Bond Case Briefs

Municipal Finance Law Since 1971

Jamie Stewart

UTILITY FEES - ARKANSAS

Watson v. City of Blytheville

Supreme Court of Arkansas - February 6, 2020 - S.W.3d - 2020 Ark. 51 - 2020 WL 581491

Taxpayer, individually and as a representative of a class of persons similarly situated, brought class-action complaint against city challenging ordinance establishing a monthly fee to repair and upgrade city's sewer system to comply with Consent Administrative Order (COA) entered into with the Arkansas Department of Environmental Quality (ADEQ).

The Circuit Court granted city's motion for summary judgment. Taxpayer appealed.

The Supreme Court held that:

- Fee established by ordinance to raise funds necessary to repair and upgrade city's sewer system was not a tax and thus was not an illegal exaction, and
- Fee was not unnecessary.

Fee established by ordinance enacted by city in order to raise funds necessary to repair and upgrade city's sewer system to comply with Consent Administrative Order (CAO) entered into with the Arkansas Department of Environmental Quality (ADEQ) was not a tax and thus was not an illegal exaction; only those persons who directly benefited from city's sewer services were required to pay the fee, funds collected from the fee were accounted for separately and used only for their designated purpose, funds were designated for use for improvements to the sewer system required by COA and that revenue was only used to fund improvements to city's sewer system, and city's expert opined that fee was fair and equitable.

Fee established by ordinance enacted by city in order to raise funds necessary to repair and upgrade city's sewer system to comply with Consent Administrative Order (CAO) entered into with the Arkansas Department of Environmental Quality (ADEQ) was not unnecessary; city's expert opined that city's sewer department had been experiencing severe financial distress, and city had no choice but to implement some form of sewer-rate adjustment to provide the revenue required to fund the repairs.

ZONING & PLANNING - CALIFORNIA

<u>Citizens for South Bay Coastal Access v. City of San Diego</u>

Court of Appeal, Fourth District, Division 1, California - February 18, 2020 - Cal.Rptr.3d - 2020 WL 772602 - 20 Cal. Daily Op. Serv. 1307

Interest group brought action to challenge city's issuance of conditional use permit allowing it to convert a motel that it recently purchased into a transitional housing facility for homeless misdemeanor offenders, alleging that city was required to obtain a coastal development permit for the project.

The Superior Court issued peremptory writ of mandate requiring coastal development permit, and city appealed.

The Court of Appeal held that city's certified local coastal plan, rather than California Coastal Act regulation, governed city's coastal development.

Existing-structure exemption in regulation promulgated under California Coastal Act of 1976 did not apply to city's plan to convert motel into a transitional housing facility for homeless misdemeanor offenders in light of California Coastal Commission's certification of city's local coastal plan, as plan, rather than regulation, governed city's coastal development.

ANNEXATION - GEORGIA

City of Atlanta v. Atlanta Independent School System

Supreme Court of Georgia - February 10, 2020 - S.E.2d - 2020 WL 609643

Independent school system filed declaratory judgment action challenging validity of city ordinance which annexed a city-owned parcel of land in county industrial district while expressly prohibiting co-expansion of school system's boundaries only with regard to the annexation.

The Superior Court denied city's motion to dismiss. City applied for interlocutory appeal, which was granted.

The Supreme Court held that matter did not amount to an actual, justiciable controversy.

Independent school system's declaratory judgment action challenging validity of city ordinance which annexed a city-owned parcel of land in county industrial district while expressly prohibiting co-expansion of school system's boundaries only with regard to the annexation amounted to a request for an improper advisory opinion and raised no actual, justiciable controversy, where school system did not articulate any future conduct upon which the court's resolution of the parties' dispute depended, and school system was in reality seeking a determination as to validity of local constitutional amendment addressing effect of city's annexation into county on ownership of school property, apparently in anticipation of future dust-ups between the parties concerning city's annexation authority.

EMINENT DOMAIN - MASSACHUSETTS

Gentili v. Town of Sturbridge

Supreme Judicial Court of Massachusetts - February 24, 2020 - N.E.3d - 2020 WL 880413

Property owner brought action against town to recover for taking of property by prescriptive easement to discharge storm water.

The Superior Court Department entered summary judgment in favor of town. Owner appealed, and

appeal was transferred.

The Supreme Judicial Court held that prescriptive easement could not be a taking.

A prescriptive easement is not a means for the government to take private property without just compensation; rather, the prescriptive period requires a private landowner to bring a takings action within a specified period of time.

INVERSE CONDEMNATION - SOUTH CAROLINA

Bluestein v. Town of Sullivan's Island

Supreme Court of South Carolina - February 19, 2020 - S.E.2d - 2020 WL 810963

Coastal property owners brought action against town for breach of contract, breach of contract accompanied by a fraudulent act, a violation of the South Carolina Unfair Trade Practices Act (SCUTPA), nuisance, and inverse condemnation, based on town's failure to trim vegetation on accreting land along coast.

The Court of Common Pleas granted town's motion for summary judgment, and property owners appealed. The Court of Appeals affirmed. Property owners sought writ of certiorari, which the Supreme Court granted.

The Supreme Court held that genuine issues of material fact existed as to town's maintenance responsibilities, thus precluding summary judgment.

Genuine issues of material fact existed as to town's maintenance responsibilities towards accreting land along coast under deed transferring ownership of land to town with a number of deed restrictions, thus precluding summary judgment in action by abutting property owners, who were third party beneficiaries of the deed, for breach of contract and other claims arising from town's failure to trim vegetation on accreting land.

PUBLIC UTILITIES - WASHINGTON

Pioneer Square Hotel Company v. City of Seattle

Court of Appeals of Washington, Division 1 - February 18, 2020 - P.3d - 2020 WL 773062

Property developer brought action against city, seeking declaratory judgment that city's public utility decision requiring developer to construct 12-inch water main to supply water to property violated applicable law, and seeking an injunction requiring city to activate existing water main.

The Superior Court granted summary judgment to city, and denied developer's motion for reconsideration, finding the action untimely under Land Use Petition Act's (LUPA) statute of limitations. Developer appealed.

Decision by city public utilities regarding property developer's request to access city's water system was not a "land use decision" subject to judicial review under Land Use Petition Act (LUPA); city decision requiring developer to construct 12-inch water main to serve property was not "an interpretive or declaratory decision" regarding the law that applied to developer's request to access water system

Why Taxable Bonds are a Muni Market Fixture, Not a Fad.

AUSTIN — At 30% of issuance so far in 2020, taxable munis are here to stay and will continue to be a force in the municipal market unless tax law changes or rates rise dramatically.

Taxable issuance ballooned to about \$70.5 billion in 2019, by far the highest level outside the two years Build America Bonds were sold, 2009 and 2010.

That amount represented nearly 18% of the muni market'stotal 2019 issuance.

Members of the taxable bond panel at The Bond Buyer's Texas Public Finance Conference this week were unanimous in saying taxable issuance totals will grow further and represent an even larger piece of the overall issuance pie in 2020 and beyond.

From a broadened buyer base that includes larger institutional and international investors, but extends to direct retail and separately managed accounts, taxable demand has dramatically changed the municipal market starting in the second half of 2019.

Tom Ryan, head of municipal bond valuations at Refinitiv, noted that instead of typical crossover buyers, the market now has "crossover issuers" because they can truly take advantage of both markets in this rate environment.

Dan Bingham, head of institutional markets at Build America Mutual, said the taxable issuance boom has attracted a much larger investor base, including a growing number of institutional and international buyers.

Bingham said that in the BABs era, the investor base was broadened but when the program expired, the market went back to very limited issuance of taxables.

"With that said, we are even seeing smaller issuers selling taxable deals," he said. "Ultimately, we are seeing a much healthier environment" for all issuers.

The prospect that smaller issuers can access direct retail and SMA accounts engaged with the yield pick-up that can be found in the taxable space, is compelling, he said.

"Larger deals, recognizable names, index eligible deals — you've got a lot of institutional accounts that are much more apt to participate in this market," Bingham said. "International accounts are participating in the municipal market to a level we haven't seen before."

Low absolute rates across the globe are helping.

As the percentage of taxable deals relative to the total market continues to expand, they are becoming easier to understand from an international investor perspective, given some of the protections that are provided in the offering documents.

Investors are "looking for anything they can pick up spread," Bingham said.

The supply/demand mismatch, tremendous cash coming into the market via tax-exempt mutual fund inflows and compressed spreads on the tax-exempt side of the market are leading to a perfect environment for issuers to take advantage of the taxable market, Patricia McGrorry, managing director at Ramirez & Co., said.

"Across the curve there are buyers for every credit and every credit spectrum," she said. There are definitely different buyers for those smaller deals and different liquidity requirements, but "there's always a spread for everything." While she said that smaller issuers might face some concessions for a taxable deal less than, say, \$25 million, it depends on the market conditions, such as what other taxable deals are being priced on a given day among other factors.

And the traditional municipal 10-year call is making the leap into the taxable space.

Panelists noted that prior to the recent market conditions, investors would charge at least a 35 to 40 basis point premium on a taxable 10-year callable deal. Today, the cost of the call is about 18 to 22 basis points. "That has changed pretty meaningfully," Bingham said.

McGrorry said the investor perception has changed and that "if you build it, they will come." The 10-year call option that many taxable municipal deals use is less of a deterrent in the current market than a few years ago.

Investors are "going to have to buy it if they want to participate. The penalty is credit specific and name by name recognition, and the 10-year call penalty will be less.

Ryan noted that while the global demand is strong, it is "surprising to me that taxable investors aren't penalizing issuers more."

With that, Ryan said issuers could even test the market with a seven-year call. In this market, investors are thinking, "do I actually care about the call option?"

Having more optionality is better for issuers and they should "call their bankers."

Bingham noted there are three ways of dealing with the lack of exempt advanced refundings: access it through a forward-delivery deal, a taxable refunding, or waiting.

"The value of savings today are too strong to wait," he said.

Barbara League, partner at law firm Orrick, Herrington & Sutcliffe, noted that she is seeing more inquiries into different structures to take advantage of low rates. Aside from issuing taxable bonds to refund exempts, she is seeing more forward-delivery bonds, certain swap structures, tender rights.

"How can we recreate what we lost? The best way we can recreate is to bring back what we lost," but that does not seem to be a likely scenario, she said.

One area that the participants agreed was that taxable issuance has pressured the exempt market significantly but that threats to removing the exemption at the federal level should not be considered.

Shannon Albert, Senior Director, Treasury & Assistant Treasurer at San Antonio's municipal CPS Energy, said even outside of the current taxable environment, "there is always that risk."

As a utility that issues a lot of tax-exempt debt, she said market participants have an obligation to do "everything we can to educate our legislators" on the exemption. "We use taxable as a tool in our toolbox. We look at strategically to see what the most makes sense," and there are multiple considerations to how she plans her bonding program.

"Issuing taxable debt sometimes is a better choice for us," however, the exemption is integral to her debt portfolio. The exemption provides significant savings over long periods of time and will cost

communities largely if it were to be taken away.

"I feel like we have an obligation to give [lawmakers] a hard time," she said.

By Lynne Funk

BY SOURCEMEDIA | MUNICIPAL | 02/27/20 03:01 PM EST

Parametric Insurance: An Emerging Tool for Financial Risk Management

Local governments have a duty to respond quickly and decisively to extreme events and provide continuity in critical public service through adverse circumstances. Reserves or "rainy day funds," federal assistance, and indemnitybased insurance* programs are the primary tools governments have used to manage risk associated with events, such as natural disasters, recessions, etc., that have the potential to disrupt public services. In recent years, a type of insurance instrument called "parametric insurance" has generated interest in local governments in North America to help fulfill risk management needs that aren't met by indemnity based insurance, federal assistance, or rainy day funds.

In this paper, we will review the most import things local governments need to know about parametric insurance, including:

- Why local governments might wish to consider parametric insurance.
- Who is using parametric insurance, including a review of the experiences with parametric of two U.S. local governments and one state government.
- How to explore the use of a parametric policy.
- A review of the advantages and disadvantages of parametric insurance.

Download Research Report

Government Finance Officers of America

Author: Shayne C. Kavanagh Elizabeth Fu

Year: 2020

Fitch Rtgs: Aging Populations Strain State Budgets, Pension Funding Varies

Link to Fitch Ratings' Report(s): <u>Demographic Trends and Pension Pressures (Aging Populations and Underfunded Pensions May Present Fiscal Challenges for States)</u>

Fitch Ratings-New York-25 February 2020: The aging US population poses a range of challenges to state finances, including providing pensions for the swelling ranks of retired public workers. However, a state's demographic profile does not necessarily determine its pension funding, Fitch Ratings says. States with weaker demographic profiles are likely to face slower revenue growth and expenditure pressures but some of these states have maintained an approach to pension funding that alleviates pension pressure.

The population profiles of pension systems are aging, with the number of retirees drawing benefits growing, even as the number of active workers lags behind. For many plans, the number of retirees now exceeds the number of active employees. As states see populations age, revenue growth prospects slow and demand for services climb the concurrent demand for higher pension contributions in order to address underfunding may limit fiscal flexibility.

Fitch's report assesses these pension burdens and demographic trends and differentiates states based on their position relative to 50-state medians, highlighting examples that illustrate the nuances of states' funding considerations and the importance of sustained policy actions in managing the trajectory of pension burdens over time.

States are categorized by their position above or below the median projected labor force growth of 0.12% annually over the 2017-2026 period as projected by the US Census, and the median pension burden, which Fitch defines as the ratio of state net pension liabilities adjusted to a standard 6% discount rate as a percentage of personal income. The median pension burden measured 3.1% in 2018. Quadrants created by this comparison indicate whether states are well placed to manage their pension obligations based on the size of the liability and their active population.

