter did not apply to open-enrollment charter school's request for ad valorem tax exemption related to property it was leasing from private entity and using exclusively as a public school, since the statute did not speak to tax exemptions as to leased real property during the period a charter remains active, it did not establish that the State or a political subdivision owned the property for tax-exemption purposes, and school's interest in the property was limited to its leasehold.

Will Climate Change Lead to a 'Fiscal Tsunami'?

As extreme weather increasingly wreaks havoc, credit rating agencies want more information about how vulnerable each state and local government's economy is to climate change.

Moody's isn't waiting for them to give it up.

Moody's Corporation, which owns one of the largest U.S. credit rating agencies, recently purchased a major stake in Four Twenty Seven, a company that analyzes climate risks, such as sea level rise, heat stress and storms, to companies and governments. The acquisition "will help us go deeper into and refine how we assess physical risks caused by environmental factors," Michael Mulvagh, head of communications for Moody's, told Inside Climate News.

The move comes as rating agencies have increasingly commented on climate change and credit risk.

Both Moody's and S&P have released online tools to gauge which areas and what industries face the most exposure to extreme weather and long-term climate change. All three rating agencies have developed guidelines for evaluating the environmental, social and governance investments, some

which include certain government bonds. But the purchase by Moody's is widely regarded as a clear signal the ratings agency will be incorporating climate risk into future assessments of governments as a whole.

Calling Out Coal

While hurricanes and wildfires can do a lot of damage in a short amount of time, a more subtle climate risk is having an economy that's reliant on an industry that's harmful to the environment — like coal.

After robust growth between the early 1960s and 2000s, total coal production in the U.S. declined by 32 percent between 2007 and 2017, in large part because of the cheaper cost of natural gas. Much of the decline affected coal mines east of the Mississippi River in Appalachia and in the Powder River Basin in Wyoming and Montana.

According to new research from Columbia University's Center on Global Energy Policy, local governments in these regions — some of which rely on coal for up to half of their annual revenue — face "a fiscal tsunami."

"We've seen this with other industry collapses," Adele C. Morris, one of the report's authors, said in a presentation of the paper last month at the Brookings Institution. "In most cases what you see is this fiscal death spiral where public services decline, property values decline, other revenue declines, outmigration produces blight."

In Mingo County, W.V., coal mine employment fell from more than 1,400 people in 2011 to just 500 at the end of 2016. Nationwide, coal production is expected to drop by another 15 percent over the next decade — by even more if governments continue pursuing climate policies to reduce emissions and incentivize renewable energy.

Moving forward, the Center on Global Energy Policy suggests investors and other stakeholders ask these governments "for budget data that appropriately reveals the coal reliance of the local economy, and they should expect the information to appear in official statements in bond issuances."

Exaggerating the Financial Risk?

But some bond investors and analysts argue that any savvy bond buyer is already looking at climate risk, especially as it pertains to fossil fuels.

It's not necessary for governments to discuss their own climate risk at length, says Joseph Krist, a partner at the municipal finance firm Court Street Group.

"We've seen this before," he says, noting the collapse of the textile industry in South Carolina and the steel industry in Pennsylvania. "It's not a great thing if you live there but it also hasn't led to a whole lot of defaults. It's not a reason for bondholders to freak out."

Asking governments to disclose more about their how the environment could pose financial risks is also tougher for smaller cities and counties, many of which are most vulnerable to the changing climate.

"Reporting is an issue, and it is a struggle for municipalities," Tim Coffin, director of sustainability for Breckinridge Capital Advisors, said at the Brookings event. "We engage with companies and municipalities and we've discovered that even though we carry a pretty big stick in the muni market, it's hard to engage with some of them because they just don't have the bandwidth."

GOVERNING.COM

BY LIZ FARMER | AUGUST 7, 2019 AT 4:00 AM