States with the twin challenges of weaker demographics and higher underfunded pensions are arguably more vulnerable to fiscal pressures over time. Dominated by those in the Northeast and Midwest, many of these states are aging faster than the median, with a rising share of the population aged 65 and older, and barely growing or even declining working age populations. Some states within this quadrant, however, have shown commitment to pension funding that has resulted in an improved funding status.

An equal number of states are in the relatively more favorable situation of having both stronger demographic trends and carrying relatively lower pension burdens. Fiscal vulnerabilities stemming from either demographic trends or pension contributions pressures are likely to be lower for states in this quadrant. Pensions are either well funded, or if not, represent a smaller burden relative to the state's wealth base.

The remaining states in the other two quadrants either have solid demographic trends but higher pension burdens, or lower pension burdens, despite weaker demographic trends. While still vulnerable based on weakness that could hamper full pension funding, these states arguably retain more fiscal flexibility than those in the upper left quadrant.

Most governments have taken steps to shore up their pensions by shifting to more reasonable assumptions, increasing contributions to the actuarial level and cutting future benefits for new workers. These corrective actions have less of an effect in the context of maturing pension systems. The problem is magnified for states in which pensions are a material burden relative to the state's resource base.

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

Fitch Ratings: Updates Report for U.S. Public Finance Structured Finance Criteria

Link to Fitch Ratings' Report(s): <u>U.S. Public Finance Structured Finance Rating Criteria</u>

Fitch Ratings-New York-28 February 2020: Fitch Ratings has published the following updated report: "U.S. Public Finance Structured Finance Rating Criteria." This report updates the report entitled "U.S. Public Finance Structured Finance Rating Criteria" published on Feb. 15, 2019. The key elements of Fitch's public finance structured finance rating criteria remain consistent with those of its prior criteria report.

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New P3 Contract Form Promises to Better Allocate Risk.

Dive Brief:

- ConsenusDocs has released a new form of agreement that public agencies, contractors and other stakeholders can use for public-private partnership (P3) projects.
- At 17 pages, "ConsensusDocs 900 Standard Public-Private Partnership (P3) Agreement and General Conditions (Where the Basis of Payment is Milestone, Completion and Availability Payments)" gives participants a "fair, off-the-shelf" alternative to the massive and complicated P3 contracts now in use, according to ConsensusDocs, as it does not bury the imbalance of risk contained in many agreements.
- A more equitable standard form of agreement, said ConsensusDocs, should lower transactional
 costs for small and medium-sized projects as users try to create a fair agreement and evaluate
 their risk. The ConsensusDocs 900 agreement was developed with input from a coalition of
 industry groups including the Associated General Contractors of America, the Associated Builders
 and Contractors and the Construction Financial Management Association.

Dive Insight:

There has been more interest in P3s during the last decade, said Brian Perlberg, executive director and senior counsel at ConsensusDocs, probably more than one might think because a lot of the activity is with small and medium-sized projects at the state and local government level, not just with the multibillion-dollar projects that make the news.

And, Perlberg said the P3 will only become more prominent as the U.S. seeks to deliver new infrastructure under current budgetary constraints.

"However," he said, "the way P3 contracting is currently operating is broken. Companies are fleeing the market because of the unprofitable, unsustainable risk transfer that is occurring." Trying to manage the improper risk, Perlberg said, sometimes makes the P3 model too expensive for big projects, let alone smaller ones.

While ConsensusDocs 900 could be a good starting point in developing a P3 agreement, such contract templates should only be looked at as guides since all P3s are different and one size does not fit all, said attorney Keith Poliakoff, a partner in the Fort Lauderdale, Florida, office of Saul Ewing Arnstein & Lehr and co-chair of the firm's government relations practice group. For example, he said, ConsensusDocs 900 presumes that financing will include availability payments and use the design-build method of project delivery. "If either is incorrect," Poliakoff said, "the agreement would have to be modified."

"There are many important benefits of using the P3 delivery method for appropriate infrastructure projects —simplicity of the contract documents is not one of them," said attorney William Eliopoulos with Rutan & Tucker, which is headquartered in Costa Mesa, California. "Every P3 project is different." The ConsensusDocs 900 document, he said, omits and glosses over many important terms that should be included even in small to mid-sized projects.

For example, he said, an important benefit of the P3 model is that the concessionaire gives the public entity owner post-construction facility performance guarantees and agrees to financial penalties if they are not met. "This important benefit seems to be missing from the ConsensusDocs 900 project agreement," Eliopoulos said.

In addition, he said, one of the important advantages of the P3 delivery method is that it allows the public entity owner, concessionaire, design-build contractor and long-term operations and maintenance service provider to collaborate at the beginning of procurement and determine how best to structure the deal, including who is in the best position to price and control each of the project's major risks, how best to design it, build it, finance it and operate and maintain it. This

seems to be missing from ConsensusDocs 900, Eliopoulos said.

The new form, Perlberg said, is not intended to be everything to everyone but rather a good starting point to help reset the conversation about what is fair and what is a reasonable risk allocation for all concerned, particularly for projects less than \$100 million. "Part of the problem is there hasn't been anything on the marketplace to fulfill that need," he said.

Construction Dive

by Kim Slowey

Feb. 26, 2020

<u>S&P Through The ESG Lens 2.0: A Deeper Dive Into U.S. Public Finance</u> Credit Factors

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- ESG In U.S. Public Finance
- States And Local Governments
- Water And Sewer, Solid Waste, Public Power And Electric Cooperative Utilities
- Health Care
- Charter Schools
- Higher Education
- Transportation
- Related Research

Key Takeaways

- S&P Global Ratings has been incorporating environmental, social, and governance (ESG) risks and opportunities into the credit ratings of public finance entities based on factors embedded in our sector-based criteria.
- ESG credit factors can influence the capacity and willingness of an obligor to meet its financial commitments, but strong
- ESG credentials do not necessarily indicate strong creditworthiness.
- Our long-term ratings and ESG credit factor analysis incorporate qualitative and quantitative analysis and do not have a pre-determined time horizon.
- Challenges remain with respect to data and disclosure practices. However, we anticipate that over time, as the market evolves, disclosure from borrowers will converge and increase transparency on ESG factors.
- Even with additional data, ESG analysis will increasingly require a qualitative view of an entity's capacity to anticipate a variety of long-term plausible disruptions to its credit fundamentals as well as an assessment of management's capacity to preserve financial and organizational resiliency.

Continue reading.

<u>S&P: Will The Expiration Of LIBOR Affect The Credit Quality Of U.S. Public Finance Issuers?</u>

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- How Did We Get Here?
- How Does S&P Global Ratings Incorporate The Rate Change Into Its Analysis of USPF Issuers?
- What S&P Global Ratings Expect The Transition From LIBOR To Look Like
- Related Research

Key Takeaways

- The London Interbank Offered Rate (LIBOR) is set to expire in December 2021.
- We continue to assess the financial exposure U.S. public finance (USPF) issuers face due to financing and hedging transactions tied to LIBOR
- We believe the low notional amount of LIBOR exposure relative to overall debt portfolios should limit the extent of financial pressures and credit implications for USPF issuers.

Continue reading.

S&P: U.S. Public Finance Issuers Must Be Nimble To Fend Off Cyberattacks Or They Could Face Credit Fallout

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- Preventive Measures Are Key To Fighting Cyberattacks
- Social Engineering Attacks Come In Many Forms
- States Are Stepping Up Efforts To Help Issuers Fight Cyberattacks

Key Takeaways

- Cyberattacks, like any event risk, can pressure liquidity and operational balance, and can further create contingent liabilities for U.S. public finance (USPF) issuers.
- Social engineering attacks, which consist mainly of phishing and pretexting, attempt to trick users
 into helping attackers evade security controls, which can open the door for them to carry out
 ransomware infections, invoice fraud, and other attacks that can cost substantial amounts of
 money.
- Wider availability of more complex exploit kits (malicious software kits) increases the likelihood of breaches, necessitating better issuer preparedness.
- As threats evolve, so do prevention efforts, including a growing trend of state-level support for improving local government cyber defenses.

Continue reading.

S&P: Environmental, Social, And Governance: Increasing Generational Dependency Poses Long-Term Social Risks To U.S. States' Fiscal And

Economic Stability

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- National Generational Dependency Is Increasing For The Foreseeable Future
- The Northeast's Aged Medicaid Enrollment Pressures Future State Budgets
- As The South's Population Continues To Grow, Economic Diversification Is Key To Rating Stability
- Migration Trends And Economic Profiles Are Likely To Increase Midwest Generational Dependency
- Aging-In-Place Will Exacerbate Housing Affordability Challenges In The West As It Keeps Homes
 Off The Market.
- Related Research

Key Takeaways

- Budgets in the Northeast will likely be pressured by increased Medicaid costs as aged enrollment (65 and older) grows.
- While the South has benefited from an influx of working-age adults, continued economic diversification is crucial to credit stability.
- We expect significant out-migration and aging-in-place to limit the Midwest's economic growth and to pressure state spending.
- Continued aging-in-place may exacerbate the West's challenge with housing unaffordability.

Continue reading.

SEC Issues Staff Legal Bulletin On Applying Antifraud Liabilities to Public Statements of Municipal Issuers in the Secondary Market: Hunton Andrews Kurth

Introduction

On February 7, 2020, the staff of the SEC's Office of Municipal Securities ("OMS") issued a Staff Legal Bulletin ("Bulletin" or "Staff Guidance") regarding the application of the antifraud provisions of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder to statements by municipal issuers and obligated persons (each, a "municipal issuer") in the secondary market. Here is a link to the Bulletin. The Bulletin summarizes and confirms prior SEC guidance that the antifraud provisions apply to any statement of a municipal issuer that is reasonably expected to reach investors and the trading markets. The Staff Guidance provides new insights into the views of SEC Staff regarding continuing disclosure practices in municipal securities issues. The Staff Guidance is summarized below.

Background

The Staff Guidance emphasizes that, though much improved since the creation and implementation of the Electronic Municipal Market Access ("EMMA") system, investor and market access to current and reliable information about municipal issuers remains uneven and inefficient. The Staff Guidance notes the variety of ways that municipal issuers disclose information about themselves, including EMMA disclosures, public announcements, press releases, media interviews and discussions with various interest groups. In addition, information about municipal issuers is collected and disseminated publicly by state and local governments. In the Staff's view, these diverse types of

statements provide significant, current information about a municipal issuer and can reasonably be expected to reach investors and trading markets, even if they are not published or conducted for purposes of informing the securities markets. Noting questions raised by market participants about the application of the antifraud provisions to issuer statements, including annual and continuing disclosures, the Staff Guidance outlines previous Commission statements regarding the scope and application of the antifraud provisions to municipal issuer statements, primarily the 1994 Interpretive Release1 and the City of Harrisburg, PA enforcement action (and accompanying report) discussed below. The Staff Guidance provides a broad and current formulation of how the antifraud provisions apply to municipal issuer statements.

The Current Staff Guidance Formulation and the Importance of a Staff Legal Bulletin

The Staff Guidance emphasizes that the antifraud provisions apply to all municipal issuer statements that provide information that is reasonably expected to reach investors and the trading markets, whoever the intended primary audience and whatever the medium of delivery. "Statement" or "Statements" is broadly defined to include any publicly available written or oral communication of a municipal issuer, regardless of the intended audience or medium of delivery. The Staff Guidance refers to this as a "standard" and stresses that the antifraud provisions apply to all statements by a municipal issuer whether on EMMA or elsewhere, whether written or oral, regardless of the extent to which the municipal issuer has fulfilled its continuing disclosure undertakings and notwithstanding changes of municipal issuer disclosure practices technology, investor expectations, and regulatory framework. In outlining previous Commission statements, the Staff Guidance offers a broad, current formulation of how the antifraud provisions apply to municipal issuers.

A Staff legal bulletin is not an SEC rule, regulation or Commission statement. However, while a Staff legal bulletin has no legal force or effect, and may not be formally recognized in administrative or court proceedings, a bulletin does represent the current views of the SEC Staff presumably the staff of the Office of Municipal Securities and the staff of the Public Finance Abuse Unit of the SEC's Enforcement Division that is regularly applying SEC rules, regulations and laws to municipal issuers and municipal securities continuing disclosure. For example, Staff Legal Bulletins are regarded as important, practical guidance for SEC-reporting companies when complying with SEC rules and regulations, from disclosing shareholder proposals to corporate disclosures in registered offerings and ongoing reporting. In short, an issuer and its counsel are well advised to be familiar with applicable SEC legal bulletins when engaged in primary offerings and ongoing disclosures.

It is worth noting that the framework or approach of OMS Staff in the Staff Guidance is grounded in corporate disclosure concepts. Much like the corporate framework used to introduce the financial obligation reporting amendments to Rule 15c2-12 in 2019, the Staff states it views regarding disclosure obligations of municipal issuers in the context of "entities whose securities are publicly traded" and suggests that municipal issuers disclose current information in a variety of ways "like public companies". As discussed below, the Staff Guidance takes into account many of the unique aspects of the municipal market, but the guidance is not unlike Staff legal bulletins that are issued and followed in the reporting company context.

SEC-OMS Views on Antifraud Provisions

The Staff Guidance presents OMS's views on (a) certain elements of Section 10(b) and Rule 10b-5, including intent, scienter and materiality, (b) the scope of coverage of the antifraud provisions with respect to statements made by municipal issuers in the secondary market that are reasonably expected to reach investors and the trading markets, including examples of various, current modes of municipal issuer statements and (c) the importance of disclosure policies and procedures in complying with antifraud provisions.

Elements of Antifraud Provisions Relevant to Municipal Issuer Statements to Secondary Market

Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5 are referred to as the "antifraud provisions" and generally prohibit misstatements or omissions of material facts in connection with the purchase and sale of municipal securities. The antifraud provisions apply to municipal issuer continuing disclosures and to municipal issuer statements to the secondary market.

Scienter Standard. The Staff Guidance reminds issuers that "scienter" a mental state of intent is required to find a violation of the antifraud provisions. Specifically, scienter is demonstrated by finding "recklessness", an extreme departure from the standard of ordinary care. However, it is important to remember, as is referenced in a footnote in the Staff Guidance, that the SEC does and can proceed against municipal issuers for disclosure violations under Section 17(a) of the Securities Act of 1933. Different than requiring intent like Rule 10b-5, Section 17(a) only requires a finding of negligence or gross negligence to determine that an antifraud violation has occurred. While Section 10(b) and Rule 10b-5 would be the typical standard applied to secondary market disclosures, recent, other enforcement actions regarding disclosure violations by municipal issuers have been based on Section 17(a) negligence, a lesser standard than Section 10(b) scienter. Nonetheless, the Staff Guidance is helpful in reminding municipal issuers that recklessness and extreme departure from ordinary care is the standard typically applied in evaluating municipal issuer liability for secondary market statements to investors and the trading markets.

Materiality and "Total Mix" of Information. In helpful analysis for municipal issuers, the Staff Guidance reminds issuers that a fact or factual statement is material if there is a substantial likelihood that the information would have been viewed by a reasonable investor as significantly altering the "total mix" of information available. The Staff Guidance emphasizes that "total mix" analysis is a fact and circumstance assessment for an issuer and could differ among municipal issuers. Importantly, "total mix" of information assessment may differ depending on whether issuer information is "uneven or inefficient" in the secondary market or is regularly available through EMMA or other investor relations website. To illustrate this "total mix" analysis for municipal issuers, the Staff Guidance relies on the SEC's 2013 Harrisburg Report that accompanied the SEC's Enforcement action against the City of Harrisburg, Pennsylvania.2 In that case, the city administration recurrently released information that omitted or misstated material information about the City's financial condition, while during the same time period failing to submit annual financial information, audited financial statements, notices of failure to provide annual financial information and material event notices.

Information Reasonably Expected to Reach Investors. The Staff Guidance emphasizes that a municipal issuer's failure to fulfill its continuing disclosure undertakings, as was the case with Harrisburg, is not necessary for a municipal issuer to be subject to antifraud liability. Rather, according to Staff, "all statements of a municipal issuer that are reasonably expected to reach investors and the trading markets are subject to the antifraud provisions, regardless of the municipal issuer's compliance with its continuing disclosure obligations". While this guidance is consistent with a compilation of past statements from the SEC on antifraud liability for municipal issuer statements, this new formulation offers a broad, expansive view of the applicability of antifraud provisions to municipal issuers. According to Staff, whether an issuer's statements to the market have been uneven or consistent may increase or decrease the risk that the statements significantly alter the total mix of information and create antifraud liability.

In addition, SEC Staff takes a broad view of information reasonably expected to reach investors: in addition to EMMA disclosures, public announcements, press releases, interviews with media representatives, discussions with interest groups and municipal issuer information disseminated by

other state and local governmental bodies are sources of information that reasonably can be expected to reach investors and the trading markets. These statements are part of the "total mix" and can lead to exposure to antifraud liability, depending on the level of issuer information otherwise available in the market. Even if not published for purposes of informing the securities markets, such oral or written statements may not violate the antifraud provisions

Examples of Statements (Other than EMMA Disclosures) Covered by Antifraud Provisions

To emphasize that the antifraud provisions apply to all issuer statements reasonably expected to reach investors and trading markets, regardless of the intended primary audience or medium of delivery, the Staff Guidance provides examples of issuer statements other than EMMA disclosures that could be subject to antifraud liability:

Information on Municipal Issuer Websites. To avoid misleading investors, information previously posted on an issuer's website should be separately identified as historical and located in a separate section of the website. The Staff Guidance encourages municipal issuers to follow public reporting company guidance regarding hyperlinked information, including disclosing the reason for the hyperlink, using disclaimers and use of exit screens or intermediate screens to minimize antifraud liability. Summary information posted on issuer websites should be displayed in a manner designed to avoid confusing or misleading investors. On each of the foregoing areas of website disclosure concerns, the Staff Guidance directs municipal issuers to follow Commission guidance regarding how antifraud provisions apply to public reporting companies.

Municipal Issuer Reports Delivered to Other Governmental Bodies. The Staff Guidance states that CAFRs, budgets and mid-year financial reports are information reasonably expected to reach investors and trading market even if not posted on EMMA, and are subject to the antifraud provisions. The Staff Guidance states that additional types of reports may be covered by the antifraud provisions, depending on facts and circumstances, including reports submitted by a municipality to a state agency, reports by a state or local official to a city council or state legislature and other publicly available reports. Again, while this Staff Guidance is consistent with past SEC principle-based guidance, it is expansive in its present detail of what sources may be viewed as significant, current information reasonably expected to reach investors and markets.

Statements Made By Municipal Issuer Officials. The Staff Guidance re-emphasizes past SEC guidance that statements by municipal issuer officials reasonably expected to reach investors or securities markets are subject to the antifraud provisions. The current Staff Guidance broadly defines the term "municipal issuer official" to include elected officials, appointed officials and employees or their functional equivalents. In addition, the current Staff Guidance broadly describes the types of statements, depending on facts and circumstances, that may be actionable under the antifraud provisions: verbal statements, speeches, public announcements, interviews with media as well as other avenues such as social media. The Staff Guidance, in bringing past guidance current, is expansive in its views of municipal issuer statements subject to antifraud provisions.

Key Importance of Disclosure Policies and Procedures

The Staff Guidance emphasizes that "reasonably designed" and "consistently implemented" disclosure policies and procedures will help a municipal issuer comply with the antifraud provisions. Given the current, broad views of Staff on what constitutes actionable statements and what public information is reasonably expected to reach investors and trading markets, the Staff's renewed emphasis on adopting and implementing disclosure policies and procedures is of key importance for municipal issuers. The Staff Guidance recommends that municipal issuers "follow and further develop initiatives to enhance disclosure policies and procedures for both primary offering and

ongoing disclosures", including adoption of disclosure committees and training programs. Specifically, the Staff Guidance recommends that disclosure policies and procedures:

- Designate a responsible individual;
- Conduct periodic training for staff and officials;
- Identify the documents and reports that customarily contain current financial and operational information and establish a process for disseminating the documents and reports to investors; and
- Identify the places, such as EMMA or an investor-relations website, where such documents and reports are regularly available to the public.

Conclusions and Recommendations

The new Staff Guidance provides views consistent with past SEC guidance on municipal issuer secondary market disclosure and states that it does not create new or additional obligations for municipal issuers. At the same time, in offering its current views on how the antifraud provisions apply to secondary market disclosures, the Staff Guidance offers broad, even expansive, views of current municipal issuer obligations: the antifraud provisions apply to all statements, broadly defined from EMMA disclosures to social media, that are reasonably expected to reach investors and the trading markets, whoever the intended primary audience, whatever the medium of delivery and regardless of the extent to which an issuer has fulfilled its continuing disclosure undertakings. The scope of application of the antifraud provisions is broad, notwithstanding changes or improvements in municipal issuer disclosure practices, changes in technology, investor expectations and changes in regulatory framework. While the Staff Legal Bulletin addresses municipal issuers who have outstanding issues in the public market subject to the continuing disclosure rules, the Staff views on application of the antifraud provisions to issuer statements are also relevant to primary offerings and issuer statements made in an offering process before an issue is closed.

According to the Staff Guidance, the broad potential for antifraud liability of municipal issuers and their officials for secondary market disclosures and public statements underscores the need for adopting, and regularly carrying out, thorough disclosure policies and procedures. Municipal issuers can expect to see continued focus by their counsel on adequacy and regular implementation of disclosure policies and procedures. Specifically, municipal issuers will want to ensure that their disclosure policies and procedures appropriately identify the financial and operating information that will regularly be made available to investors and the trading markets by EMMA filings or through other means such as an issuer website, and consider separating and/or disclaiming information not intended for investors or the market. Issuers may look to disclosure counsel increasingly to advise not just on primary disclosure in connection with initial bond issuances, but on ongoing EMMA disclosures and other publicly available issuer statements. The Staff Guidance makes clear that OMS and SEC Staff, including Enforcement, view the application of the antifraud provisions broadly with respect to municipal issuer statements. Disclosure policies and procedures are a critical line of defense against fraud claims and Enforcement review.

Hunton Andrews Kurth LLP

by Douglass P. Selby, Yeshake 'Isaac' Yilma, Benjamin Vernon, Caryl Greenberg Smith, Darren C. McHugh, William H. McBride, Thomas A. Sage, Mark B. Arnold, Clayton T. Holland, Ryan M. Bates, Audra L. Herrera, Samantha Gilley Rachlin, Christopher G. Kulp, Brendan M. Staley, Martha A. Warthen, Andrew R. Kintzinger and Scott H. Kimpel

February 24 2020

SEC to Municipal Issuers and Obligated Persons: What You Say Can and Will Be Held Against You: Squire Patton Boggs

SEC Staff Releases Staff Legal Bulletin No. 21 on Application of Antifraud Provisions to Public Statements in Secondary Municipal Market and Misses Opportunity to Develop a Real-World Approach

In response to a July 2019 direction from Securities and Exchange Commission (SEC) Chairman Jay Clayton, the SEC Office of Municipal Securities (OMS) staff issued a Staff Legal Bulletin No. 21 (OMS) that discusses the application of antifraud provisions to public statements of municipal issuers and obligated persons in the municipal secondary market.1 The purpose of the OMS bulletin, according to the OMS staff, is to "outline previous Commission statements relevant to understanding the application of the antifraud provisions to any statement of a municipal issuer that is reasonably expected to reach investors and the trading markets, and, thereby, promote more informed disclosure practices by municipal issuers in the secondary market; facilitate investor access to accurate, timely and comprehensive information; and improve investor protection."2 Relying heavily on the 1994 Interpretive Release3 and the City of Harrisburg Section 21(a) Report4, the OMS staff puts forth the proposition that virtually every statement made by a municipal issuer, including staff and elected officials, in any medium (e.g., websites, social media, speeches, governmental meetings and reports to other governmental agencies), for any purpose, is reasonably expected to reach investors and the trading market, and is, therefore, subject to the federal securities antifraud provisions.

In order to appreciate the gravity of that proposition, a review of the elements of the antifraud provisions might be informative.

As referred to in the bulletin, SEC Rule 10b-5 essentially prohibits making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made in light of the circumstances under which they were made not misleading, all in connection with the purchase or sale of any security. The bulletin describes how the federal courts and the SEC interpret the phrase "material fact"5. However, the bulletin omits any discussion about when statements will be viewed as being made "in connection with" a purchase or sale of a security or how the phrase "in light of the circumstances under which they were made" might aid the legal analysis.

The discussion of what constitutes a "material fact" revolves around the concept that a fact is material, and its omission from a statement is material, if the inclusion or exclusion, as the case may be, of that fact would alter the total mix of information available. Usually, this analysis of materiality involves a disclosure document (e.g., an official statement). In the case of secondary market disclosure, however, it is not clear from the bulletin what the "total mix of information" would include. The OMS staff suggests that the relative importance of any particular fact (and its materiality) might be affected by whether investors otherwise have regular access to accurate, timely and comprehensive information as opposed to "uneven and inefficient" access to information about the issuer. The staff specifically identifies the MSRB's EMMA system "or some other investor relations-focused medium (e.g., investor website)" as potential means to provide regular access to information, but does not delve into what should be considered "regular" or "comprehensive."

While the bulletin did not discuss the phrase "in connection with the purchase or sale of a security" in the context of the antifraud rules, this concept bears touching on, particularly with respect to municipal issuers. There does not appear to be one uniform interpretation of the meaning of this phrase, although several judicial interpretations have been made with respect to the corporate

market. One interpretation is that all publicly disseminated statements are deemed to be made in connection with a securities transaction if they are "reasonably calculated to influence the investing public."6 Case law also refers to a "transactional nexus" requirement, meaning there must be a connection between the alleged fraud and the purchase or sale of securities. 7 Courts have found sufficient "connection" in SEC filings, press releases, public statements, letters published in the financial press, news articles, investment research reports and product advertisements.8 Whether this same standard should be applied with respect to municipal issuers is a question that should be given serious consideration in light of the differences in the flow of information in the public and private sectors. Private entities (e.g., corporations, partnerships, etc.), to a large extent, are able to control the release and dissemination of their information and, thus, may keep private all information other than what they choose to divulge or what applicable law requires. State and local government entities, on the other hand, generally are subject to public records laws and are prohibited from keeping any information private unless a law specifically provides an exclusion. Additionally, many jurisdictions have transparency laws that make it compulsory for state and local governments to post specific documents on their websites (or otherwise provide for public access) for the benefit of the entities' constituents. These public records and transparency laws were not developed for the benefit of potential debt investors and so the question is whether complying with these laws should automatically result in federal antifraud scrutiny. When a city clerk posts on the city's website the agenda materials for the next city commission public meeting, should the assumption be that the posting was made to influence the investing public? Is it reasonable to assume an investor might rely on the meeting agenda materials in making an investment decision and, thus, those materials should be "vetted" for antifraud liability? What if the agenda package includes the audited financial statements for acceptance by the city commission? Contrast that to the city finance director posting the final accepted audited financial statements on a webpage designated as the city's "investor relations page." There is an obvious distinction to be made.

The most unfortunate and confusing part of the bulletin, however, is the OMS staff's discussion of policies and procedures. Quoting the Harrisburg report, the staff cited the SEC's recommendation that municipal issuers, among other things, evaluate public statements "prior to public dissemination" for accuracy and completeness.9 The staff suggests that the development and consistent application of policies and procedures such as described in the Harrisburg Report "can help a municipal issuer regularly provide more accurate, timely, and comprehensive information to investors, better manage communications with their investors; and comply with the antifraud provisions."10 After five pages of analysis and the expansive conclusion that all public statements are subject to antifraud provisions, the staff encourages municipal issuers to "identify the place" where the issuer will make pertinent financial information regularly available, "which may include a central repository, such as the EMMA system, or an investor-relations website."11 Yet the bulletin does not otherwise distinguish liability by whether information is posted to a central or investorfocused location. The only sense to be made of this statement in the context of the rest of the bulletin is that the staff is suggesting municipal issuers need to bulk up the information intentionally made available to investors and the trading market so that the public dissemination of other information is less likely to alter the total mix of information available. But, if all public statements (which, from a public records perspective, essentially include all public information) are subject to the antifraud rules regardless of the purpose of the disclosure, why would it matter whether information is posted on EMMA or on a non-investor-focused website? Can we conclude by this recommendation that OMS staff believes that information disseminated to a designated investor location (e.g., EMMA or an investor relations page) would result in a greater weight being given to such information?

The OMS staff could have discussed, but did not, whether the phrases "in connection with" or "under the circumstances under which the statement is made" could be applied to distinguish

information routinely posted on an issuer's website for the information and convenience of its citizenry or statements made in a political setting from statements made during an annual investor call, posted to EMMA or to an "investor relations page." OMS staff could have stated, but did not, that municipal issuers and obligated persons would benefit from the use of reasonable precautionary language that could, if properly used, successfully communicate to the reader of the public statements the nature and purpose of the statements, thereby promoting investor understanding and providing a small level of comfort to the municipal issuer or obligated person regarding potential securities liability for intentionally (but understandably so) incomplete information (e.g., unaudited financial statements with no financial notes) or un-vetted information dissemination (e.g., public records responses).

By omitting any discussion of these important elements of the legal analysis, the OMS staff has missed the opportunity to provide meaningful guidance to the municipal market that would have been far more likely to facilitate investors' regular access to accurate, timely and comprehensive information than what is contained in the bulletin. In fact, the bulletin's proposition that all public statements are subject to antifraud rules could lead municipal issuers to provide less information by means of informal media (such as a website). A similar result occurred in response to the MSRB's market analysis that insider trading liability could result from one-on-one investor communications.12

Perhaps the best guidance to be gained from the staff bulletin might be derived from the omitted analysis. We have long provided clients with advice regarding the dissemination of information to the secondary market and specifically about the use of websites to communicate with bondholders. The National Association of Bond Lawyers (NABL) has also provided a very useful publication for its members setting out considerations in the drafting of disclosure policies and procedures similar to what is encouraged in the staff bulletin.13 The staff bulletin can be construed to support the approach set out by NABL, which is to establish (and follow) written procedures for a formal process of vetting information before it is posted to EMMA or to an investors relations webpage and to clearly delineate which information is (and is not) intended for investor consumption. Regardless of the legal arguments that can be made to limit the reach of federal antifraud provisions to public information of governmental entities clearly not intended for investors or the trading market, it behooves governmental entities and other obligated persons to review the type of information available on its websites and in other media, review (and strengthen, if necessary) the current procedures for posting new information and otherwise releasing public statements, and consider voluntary postings to EMMA (or an investor relations page) of relevant vetted financial information (with appropriate precautionary language) that is otherwise routinely prepared and reviewed internally.

Squire Patton Boggs

February 28 2020

What Does the Puerto Rico HTA Ruling Mean for Special Revenue Bonds? Likely Not as Much as Feared.

Municipalities have long issued "special revenue" bonds, as defined by the federal bankruptcy code, to finance essential service infrastructure projects including water waste and electric utilities. The bankruptcy code provides special revenue bonds with unique features that benefit creditors during an issuer's bankruptcy. One key provision, Section 922, addresses the timely payment of debt

service by an issuer by exempting the payment of special revenues from an automatic stay in bankruptcy.

Last March, the 1st U.S. Circuit Court of Appeals affirmed the decision by the Puerto Rico bankruptcy court, which had stated that Section 922 provides a bankrupt issuer the option, but not the requirement, to pay debt service. On 13 January 2020, the Supreme Court decided it would not hear an appeal in the case, effectively upholding the rulings of the lower courts.

Taken together, the decisions of each of the courts surprised some investors in the \$3.8 trillion U.S. municipal bond market. Investors saw them as contrary to the intent of the U.S. Congress when it incorporated the concept of special revenues into the bankruptcy code in 1988. In addition, the rulings differ from established precedent in past municipal bankruptcies. Some investors fear the rulings tarnish the appeal of bonds backed by special revenues and could result in wider credit spreads for issuers.

Fallout is likely limited

Despite these concerns, PIMCO does not expect the HTA ruling to trigger meaningful spread widening in any sector, nor will it likely result in a sustained increase in borrowing costs for higher-quality borrowers. In part, this is because we expect actions by rating agencies will affect only a limited number of credits in cases where large ratings gaps exist between a municipality's special revenue bonds and its general fund obligations.

Bonds backed by special revenue were never completely insulated from the risk of a payment disruption. A distressed municipality may use the threat of a payment disruption on an essential service enterprise to increase its bargaining power over creditors. Arguably, the negotiating leverage of municipalities has increased modestly following the HTA rulings, but the risks have always been present. Consider that when the City of Detroit declared bankruptcy in 2013, the special revenue bonds issued by the Detroit Water and Sewerage Department suffered a significant price decline, but were ultimately paid in full. Thus, issuers of special revenue bonds could face more price volatility if their parent government is of low quality and falls further into distress.

In addition, the lower court's ruling does not strip away all the unique features granted by the bankruptcy code to bonds backed by special revenues. For instance, the security interest granted to special revenues under Section 928 remains intact and enforceable after bankruptcy; that is to say, even after a municipal utility exits bankruptcy, it remains bound by its pledge to use service charges to make interest payments on special revenue bonds. The continuation of the security interest is the most important defining characteristic of special revenue bonds, in our view. It prevents these bonds from becoming unsecured general obligations during bankruptcy.

The HTA ruling may increase the issuance of special tax bonds that have even greater structural protections for investors. An example is debt issued by the Sales Tax Securitization Corporation created by the City of Chicago in 2017. The issuer is a bankruptcy-remote entity and provides a statutory lien over pledged revenues, and the City's transfer of sales tax revenue to the issuer is structured as a true sale. Similar designs could help lower-quality borrowers access cheaper financing for refunding purposes and displace more traditional special tax and general obligation supply.

Ultimately, we believe the lesson of the HTA ruling is a basic one: There is no substitute for fundamental analysis and thoughtful credit selection. The ruling does not diminish our constructive view of special revenue bonds that we believe are supported by stable cash flows and healthy parent obligors, nor does it change our view of the most important legal protections afforded by special

revenue bonds, or the way we approach distressed borrowers whose bonds provide investors with appropriate risk-adjusted return.

by Sean McCarthy, Tom Scayette of PIMCO, 2/28/20

TAX - FLORIDA

Miami-Dade County v. Eastern Partners, LLC

District Court of Appeal of Florida, Third District - February 5, 2020 - So.3d - 2020 WL 559175

Property owner brought putative class action against county challenging county's authority to enforce special assessment liens as tax liens that survived foreclosure.

The Circuit Court denied county's motion for protective order and granted property owner's motion to compel discovery. County filed petition for certiorari relief.

The District Court of Appeal held that a trial court departs from the essential requirements of law, warranting certiorari relief, when the trial court compels merits discovery without first determining that a putative class representative has adequate standing.

TAX - WASHINGTON

Black v. Central Puget Sound Regional Transit Authority

Supreme Court of Washington - February 13, 2020 - P.3d - 2020 WL 719101

Taxpayers brought declaratory judgment action against regional transit authority and State, asserting that motor vehicle excise tax statute was unconstitutional.

The Superior Court granted transit authority's motion for summary judgment. Taxpayers appealed.

The Supreme Court held that:

- Second stage of analysis of whether a statute violates constitutional provision prohibiting enactment of legislation that revises or amends other acts without setting them forth at full length, requiring court to answer question of whether a straightforward determination of scope of rights or duties under existing statutes would be rendered erroneous by the new enactment, is required to be undertaken even if court determines in first stage of analysis that statute is a complete act;
- Statute properly adopted former and current depreciation schedules by reference, supporting finding that statute was a complete act and thus that it did not violate constitutional provision prohibiting enactment of legislation that revises or amends other acts without setting them forth at full length;
- Statute, which authorized use of former depreciation schedule to calculate excise tax depending on applicable dates and whether revenue from taxes was pledged to pay bond contract, was not required to list out every bond issued by transit authority prior to statutory date trigger in order to be a complete act; and
- Statute did not require research into unreferenced statutes, supporting finding it did not violate constitutional provision prohibiting enactment of legislation that revises or amends other acts without setting them forth at full length.

For Small County Governments, Tackling Cybersecurity Basics Can Go a Long Way.

The local governments can face unique challenges when it comes to protecting their computer systems from threats.

To a small county with limited resources, it may sound intimidating to overhaul and adopt new cybersecurity standards.

But if county officials begin by taking small steps to improve their government's overall cyberhygiene – such as using secure passwords and training employees on cyber threats – they may be surprised how quickly they fall in line with industry best practices.

Cybersecurity experts shared tips on how local governments could apply the National Institute of Standards and Technology's cybersecurity framework to their networks on Friday at a panel discussion at the National Association of Counties legislative conference in Washington, D.C.

"Attacks are exploiting vulnerabilities we've known about for a really long time... like the fact we don't do secure passwords very well, we don't do user training," said Patrick Woods, the security assurance lead for state and local government at Amazon World Services.

The <u>NIST framework</u> was designed as a voluntary guide for businesses, organizations and federal, state and local governments to help promote the protection of critical infrastructure and manage cybersecurity-related risks.

Compliance with the framework "comes organically when you start nailing those fundamentals," Woods said.

Ensuring that county information technology officials have a working relationship with those overseeing the budget can be critical to ensuring cybersecurity efforts receive sufficient funding, said Barry Condrey, the chief information officer for Chesterfield County, Virginia.

"If the budget department doesn't understand your cyber posture, you're missing the boat," Condrey said. "Make sure you align with the people who control the money."

Condrey shared his state's experience developing security standards for Virginia's voter registration systems and the difficulties encountered by individual counties.

Virginia lawmakers in 2019 approved legislation directing the state's Board of Elections to draft regulations securing the state's voter registration system and requiring local electoral boards to develop their own security plans.

When stakeholders met to discuss potential development of minimum security standards, Condrey said about one-third of the governments represented didn't have a person on staff who was responsible for information technology security across the government. Officials were also worried about the time and resources that would be needed to develop and meet the new requirements.

Once the state adopted the standards, Condrey said officials were not able to act immediately because they missed the budget cycle for the year. He recommended that any efforts to implement new security standards be closely tied to budget discussions so that there is money to pay for initiatives.

"Anytime a state tries to impose its will on local government, particularly with an unfunded mandate, it generally does not go well," he said.

Route Fifty

by Andrea Noble

FEBRUARY 28, 2020

Why Public Pension Debt And Social Insurance Finances Are Not The Same.

Continuing my series of, well, sharing old, bookmarked items, here's a scholarly article from July 2019: "The Sustainability of State and Local Government Pensions: A Public Finance Approach," by Jamie Lenney of the Bank of England, Byron Lutz of the Federal Reserve Board of Governors, and Louise Sheiner of the Brookings Institution.

Here's some background:

A week ago, I wrote about the French concept of "intergenerational solidarity" and their use of the term not to express all generations forging a consensus on how to best meet the needs of the elderly as well as, well, everyone else who has needs, but instead to explain their practice of intentionally not funding their version of Social Security retirement benefits, and promising that each generation funds benefits for their elders and is in turn promised the same benefits then they reach old age.

Continue reading.

Forbes

by Elizabeth Bauer

Feb 28, 2020, 04:22pm

IRS Publishes Population Figures for Housing Credit, Private Bonds.

The IRS has published (Notice 2020-10, 2020-10 IRB 456) the 2020 resident population figures for the 50 states, the District of Columbia, Puerto Rico, and the insular areas for use in determining the state housing credit ceiling under section 42(h) and the private activity bond volume cap under section 146.

Infrastructure Roundtable on Capitol Hill.

BDA Partnering with the Public Finance Network, GFOA, the National Association of Counties, the American Public Power Association and BDA member firm Hilltop Securities

Next week, the Municipal Bonds 101: Modernizing Infrastructure into the 21st Century.

The flyer circulated on Capitol Hill can be viewed here.

The panel will be moderated by Anne Burger Entrekin, Hilltop Securities Regional Managing Director and will feature:

- Kendel Taylor, Finance Director, City of Alexandria, VA (GFOA)
- Commissioner Kevin Boyce, Franklin County (OH) (NACo)>
- Jolene Thompson, Executive Vice President of Member Services and External Affairs, American Municipal Power (APPA)

The discussion will serve as an educational event for Capitol Hill staff, while promoting BDA< and PFN priorities such as:

- Continued support and protection of the tax-exemption;
- The reinstatement of tax-exempt advance refundings
- Raising the limit on BQ debt;
- The expansion of PABs;
- Working to ensure that BABs, if reinstated, would be uncoupled from sequestration.

The BDA will provide an update next week following the event.

Bond Dealers of America

February 26, 2020

S&P Pension Spotlight: Texas

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- Credit Fundamentals By Sector
- Plan Summary
- Texas Municipal Retirement System
- Texas County and District Retirement System
- Employees Retirement System
- Teacher Retirement System
- Single-Employer Plans Around The State
- Related Research

Key Takeaways

- The Texas Municipal Retirement System and the Texas County and District Retirement System are well funded and pose minimal credit pressure on local government issuers.
- The Teacher Retirement System features poor funding discipline. However, recent legislative changes to contributions should improve funding discipline with minimal impact on affordability for participating issuers.
- The Employees Retirement System also features poor funding discipline, as a result of low statutory contribution rates. This has led to a weak funded status and a projected depletion of plan assets.

Continue reading.

SEC Probes Owner of Chicago Apartments After Bond Default.

- Probe of \$170 million of bond deals disclosed in bankruptcy
- Better Housing Foundation issued bonds through Illinois agency

The U.S. Securities and Exchange Commission is investigating a non-profit that defaulted on \$170 million of municipal bonds issued to finance the acquisition of about 1,800 low-income apartments in Chicago and its suburbs.

The disclosure of the investigation came in a court filing earlier this month by attorneys for the Better Housing Foundation. Lindran Properties LLC, a subsidiary of the foundation, filed for Chapter 11 protection from creditors on Jan. 31.

Clark Hill Plc, a law firm representing BHF in the bankruptcy, said the non-profit received a subpoena from the SEC "seeking records related to the events that preceded current ownership's involvement in BHF and its affiliates."

BHF was incorporated in 2015 by Meredith Rosenbeck, an attorney in a Columbus, Ohio, suburb, just one-year before it started borrowing through the Illinois Finance Authority to acquire the apartments in Chicago. The non-profit paid Chicago-based real estate investor L. Mark DeAngelis more than \$4 million to acquire and manage three of the five portfolios of apartments, known as Shoreline, Icarus and Ernst, according to a lawsuit filed by BHF in October 2018.

The apartments managed by DeAngelis suffered from scores of building code violations and overdue property taxes, according to bond filings by BHF. The foundation accused DeAngelis of providing deeply flawed reports on the properties, which needed extensive repairs, and alleged DeAngelis grossly mismanaged the apartments and failed to collect rent.

As a result, the Chicago Housing Authority terminated tenants' housing vouchers and BHF defaulted on the debt. The non-profit later defaulted on the two remaining bond issues and some of the securities traded this month for 2 cents on the dollar.

Andrew Belew, a Palm Beach, Florida-based real-estate investor who took over Better Housing Foundation in late 2018, said he's cooperating with the SEC investigation. Rosenbeck couldn't immediately be reached to comment, nor could DeAngelis.

On one \$52 million bond sale in 2017 to acquire the 500-unit Icarus portfolio, a consultant hired by BHF estimated the apartments, some built in the 1890s, needed less than \$500,000 in repairs, according to the bond offering document.

A report commissioned by Belew in 2019 after the bonds defaulted found the properties needed more than \$7 million in critical repairs and almost \$8 million to fix code violations. Making recommended repairs and curing potential code violations would cost another \$34 million

Stifel Financial Corp. managed the Better Housing Foundation's bonds sales. Neil Shapiro, a Stifel spokesperson, didn't immediately return a call seeking comment.

Bloomberg Markets

By Martin Z Braun

February 24, 2020, 12:47 PM PST Updated on February 24, 2020, 1:45 PM PST

Muni Bonds Stage Biggest One-Day Rally Since 2017.

- Top-rated, 30-year bond yields tumble 10 basis points to 1.59%
- · 'I'm shocked it's gone as low as it has,' investor says

Just when municipal bonds didn't seem to have much more room to rally, the fear cast by the coronavirus is driving them to their biggest one-day jump in more than two years.

As stocks plunged worldwide and investors rushed into the safest assets, the yields on top-rated state and local government debt maturing in 30 years plunged 10 basis points to 1.59%, the biggest one day drop since December 2017, according to the Bloomberg BVAL index. Those on 10-year benchmark tax-exempt bonds fell 7 basis points to 1.03%.

The economic uncertainty posed by the spreading coronavirus is spurring a market that had already been rallying since late 2018, driving yields to the lowest since the 1950s, as investors poured money into state and local government bond mutual funds. Such funds picked up about \$1.8 billion of new cash during the week ended Feb. 19, according to Refinitiv Lipper US Fund Flows data.

"Investors are fleeing to high-quality assets as the market freaks out about the coronavirus spreading to other places besides China," said Jason Appleson, a portfolio manager at PT Asset Management.

"I'm shocked it's gone as low as it has so nothing would surprise me at this point if we continue to see contagion," he said. "It seems the market is very focused on what the economic implication of coronavirus is."

The rally has pushed yields so low that investors have been shifting into the longest-dated debt to pick up slightly better yields, said Peter Block, head of municipal strategy at Samuel A. Ramirez & Co.

"If there is any value to be had in the market, it's going to be the 30-year right now," Block said, though that value will be taken out pretty quickly as continued buying pushes the yield down even further. He said it's like a "mini sale with limited supply."

Bloomberg Markets

By Mallika Mitra

February 24, 2020, 10:29 AM PST

— With assistance by Danielle Moran, and Amanda Albright

Fitch Rtgs: Binding Arbitration Resolves Impasse over San Antonio, TX Firefighters CBA

Fitch Ratings-Austin-26 February 2020: A new collective bargaining agreement (CBA) for the fire fighters of San Antonio, TX (Issuer Default Rating AA+/Stable) has been established through a final arbitration award announced on Feb. 13, according to Fitch Ratings. The new CBA is a five-year agreement that extends through Dec. 31, 2024 and provides a total of 17% in pay increases (7% in

lump sum and 10% in recurring wages). The agreement includes two healthcare plans, one of which is a PPO plan that requires firefighters pay healthcare premiums for their dependents (firefighters previously did not pay any premiums for dependent coverage). The other healthcare plan is a high-deductible consumer driven plan. The new CBA also reduces the evergreen period (during which employee benefits remain in place after the CBA expires and a new CBA is approved) to five years from 10 years. Employee contributions to the PPO plan will increase by 10% annually during both the term of the CBA and the evergreen period.

The option to pursue binding arbitration was imposed by the International Fire Fighters Union as allowed by Proposition C, which voters approved in November 2018. In the event of an impasse during CBA negotiations, Proposition C provides the local firefighter union the authority to require the city to participate in binding arbitration on issues selected by the parties. There are no provisions in the CBA for annual reopeners in the event of economic declines. The previous CBA for firefighters expired in September 2014 and negotiations had stalled as the city attempted to realign the costly benefits for fire employees and their dependents. The city estimates that the firefighters' new healthcare options will result in significant cost avoidance. Inclusive of the pay raises, the incremental cost of the new contract is estimated at approximately \$23 million over the five-year term, a modest amount relative to the city's fiscal 2020 general fund budget of \$1.3 billion.

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Additional information is available on www.fitchratings.com

Rush to Invest in Municipal Debt Pushes Yields to Record Lows.

Municipal-bond yields are hitting 38-year lows due to investors' coronavirus concerns driving up demand in the \$4 trillion muni market.

Fears of the coronavirus's impact on global markets led to a stock selloff on Monday and Tuesday. Investors flocked to munis and other fixed-income investments for stability. The S&P Municipal Bond Index continued to climb Tuesday after logging its biggest one-day gain in 20 months Monday. A daily gain that big—about one-third of a percentage point—has occurred only five times in the past three years.

"Fear is present and investors are taking some risk off the table," said Sylvia Yeh, co-head of municipal fixed income at Goldman Sachs Asset Management. "That de-risking could mean [they buy

into] cash, Treasurys or munis."

The new wave of demand Monday pushed bond yields to once-unheard-of levels. Yields on high-grade tax-exempt 30-year municipal bonds fell to 1.594% Tuesday, 47% lower than in February of last year, according to financial analytics company ICE Data Services' Muni Yield Curve. Bond yields fall as prices rise.

Daniel Berger, senior market strategist at Refinitiv, said "there's no end in sight" to low muni yields. The firm, which tracks state government-bond yields going back to June 1981, showed its lowest yields on record Wednesday for the second day in a row.

Lower yields mean less income for investors and some of them are seeking out less creditworthy borrowers in an effort to find higher returns. At the same time, the falling yields reduce borrowing costs for municipal-bond issuers and make borrowing easier for less creditworthy governments and nonprofits.

Muni-bond prices were climbing steadily even before coronavirus headlines spooked investors. Changes in the 2017 tax law drove up demand in high-tax states by capping the federal deduction for state and local taxes, making tax-exempt munis more attractive. At the same time, the tax law reduced supply by placing new limits on when governments can issue tax-exempt debt.

Quick moves into or out of municipal-bond investments have become easier to execute in the past decade with the proliferation of muni mutual funds and exchange-traded funds, which now hold \$852 billion worth of munis, according to the Federal Reserve. Municipal-bond funds reported net inflows of \$96.5 billion last year, a 28-year record, according to Refinitiv, and \$1.8 billion in inflows for the week ended Feb. 19, the most recent data available.

Fund managers working overtime to field calls from concerned investors expect that number to go up this week.

"There's positive correlation with volatility and how many hours we work here," said Justin Pfaff, municipals product manager at investment management company Nuveen.

The Wall Street Journal

By Heather Gillers

Updated Feb. 26, 2020 4:16 pm ET

John W. Auchincloss Named Executive Director, Financial Accounting Foundation.

Norwalk, CT—February 27, 2020 — The Board of Trustees of the Financial Accounting Foundation (FAF) today announced that it has appointed John W. Auchincloss as the executive director of the Foundation. The FAF is the organization that oversees the Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB).

Mr. Auchincloss joined the FAF as vice president and general counsel in May 2016. In 2019, following the departure of then-president Terri Polley, he was appointed acting president while a national search was conducted for an executive director of the Foundation. His appointment as

executive director is effective immediately.

"John has long impressed the FAF trustees with his intelligence, thoughtful strategic counsel, and commitment to the FASB and the GASB and their important mission," said FAF Chair Kathleen L. Casey. "I am very pleased that we will continue to benefit from his strong leadership."

"I am grateful to the FAF trustees and the entire organization for this opportunity to serve," said Mr. Auchincloss. "The standard-setting boards have a unique role serving investors and other stakeholders across our capital markets. The entire FAF organization is committed to supporting the integrity of the independent standard-setting process and ensuring the boards have what they need to succeed."

Before joining the FAF, Mr. Auchincloss developed deep professional experience with nonprofit governance, tax, and regulatory issues. His last position before coming to the FAF was general counsel and secretary for Commonfund, a private, nonprofit asset management firm.

Previously, Mr. Auchincloss served as an assistant U.S. attorney in the Southern District of New York. He began his career at Davis Polk & Wardwell in Washington, D.C. and New York City. Mr. Auchincloss received a bachelor's degree in history from Yale University, a J.D. degree from the University of Virginia School of Law, and an LL.M. degree from Cambridge University.

MSRB Seeks Volunteers for New Market Transparency Advisory Group.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today announced that it is establishing a new Market Transparency Advisory Group (MTAG) to advise its Board of Directors on strategic initiatives to modernize and enhance the free Electronic Municipal Market Access (EMMA®) website and related systems in support of market transparency. The MSRB is now seeking volunteers for the FY 2020 MTAG, which will convene in April 2020 and continue through September 2020.

"As we migrate our market transparency systems to the cloud, the MSRB sees tremendous potential for the EMMA website to deliver even greater value to our market stakeholders by enabling dynamic comparison, regulatory compliance and big data analytics," said Ron Dieckman, Chair of the Board's Technology Committee.

Jerry Ford, Chair of the Board's Stakeholder Engagement Committee, said, "This new advisory group will provide a forum for stakeholders to partner with the MSRB in identifying and prioritizing data and technology initiatives that advance transparency in our market, ultimately contributing to a fairer and more efficient market for all participants."

The MSRB seeks volunteers representing regulated entities, issuers, investors, and other market participants with knowledge of the EMMA website and the MSRB's market data to serve on the MTAG. The MSRB will accept applications through March 13, 2020, and review and assess candidates based on their individual knowledge and experience as well as other factors such as diversity in geographic location and size and type of firm. The selection process and announcement of MTAG members is expected to occur in March.

Read more information on volunteering for MTAG.

Date: February 25, 2020

Contact: Leah Szarek, Director of Communications 202-838-1500 lszarek@msrb.org

Fund Custody and Opportunity Zones, with Jeremy Christensen.

What level of transparency does your Opportunity Zone fund provide? Is it verified by a third-party fund custodian? Jeremy Christensen is director of fund custody at Millennium Trust Company, a custody firm that manages investment accounts, retirement funds, and alternative assets like Opportunity Zone funds. Click the play button below to listen to my conversation with Jeremy. Episode Highlights The role of a fund custodian...

Read More »

Opportunity Db

February 26, 2020

SEC Probes Owner of Chicago Apartments After Bond Default.

The agency is investigating a nonprofit that defaulted on \$170 million of municipal bonds issued to finance the acquisition of about 1,800 low-income apartments in Chicago and its suburbs.

The U.S. Securities and Exchange Commission is investigating a non-profit that defaulted on \$170 million of municipal bonds issued to finance the acquisition of about 1,800 low-income apartments in Chicago and its suburbs.

The disclosure of the investigation came in a court filing earlier this month by attorneys for the Better Housing Foundation. Lindran Properties LLC, a subsidiary of the foundation, filed for Chapter 11 protection from creditors on Jan. 31.

Clark Hill Plc, a law firm representing BHF in the bankruptcy, said the non-profit received a subpoena from the SEC "seeking records related to the events that preceded current ownership's involvement in BHF and its affiliates."

BHF was incorporated in 2015 by Meredith Rosenbeck, an attorney in a Columbus, Ohio, suburb, just one-year before it started borrowing through the Illinois Finance Authority to acquire the apartments in Chicago. The non-profit paid Chicago-based real estate investor L. Mark DeAngelis more than \$4 million to acquire and manage three of the five portfolios of apartments, known as Shoreline, Icarus and Ernst, according to a lawsuit filed by BHF in October 2018.

The apartments managed by DeAngelis suffered from scores of building code violations and overdue property taxes, according to bond filings by BHF. The foundation accused DeAngelis of providing deeply flawed reports on the properties, which needed extensive repairs, and alleged DeAngelis grossly mismanaged the apartments and failed to collect rent.

As a result, the Chicago Housing Authority terminated tenants' housing vouchers and BHF defaulted

on the debt. The non-profit later defaulted on the two remaining bond issues and some of the securities traded this month for 2 cents on the dollar.

Andrew Belew, a Palm Beach, Florida-based real-estate investor who took over Better Housing Foundation in late 2018, said he's cooperating with the SEC investigation. Rosenbeck couldn't immediately be reached to comment, nor could DeAngelis.

On one \$52 million bond sale in 2017 to acquire the 500-unit Icarus portfolio, a consultant hired by BHF estimated the apartments, some built in the 1890s, needed less than \$500,000 in repairs, according to the bond offering document.

A report commissioned by Belew in 2019 after the bonds defaulted found the properties needed more than \$7 million in critical repairs and almost \$8 million to fix code violations. Making recommended repairs and curing potential code violations would cost another \$34 million.

Stifel Financial Corp. managed the Better Housing Foundation's bonds sales. Neil Shapiro, a Stifel spokesperson, didn't immediately return a call seeking comment.

Crain's Chicago Business

February 24, 2020 04:09 PM

The 2 Hidden Benefits of Opportunity Zone Investing.

Opportunity Zone investing offers two little-known hidden benefits that almost no one talks about. First, let's review the three main tax benefits: When you roll over capital gains into a Qualified Opportunity Fund within 180 days, you are able to defer recognition of that gain until December 31, 2026. (The tax bill on this initial gain would be due in April 2027 for most taxpayers.)...

Read More »

Opportunity Db

February 25, 2020

Connecticut Legislation Would Double Cap for Workforce Housing Credit, Make OZ Properties Eligible.

Legislation introduced in the Connecticut General Assembly would expand the state's workforce housing tax credit program to include properties in opportunity zones (OZs) and would change definitions for workforce housing in other parts of the state. S.B. 184 would add properties in OZs to the definition of "eligible workforce housing development projects." The bill would also redefine workforce housing as a property where 10 percent of units are for low-income renters, 40 percent are available at 20 percent of the area's prevailing rent and the remainder are available at market rate. The legislation would double the statewide annual cap for the workforce housing tax credit to \$20 million.

Novogradac

Wisconsin Bill to Double Capital Gains Exclusion for OZs Goes to Governor.

A bill to conform Wisconsin's tax code to the federal Internal Revenue Code concerning opportunity zones (OZs) and to double the exclusion for capital gains invested in Wisconsin-based OZs passed the state Senate and is on the desk of Gov. Tony Evers. <u>A.B. 532</u> would allow an additional 10 percent capital gains tax reduction for investors who hold investments in a Wisconsin-centered qualified opportunity fund (QOF)-defined as a QOF that holds at least 90 percent of its assets in Wisconsin OZ projects-for five years and an additional 15 percent reduction for investors who hold their investment for seven years.

Novogradac

Thursday, February 20, 2020

Current Important Things About High-Yield Munis.

Municipal bonds are often considered lower risk fixed income alternatives and as such carry lower yields than, say, corporate debt. However, there are avenues for investors looking for more municipal income, including the VanEck Vectors Short High-Yield Municipal Index ETF (SHYD C+) and the VanEck Vectors High-Yield Municipal ETF (HYD A-).

Municipal bonds, also known simply as munis, are debt obligations issued by government entities. Like other forms of debt, when you purchase a municipal bond, you are loaning money to the issuer in exchange for a set number of interest payments over a predetermined period of time. At the end of that period, the bond reaches its maturity date, and the full amount of your original investment is returned to the investor.

An important part of the near-term thesis for ETFs such as HYD and SHYD is that default rates remain low.

"The total par value of first-time non-payments of interest or principal due was \$3.6 billion in 2019," said VanEck in a recent note. "This is just 0.09% of the \$3.82 trillion market. Recent defaults have been generally from smaller healthcare sub-sectors such as nursing homes and continuing care retirement communities (CCRCs). These alone represented nearly three-quarters of last year's total."

Evaluating The Options

Since muni bond interest is exempt from federal taxes, muni ETFs are a good way for investors seeking tax-exempt income, especially those in higher tax brackets. Due to its tax-exempt status, the asset category is also best utilized in taxable accounts.

Another important element to consider with HYD and SHYD this year is that regardless of the presidential election, demand for muni debt remains strong.

"The leading Democratic candidates support higher and/or new income taxes on high-income

earners," according to VanEck. "Higher taxes historically support demand for tax-exempts, and even the possibility of higher taxes could contribute to positive fund flows. If Trump wins reelection, federal tax policies are likely to remain unchanged. No matter the outcome, we expect continued demand for municipal bonds."

Favorable fundamentals will continue to support the municipal bond market, especially for high-yield munis and related ETFs. Supporting the munis market, the robust demand and relatively low supply has helped bolster prices.

"The total issuance of municipal bonds expanded by 21.9% in 2019," according to VanEck. However, this was not nearly enough to meet the reinvestment demand generated by calls, coupon payments, and maturing bonds, let alone the demand from mutual fund and ETF fund inflows, which totaled \$93.6 billion last year."

ETF Database

February 26, 2020

Investors Run to Municipal Bond ETFs for Safekeeping.

Fixed-income investors are placing more attention on municipal bond ETFs, with muni bonds rallying and yields closing in on four-decade lows, as coronavirus concerns push more into the munis market.

For instance, the Vanguard Tax-Exempt Bond ETF (VTEB A-) has attracted \$750 million in net inflows and iShares National Muni Bond ETF (MUB A+) brought in \$780 million in inflows year-t-date, according to ETFdb data. VTEB tracks the Standard & Poor's National AMT-Free Municipal Bond Index, which measures the performance of the investment-grade segment of the U.S. municipal bond market. MUB seeks to track the investment results of the S&P National AMT-Free Municipal Bond Index, which also measures the performance of the investment-grade segment of the U.S. municipal bond market.

As fears of a spreading coronavirus intensified this week, investors shifted over to munis and other safe-haven fixed-income assets. Consequently, the S&P Municipal Bond Index experienced its biggest one-day gain in 20 months on Monday, the Wall Street Journal reports. A daily gain of about one-third of a percentage point has only occurred five times over the last three years.

"Fear is present and investors are taking some risk off the table," Sylvia Yeh, co-head of municipal fixed income at Goldman Sachs Asset Management, told the WSJ. "That de-risking could mean [they buy into]cash, Treasurys or munis."

The sudden spike in demand for safe-haven bets dragged bond yields to unprecedented low levels. For instance, yields on high-quality, tax-exempt 30-year municipal bonds dipped to 1.627% Monday, or 46% lower than in February of last year, according to financial analytics company ICE Data Services' Muni Yield Curve. Bond yields have an inverse relationship to prices.

Daniel Berger, senior market strategist at Refinitiv, believed that "there's no end in sight" to low muni yields.

The lower yields have even caused some to take on riskier bets in search of more attractive payouts.

For example, the VanEck Vectors High-Yield Municipal ETF (HYD A-) attracted \$407 million in net inflows so far this year.

Yields on munis have been steadily falling with bond prices rising even before the coronavirus hubbub. After the 2017 tax law changes, demand for tax exempt munis became more attractive in response to caps in the federal deduction for state and local taxes, especially among more high-tax states. The tax law also diminished supply due to new limits on when governments can issue tax-exempt debt.

ETF Database

February 27, 2020

- GASB Issues Proposal to Enhance Concepts for Notes to Financial Statements.
- MSRB to Enhance Transparency of Timing of Issuer's Annual Disclosures on the EMMA Website.
- MSRB Webinar: Continuing Disclosures and the EMMA® Website.
- A Bid to Shame Muni-Disclosure Derelicts Draws Industry's Fire.
- MSRB Compliance Corner.
- Climate Change Is Coming to Your Hometown Bonds.
- Bondholder Committee On Behalf of Owners of Quad Cities Regional Economic Development Authority First Mortgage Revenue Bonds Series 2013A v. Sauk Valley Student Housing, LLC District Court dismisses suit brought by Bondholder Committee against underwriters and trustee alleging fraudulent sale and improper management of student housing bonds, holding that the nature of the claims brought, as well as the relief sought, would require Plaintiff's members to provide provide individualized evidence regarding their damages.
- And finally, Employee Of The Month is brought to us this week by <u>Mark v. City of Hattiesburg</u>, in which a court clerk was "terminated and <u>reassigned</u> [emphasis added] after being accused of hiding paperwork, shredding documents, accepting bribes in exchange for dismissing tickets, fines, and warrants, and engaging in inappropriate contact with judges." Terminated? Sure. Reassigned? I'm going to need to remember that one for future use in my frequent out-of-office email replies. Has a much nicer ring to it than my usual, "remanded to custody."

OPEN MEETINGS - CALIFORNIA

Fowler v. City of Lafayette

Court of Appeal, First District, Division 4, California - February 10, 2020 - Cal.Rptr.3d - 2020 WL 612870 - 20 Cal. Daily Op. Serv. 1074

Landowners' neighbors petitioned for writ of mandate seeking declaratory and injunctive relief against city for allegedly violating Ralph M. Brown Act on open meetings by discussing litigation threat in closed session.

The Superior Court denied petition. Neighbors appealed.

The Court of Appeal held that:

- Applicable statute permitted closed session in response to pending litigation based on statement threatening litigation made by a person outside an open and public meeting;
- City complied with obligation to make a contemporaneous or other record of the statement prior to meeting;
- Litigation threat against city to be discussed in closed session had to be included in agenda packet made available upon request before open meeting; but
- City's violation of Brown Act did not nullify city's approval of project.

EMINENT DOMAIN - GEORGIA

Rouse v. City of Atlanta

Court of Appeals of Georgia - February 10, 2020 - S.E.2d - 2020 WL 613740

Property owner brought action against city, alleging that sewage pipe discovered beneath property drastically reduced the value of property and subjected it to demolition, asserting claims including trespass, nuisance, and inverse condemnation, and seeking attorney fees.

The trial court granted city's motion for summary judgment and denied property owner's motion for summary judgment. Property owner appealed.

The Court of Appeals held that:

- Whether method of adding cementitious lining to sewage pipes was used solely by city to rehabilitate sewage pipes was material fact issue precluding summary judgment on city's dedication claim;
- Whether property had been dedicated to city for its use was material fact issue precluding summary judgment on property owner's trespass claim;
- Whether city ever exercised dominion and control over sewage pipe was material fact issue precluding summary judgment in favor of property owner on nuisance claim;
- Whether property traversed by underground sewage pipe had been dedicated to city was material
 fact issue precluding summary judgment in favor of property owner on inverse condemnation
 claim; and
- Genuine issues of fact on all of property owner's substantive claims precluded property owner's entitlement to award of attorney fees.

CHARTER AMENDMENT - MINNESOTA

Jennissen v. City of Bloomington

Supreme Court of Minnesota - February 12, 2020 - N.W.2d - 2020 WL 699742

Group of city residents opposed to city's efforts to implement organized collection of solid waste brought action against city, seeking to compel city to place proposed charter amendment, requiring city to seek voter approval before establishing system of organized collection of solid waste, on next general-election ballot.

The District Court granted summary judgment in favor of city. Residents appealed, and the Court of Appeals affirmed. The Supreme Court reversed and remanded. On remand, the Court of Appeals held that the proposed charter amendment was not manifestly unconstitutional, but determined that amendment was impermissible because its second sentence stated an intent to repeal an ordinance

by charter amendment. Both parties appealed.

The Supreme Court held that:

- Proposed charter amendment to require prior approval from a majority of voters before the City Council could establish an organized waste-collection system was a lawful exercise of the charter amendment power;
- Sentence in proposed charter amendment stating an intent to supersede existing ordinances and charter provisions adopted under conflicting procedures did not impermissibly convert amendment to a referendum; and
- Proposed amendment to city charter did not violate the Contract Clauses of the United States and Minnesota Constitutions.

Proposed charter amendment to require prior approval from a majority of voters before the City Council could establish an organized waste-collection system was consistent with the constitution, state law, and state public policy, and thus was a lawful exercise of the charter amendment power; procedural change was not one that could have been accomplished by referendum as a referendum to suspend and possibly repeal ordinance may have provided short-term relief to residents and may have been an obvious means of exercising powers granted to city residents under the charter, but would not have provided the structural change to government that residents sought to achieve by amending the charter itself and establishing a new procedure for operating city government.

Sentence in proposed charter amendment stating an intent to supersede existing ordinances and charter provisions adopted under conflicting procedures did not impermissibly convert amendment to a referendum; Minnesota statute granted home-rule city residents power to amend city charter so that they could establish new procedures for their city's operations, and contemplated broad authority to amend city charters, if charter amendment were adopted, and city council would need to obtain voter approval before exercising its legislative authority in certain circumstances.

City did not demonstrate that a substantial impairment of its contractual obligation with trash haulers would occur with a vote should proposed charter amendment pass requiring city to seek voter approval before establishing system of organized collection of solid waste, and thus proposed amendment to city charter did not violate the Contract Clauses of the United States and Minnesota Constitutions; amendment only impaired city's performance under contract.

IMMUNITY - MISSISSIPPI

Mark v. City of Hattiesburg

Supreme Court of Mississippi - February 6, 2020 - So.3d - 2020 WL 581910

City municipal court clerk, who was terminated and reassigned after being accused of hiding paperwork, shredding documents, accepting bribes in exchange for dismissing tickets, fines, and warrants, and engaging in inappropriate contact with judges brought action against city, mayor, and city council members alleging slander, invasion of privacy, breach of implied contract, negligence, and intentional or negligent infliction of emotional distress.

The Circuit Court granted city's motion for summary judgment and, following trial, granted members' and mayor's motion for directed verdict. Clerk appealed. The Court of Appeals affirmed. Clerks petition for writ of certiorari was granted, and he appealed.

The Supreme Court held that:

- Mayor and city council members had immunity under the Tort Claims Act from clerk's claim seeking to hold them individually liable for invasion of privacy, and
- Councilman who disclosed clerk's breast cancer diagnosis and surgery through disclosure of her medical leave form to news media did not act maliciously, and, thus, councilman had immunity under the Tort Claims Act.

Mayor and city council members did not conspire with councilman who disclosed city municipal court clerk's breast cancer diagnosis and surgery through disclosure of her medical leave form to news media, and, thus, mayor and city council members had immunity under the Tort Claims Act from clerk's claim seeking to hold them individually liable for invasion of privacy, even if councilman's conduct was malicious, and thus not within course and scope of his employment.

Councilman who disclosed city municipal court clerk's breast cancer diagnosis and surgery through disclosure of her medical leave form to news media did not act maliciously, and, thus, councilman had immunity under the Tort Claims Act from clerk's claim seeking to hold him individually liable for invasion of privacy, where councilman did not act with any ill will toward clerk or disclose her medical leave form in wanton disregard of her privacy rights; rather, he acted negligently at worst.

BONDS - NEW JERSEY

Bondholder Committee On Behalf of Owners of Quad Cities Regional Economic Development Authority First Mortgage Revenue Bonds Series 2013A v. Sauk Valley Student Housing, LLC

United States District Court, D. New Jersey - January 29, 2020 - Slip Copy - 2020 WL 473636

Bondholder Committee on behalf of the Owners of Quad Cities Regional Economic Development Authority First Mortgage Revenue Bonds Series 2013A ("Plaintiff") brought action against BMOC and BOKF ("Defendants") arising out of the allegedly fraudulent sale and improper management of Series A bonds used to fund a student housing project in Illinois. Defendants BMOC was alleged to have participated in the creation of a fraudulent offering statement and defendant BOKF was alleged to have violated the terms of a Trust Indenture and Continuing Disclosure Agreement while carrying out its duties as trustee.

Defendants moved to dismiss, contending that Plaintiff lacked standing.

Plaintiff alleged associational standing as a representative of its individual members where the individual members themselves had standing to bring the same claims.

The District Court dismissed the complaint, holding that the nature of the claims brought, as well as the relief sought, would require Plaintiff's members to provide provide individualized evidence regarding their damages.

PUBLIC UTILITIES - OHIO

Cleveland Electric Illuminating Co. v. City of Cleveland

Court of Appeals of Ohio, Eighth District, Cuyahoga County - January 9, 2020 - N.E.3d - 2020 WL 105098 - 2020 - Ohio - 33

Public utility brought action for injunctive and declaratory relief against municipality challenging its purchase and resale of electricity to inhabitants located outside of its limits.

The Court of Common Pleas granted the municipality's motion for summary judgment and denied public utility's motion for summary judgment. Public utility appealed.

The Court of Appeals held that genuine issue of material fact with respect to purpose for which municipality had purchased surplus electricity precluded summary judgment.

Genuine issue of material fact with respect to purpose for which municipality had purchased surplus electricity precluded summary judgment in public utility's action against municipality challenging its purchase and resale of electricity to inhabitants located outside of its limits; utility presented evidence from which a reasonable factfinder could have concluded that municipality had purchased at least some of its electricity supply solely for the purpose of reselling electricity to others outside its municipal boundaries, and it was undisputed that municipality entered into a ten-year agreement to serve as another city's exclusive electricity supplier.

Provisions of State Constitution defining a municipality's rights to purchase electricity and to sell "surplus" electricity to an entity outside its geographic boundaries preclude a municipality from purchasing electricity solely for the purpose of reselling the entire amount to an entity outside the municipality's geographic limits regardless of whether (1) the municipality's extraterritorial sales exceed the fifty percent limitation or (2) the municipality purchased excess electricity in order to resell "the entire amount" of the purchased electricity outside its municipal boundaries.

Consistent with provisions of State Constitution defining a municipality's rights to purchase electricity and to sell "surplus" electricity to an entity outside its geographic boundaries, a municipality may acquire a surplus of electricity for reasons other than "solely for the purpose of reselling" surplus electricity outside its municipal boundaries and, if it does so, the municipality may then resell the surplus to others outside its municipal boundaries subject to the 50 percent limitation.

ANNEXATION - WISCONSIN

Town of Wilson v. City of Sheboygan

Supreme Court of Wisconsin - February 14, 2020 - N.W.2d - 2020 WL 739695 - 2020 WI 16

Town brought action for a declaratory judgment that city's annexation of land, which was annexation done pursuant to petition prepared by private party, was improper.

After entering partial summary judgment for city and then holding a bench trial, the Circuit Court determined that the annexation complied with statutory requirements and dismissed the action. Town petitioned to bypass the court of appeals.

The Supreme Court held that:

- Annexed territory satisfied statutory contiguity requirement;
- Sufficient evidence supported finding that city did not act as controlling influence that orchestrated annexation;
- Annexation was not one of exceptional shape;
- Sufficient evidence supported finding existence of reasonable present or demonstrable future need for annexed territory;

- Town failed to show that city abused its discretion in annexing property;
- Annexation petition had requisite amount of signatures of property owners as required by statute;
 and
- Annexation petition properly certified population count of territory in question, as required by statute.

City's annexation of land to be used for annexation petitioner's golf-course development satisfied statutory contiguity requirement; annexed territory shared common boundary with city of 650 feet, and there was significant degree of physical contact between city and annexed properties.

Sufficient evidence supported finding that city did not act as controlling influence that orchestrated annexation, as was relevant to determining whether boundary lines drawn by private party petitioner for annexation were impermissibly arbitrary and violated rule of reason, which was judicially created doctrine designed to determine whether power delegated to cities and villages under statutes on municipalities had been abused; private party alone selected territory to be included in petition, prepared annexation map, and drew boundary lines, and circuit court found that city had no input or involvement whatsoever in determining boundaries for annexation.

Annexation was not one of exceptional shape, as was relevant to determining whether boundary lines drawn by private party petitioner for annexation were impermissibly arbitrary and violated rule of reason, which was judicially created doctrine designed to determine whether power delegated to cities and villages under statutes on municipalities had been abused; territory was 1,450 feet wide at certain points, and overall shape and appearance of annexation was not so arbitrary or unreasonable that it could or should be invalidated.

Sufficient evidence supported finding existence of reasonable present or demonstrable future need for territory annexed pursuant to petition by private party, as was relevant to determining if annexation satisfied rule of reason, which was judicially created doctrine designed to determine whether power delegated to cities and villages under statutes on municipalities had been abused; annexation provided city with ability to expand residential housing, and petitioner wanted its property to be annexed to overcome town board's opposition to petitioner's intended golf-course development and to assure that golf course would receive a sufficient source of water.

Town objecting to city's annexation of property, which was annexation done pursuant to petition prepared by private party, failed to show that city abused its discretion in annexing property, as was relevant to determining if annexation satisfied rule of reason, which was judicially created doctrine designed to determine whether power delegated to cities and villages under statutes on municipalities had been abused; despite argument that city rubber stamped annexation and agreed to support golf course development on annexed property simply to get more money, record included evidence of lengthy deliberations by city officials regarding annexation, and city's actions were consistent with petitioner's express desire to develop its land into world championship golf course.

Annexation petition prepared by private party had requisite amount of signatures of property owners as required by statute; despite argument that annexed territory included large amount of state and city-owned land with no assessed value, petition included signatures of owners of 91% of territory as measured by assessed value.

Annexation petition prepared by private party properly certified population count of territory in question, as required by statute; Department of Administration (DOA) employee reviewed petition and averred that DOA certified or confirmed that petition satisfied population-count requirement.

MSRB Webinar: Continuing Disclosures and the EMMA® Website.

Join our March 19 webinar to learn about enhancements to the transparency of the timing and modification history of issuers' financial disclosures on the EMMA website.

Click here to register.

MSRB to Enhance Transparency of Timing of Issuer's Annual Disclosures on the EMMA Website.

Washington, DC - The Municipal Securities Rulemaking Board (MSRB) received approval from the U.S. Securities and Exchange Commission (SEC) of a proposal to more prominently display existing information on the timing of issuers' annual and audited financial disclosures on the MSRB's free Electronic Municipal Market Access (EMMA®) website. The EMMA "Submission Calculator," proposed in November 2019, would become visible on the EMMA website by July 2020 to allow time for stakeholders to preview the new display and provide feedback on educational tools.

"Improving the timeliness of financial disclosures in the municipal securities market has been an ongoing concern of the MSRB, the SEC, investors and other market participants," said MSRB Chief Compliance Officer Gail Marshall. "The EMMA Submission Calculator supports greater transparency around the timing of issuers' annual financial disclosures, and the MSRB looks forward to continued dialogue with market participants as they develop consensus solutions that would complement the increased transparency."

The MSRB's EMMA website serves as the official source for municipal securities data and disclosure documents, providing free public access to information that enables investors to make informed decisions.

In approving the MSRB's proposal, the SEC noted its belief that the Submission Calculator "would enable investors and others to more readily locate and access the financial information available on the EMMA Portal and provide investors and others with additional tools to evaluate an issuer's disclosure practices." Read the SEC's approval order.

The MSRB will host a free educational webinar on March 19, 2020 from 3 p.m. to 4 p.m. Eastern Time to discuss the Submission Calculator and demonstrate other upcoming EMMA enhancements that will provide a "modification history" to clearly indicate how a continuing disclosure filing has been amended over time. Register for the webinar.

GASB Issues Proposal to Enhance Concepts for Notes to Financial Statements.

Norwalk, CT, February 21, 2020 — The Governmental Accounting Standards Board (GASB) has issued a proposed Concepts Statement that would provide enhanced guidance to the Board when it establishes note disclosure requirements for state and local governments.

When finalized, these concepts may be used by preparers and auditors when applying the generally accepted accounting principles hierarchy in assessing specific information items in certain circumstances for which the GASB does not provide authoritative guidance. These concepts also may help stakeholders to better understand the fundamental concepts underlying future GASB standards.

The Exposure Draft, Communication Methods in General Purpose External Financial Reports That Contain Basic Financial Statements: Notes to Financial Statements, describes the purpose of notes to financial statements and the intended users of notes. The proposals set forth in the Exposure Draft would replace the existing criteria for disclosing information in notes to financial statements.

The proposals elaborate on the types of information that should be disclosed in notes and the types of information that are not appropriate for note disclosures. Of particular importance, the Board is proposing the characteristics that distinguish information that is essential to users in making economic, social, or political decisions or assessing accountability. Those proposed characteristics are that (1) the information is currently being utilized in users' analyses for making decisions or assessing accountability or (2) would be utilized if it became available.

The Exposure Draft is available for download at no charge on the GASB website, www.gasb.org. Stakeholders are encouraged to review and provide comments by April 17, 2020.

The Board has scheduled a public hearing on May 17, 2020 in New Orleans, in conjunction with the annual conference of the Government Finance Officers Association. Additional information is available in the Exposure Draft. The deadline for providing written notice of intent to participate is April 17, 2020.

Climate Change Is Coming to Your Hometown Bonds.

Startup risQ wants to be the go-to tool to assess natural-disaster risk in the municipal market.

In some corners of finance, climate-change risks are only starting to appear on investors' radars. By contrast, in the \$3.8 trillion U.S. municipal-bond market, natural disasters have been a nagging concern for decades.

In the wake of Hurricane Katrina in 2005, Moody's Investors Service slashed New Orleans's credit rating by three levels to junk. It didn't win back its investment grade until May 2007. Joplin, Missouri, suffered the deadliest U.S. tornado in almost six decades in May 2011. Two years later, almost half of its 7,500 students were still in temporary classrooms, but construction progressed on new schools thanks in part to voters approving the largest bond sale in city history. In August 2014, the strongest earthquake in 25 years hit Napa County, California, and traders exchanged a record amount of its debt in the following days amid concern that it could halt payments because of the damage. The list goes on.

Yet for all the examples, pinning down the risk has always been elusive for the muni market, which is known for its dispersion. The U.S. has more than 90,000 "local government units," according to the most recent Census data, and although not all of them issue bonds, those that do tend to borrow across a range of maturities and with varying revenue streams. While <u>many deal documents</u> now include some language about climate change, and investment banks and legal counsels are more thoroughly conducting due diligence around the issue, ultimately there's <u>little evidence</u> that the risks are baked into bond prices.

Continue reading.

Bloomberg Markets

By Brian Chappatta

February 21, 2020, 3:00 AM PST

Fitch Rtgs: States Increasingly Budget for Climate, Environment Initiatives

Fitch Ratings-New York-20 February 2020: Long-term costs to states of environmental mitigation, recovery projects and climate initiatives are expected to rise, says Fitch Ratings, particularly as an increasing number of states include environmental considerations in enacted or recent executive budget proposals. These programs are also expected to become a more prominent part of future state budgets amid greater attention to environmental, social and governance (ESG) concerns.

Boosting environmental resilience is a long-term commitment that many states are expected to address in incremental steps, with immediate attention given to life-saving measures, such as fire and flood prevention, followed by more aggressive moves to reach zero-carbon emissions or tackle sea level rise. States believe that investing in capacity building programs will help reduce the costs of future climate or weather related events, but Fitch expects identifying recurring funding sources will be challenging, particularly as spending pressures continue, especially Medicaid and pensions.

New York's governor proposed the largest amount by far in his fiscal 2021 \$178 billion budget: a \$33 billion five-year plan to tackle climate and environmental concerns and build resiliency. The proposal includes a \$3 billion environmental bond program that would invest in coastline resiliency projects, supplemented with an additional \$740 million in state funding, \$28 billion for green energy projects and \$1.5 billion for carbon-free transportation. This proposal follows the 2019 Climate Leadership and Community Protection Act, which targets reductions in state-wide greenhouse gas emissions and renewable energy gains.

California's governor proposed \$12.5 billion in spending over five years in his fiscal 2021 \$222 billion budget for a climate resilience plan that includes \$4.8 billion in bonds for investments in resiliency and protection, most of which will address immediate vulnerabilities to floods and fires, improve groundwater and farm water systems, and protect drinking water and fish habitats. The proposal furthers investment in fire protection by dedicating \$100 million to make homes resistant to fires and creating a four-year, \$1 billion revolving loan program to promote recycling, low-carbon transportation, and environmentally conscious agriculture programs. In addition to the bond program, \$965 million in funding would come from the state's existing cap-and-trade program.

Fitch notes some states that have not traditionally provisioned for environmental concerns in their budgets have recently enacted measures to apply funds for these purposes. Texas made flood resiliency and hazard mitigation a key priority in its 2019 legislative session, appropriating about \$2 billion from the state's then \$12.6 billion rainy day fund for flood mitigation and resiliency projects, and to provide funds to cover damages from Hurricane Harvey. The Texas Water Development Board's responsibilities for flood planning and financing were expanded, and the legislature made a one-time transfer of \$793 million from the state's economic stabilization fund to create a new flood financial assistance program.

Similarly, in 2019, Florida ramped up its investment in environmental protection, with the governor

dedicating \$2.5 billion in spending over four years for Everglades restoration, protection of water resources, and establishing a state resiliency office. Massachusetts enacted legislation in 2018 authorizing more than \$2.4 billion for a municipal vulnerability preparedness grant program and a state-wide hazard mitigation and adaptation plan. Oregon's governor recently proposed a bill to spend \$200 million per year over the next 20 years on wildfire prevention and mitigation.

Many other states have not taken action in their budgets on environmental protection and conservation initiatives, and this may result in greater costs in the long run. States that have not invested in mitigation and prevention efforts up front may face rising costs to address weather-related disasters in the future.

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Credit Card Surcharges for Municipalities.

In the course of providing services and resources to its community, a municipal government might consider accepting credit card payments from its citizens. Just like any business, a city, county, township, or village must enter into a merchant agreement with each credit card brand it intends to accept before it can begin dealing in plastic.

It is easy to assume that all of the major credit card companies offer generally the same things, but each contract is likely to have nuanced differences that may be important to you as the municipal merchant. We recommend that you reach out to an experienced municipal or financial services attorney before entering any credit card agreement.

However, understanding a few general guidelines may help your community know what to expect. To accept credit cards, most merchants will need to enter into an agreement with both a credit card company and a bank known as an "acquirer" which administers the transactions in exchange for a fee. Not every merchant will use the same acquirer which means that not every merchant agreement will be consistent in its administration costs. A significant aspect of most merchant agreements is the way surcharges are assessed and passed on to the consumer.

There are three things to know:

1. It is important to understand that surcharges apply only to credit card transactions and cannot be

assessed for debit card or prepaid money card purchases.

- 2. Most credit card companies differentiate between a "brand-level surcharge," where all credit cards from a particular company (e.g. Visa, Mastercard, etc.) are charged at the same rate and a "product-level surcharge," where the charge is determined by the particular credit product offered by a brand. Merchants may typically impose a surcharge in either way, but must make a choice.
- 3. Merchant agreements will have a "maximum surcharge cap," meaning a maximum amount that a merchant can pass along to a customer for a transaction. In most instances, the cap is around 4%, but charges may not exceed the actual merchant costs, which are the fees payable from the merchant to the credit card company and acquirer bank. This could effectively provide a cap below 4%.

Some cards may even have built-in restrictions for handling surcharges with competitive brands, demanding consistency across all cards you accept. That may be an important aspect of deciding which credit cards you want to accept and which you'd prefer to decline. Additionally, each card has specific rules for how information about the cards you accept must be displayed. Often these rules relate to the font, language, and location of specific disclosures that must appear at both at the point-of-entry for your merchant and at the point-of-transaction.

Credit card processing services like Square or Clover may simplify and streamline your processes and remove some of the work from accepting credit. However, municipalities should always consult with counsel before entering any agreement with lasting implications.

Foster Swift Collins & Smith PC - Alexander J. Thibodeau

February 18 202

S&P: U.S. Ports Face Headwinds

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- The Current Trade Dispute Picture Is A Mixed Bag
- We Expect Non-China Trade To Rise Despite The Trade War
- COVID-19 Outbreak Adds To Uncertainty For U.S. Ports
- The Focus On Asset Resilience And Climate-Related Issues Increases
- Elevated Cyberrisk Threatens Business Activity
- The Maritime Port Sector At A Glance
- Related Research

Key Takeaways

- We modified our port sector outlook on Jan. 15, 2020, to negative from stable.
- We believe the sector remains strong, though the still-unsettled U.S.-China trade policies, ongoing tariff disputes, and the developing economic and supply chain fallout due to COVID-19 could weigh on these issuers.
- We expect issuers in the port sector will increasingly integrate emerging risks, including cyber- and climate-related risks, into their long-term business strategies and capital planning.

The U.S. port sector is inherently exposed to volatility due to the normal business cycle, shifting

trade patterns and supply chains, drastic fluctuations in commodity prices, and changes in both bilateral and multilateral trade policies. Now added to the list is fallout from the new coronavirus (COVID-19) outbreak, which S&P Global Ratings believes will undermine the credit strength of many Chinese infrastructure operators in 2020 and negatively affect exports (see "Coronavirus Will Take A Big Toll On China's Transport Operators" published Feb. 3, 2020, on RatingsDirect). Many of our U.S. rated ports have very strong business profiles and strong financial metrics, particularly debt service coverage and low debt levels, relative to other transportation sectors. Historically, these metrics have provided cushions for these issuers to absorb volatility and maintain their current rating profile. In our view, the likely implementation of the new U.S.-Mexico-Canada Agreement (USMCA) and the U.S.-China "Phase One" trade agreement lessens the near-term risks somewhat. However, we feel there is still a high level of uncertainty regarding Asia trade and longer-term shifts in trading patterns and supply chains that will produce winners and losers and dampen volumes and revenues at some ports.

Continue reading.

<u>S&P U.S. Independent Schools Fiscal 2019 Medians And 2020 Sector Outlook:</u> <u>Steady As She Goes, For Now</u>

Table of Contents

- Overview Of Sector Ratings
- Fiscal 2019 Medians By Rating Category
- Sector-Wide Medians
- What We're Watching For In 2020

Outlook: Stable

While the sector faces broad risks, we expect ratings stability through 2020. The stable outlook reflects healthy financial and enterprise profiles for our rated schools-with steady enrollment and demand, proactive management oversight, good revenue diversity, and growing resources, building upon solid fundraising efforts and steady market returns.

Continue reading.

Muni-Bond Market's Favorite No-Risk, Can't-Lose Trade Is Back.

- Floating-rate yields jump above those on 10-year debt
- 'It's the best buying opportunity of the year,' investor says

The municipal-bond market's favorite can't-lose trade is back.

So called variable-rate demand obligations — which are virtually risk proof because they can be sold back at full face value to Wall Street banks as frequently as every day — are yielding 1.18%, more than fixed-rate municipal bonds that don't mature for a decade. And those yields have been steadily rising since mid-January, in contrast to the rest of the \$3.8 trillion municipal market.

The disconnect is the result of a frequently seen seasonal quirk: Because variable-rate debt can be

sold so easily, and at 100 cents on the dollar, investors often unload it to raise cash to cover their annual tax bills. As a result, banks' inventories of the securities tend to build up, prompting them to reset interest rates higher to draw new buyers. The Securities Industry and Financial Markets Association's index, the floating-rate benchmark, surged more than 80 basis points last April to as much as 2.3%, the highest since the 2008 credit-market collapse.

This year, even payouts not far above 1% may still be enticing at a time when yields are hovering near the lowest since the 1950s. Barclays Plc strategists led by Mikhail Foux last week flagged them to clients.

The yields have room to move even higher as the tax filing deadline on April 15 approaches, because high-net worth investors tend to wait until the last few weeks to liquidate their portfolios, said Kristian Lind, a managing director at Neuberger Berman Group. He said investors should hold the securities until yields hit a peak around March and April and then re-deploy their cash elsewhere.

"The market is basically on sale for all of March and April," Lind said. "It's the best buying opportunity of the year for the front-end of the yield curve."

Bloomberg Markets

By Mallika Mitra and Amanda Albright

February 20, 2020, 10:34 AM PST

A Bid to Shame Muni-Disclosure Derelicts Draws Industry's Fire.

- MSRB proposes showing how long the wait is for annual reports
- Industry, government groups say it could be buggy, misleading

What seems like a tiny tally is causing a big controversy in the world of municipal finance.

State and local government officials are pushing back against a proposal from the Municipal Securities Rulemaking Board that would reveal to their bondholders a potentially embarrassing fact: how long it takes them to post their audited financial statements.

That count of the days between the end of the fiscal year and the appearance of annual reports, to be disclosed on the MSRB website where securities filings are posted, is an effort to give the \$3.8 trillion municipal-bond market some of the transparency that's long been demanded from publicly traded corporations, whose annual reports have to be filed with the Securities and Exchange Commission as soon as two months after their years end.

Continue reading.

Bloomberg Markets

By Mallika Mitra

February 18, 2020, 6:02 AM PST

New Muni World Sees Rise In Taxable Bonds: Kazatsky (Radio)

MUNIS in FOCUS: Eric Kazatsky, Senior U.S. Municipals Strategist for Bloomberg Intelligence, discusses bond yields and the shifting market for munis. Hosted by Lisa Abramowicz and Paul Sweeney.

Play Episode

Bloomberg

February 21, 2020 — 8:48 AM PST

California Gives Wells Fargo First Bond Deal Since Accounts Scandal.

Doug Brown, Wells Fargo public finance managing director, discusses the bank's return to California's municipal bond market after the accounts scandal. He speaks with Bloomberg's Taylor Riggs on "Bloomberg Markets."

Watch video.

Bloomberg MarketsTV Shows

February 19th, 2020, 10:38 AM PST

Illinois Investors Seek Pension Fix Clues in Budget Proposal.

- Governor Pritzker will deliver 2021 spending plan on Wednesday
- · Voters won't weigh in on proposed income tax until November

Illinois Governor J.B. Pritzker will deliver his second budget address on Wednesday, when investors will be looking for specifics on how the Democrat plans to chip away at the government's growing pension debt and raise new revenue for the lowest-rated U.S. state.

- The billionaire will lay out his spending plan for the year that starts July 1 at noon local time in the capital of Springfield.
- During the "State of the State" last month, Pritzker said he plans to focus on education, job training, infrastructure and what he calls a "fairer" tax system in his spending plan. He also wants to work with local governments to lower property taxes.

Continue reading.

Bloomberg Markets

By Shruti Singh

February 19, 2020, 6:44 AM PST

Municipal Bond Market Outlook: 2020

Due to the dynamic nature of financial markets, they are susceptible to an array of factors from around the world, and municipal debt markets aren't immune to these events. While 2019 witnessed strong U.S. economic growth due to strong consumer spending and historic low unemployment rates, the year 2020 started with tumultuousness in U.S.-Iran relations, presidential impeachment, and global unrest due to Coronavirus.

So far, these events have yet to show an impact on U.S. financial markets and the Federal Reserve is projected to have a stable outlook on interest rates. In addition, contrary to popular opinion, the Fed decided to cut rates in 2019, which was paired with the global demand for yield and credit spread exposure, enabling more local governments to save on net interest costs by issuing taxable bonds to pre-refund outstanding tax-exempt debt.

In 2019, municipal debt funds witnessed continued inflow of funds from investors and the issuance of new municipal debt registered \$421 billion due to the lower interest rate environment.

In this article, we will discuss the 2020 outlook for municipal debt markets from both the issuance and investor standpoints.

Continue reading.

municipalbonds.com

Jayden Sangha

Feb 19, 2020

TAX - MISSISSIPPI

G4, LLC v. Pearl River County Board of Supervisors

Supreme Court of Mississippi - February 6, 2020 - So.3d - 2020 WL 581905

Taxpayer appealed decision of county board of supervisors denying his petition for refund of ad valorem taxes paid for land it leased on airport property and for lots in subdivision it was developing.

The Circuit Court affirmed. Taxpayer appealed.

The Supreme Court held that:

- Taxpayer was automatically exempted from paying ad valorem tax on land leased at city airport;
- County board of supervisors did not overvalue subdivision lots for ad valorem tax assessment; and
- Taxpayer was not entitled to ad valorem tax refund for not receiving unconstitutional developer's discount.

Tenant was automatically exempted from paying ad valorem taxes on land it leased at city's airport, since lease was entered under municipal airport law provision governing contracts and leases for airports owned by municipalities, and during period of lease, property was being used for commercial purposes.

County board of supervisors' method for assessing ad valorem tax on lots in subdivision being developed by taxpayer, based on actual market price, was not flawed, and thus, taxpayer was not entitled to refund of ad valorem taxes it believed it had overpaid as result of board's allegedly incorrect valuation of lots because lots were not held for sale, as subdivision plat was not yet approved, where board reasonably could have found that tax assessor determined that taxpayer intended to place the lots for sale, and there was no record of taxpayer having objected to assessment until years after such assessments were finalized, or that taxpayer had contested county tax roll equalization.

Taxpayer was not entitled to ad valorem tax refund on lots in subdivision it was developing for not receiving a developer's discount that county had provided to others for tax assessments on unsold lots within a subdivision, since discount scheme violated state constitution requirement that all taxable property be assessed under uniform rules and in proportion to its true value by class, and fact that others had received the unconstitutional discount did not support finding that taxpayer's equal protection rights were violated and that it now had be included in the discount.

MSRB Compliance Corner.

Read about the LIBOR transition, recent enforcement actions and more in the latest <u>MSRB</u> <u>Compliance Corner newsletter</u>.

Puerto Rico Government Objects to Moving Forward With New Debt Plan.

SAN JUAN — Bankrupt Puerto Rico's government told a federal judge on Wednesday that its opposition to a new plan announced earlier this month to restructure more than \$85 billion of its debt should put the brakes on a confirmation process.

The U.S. commonwealth's federally created financial oversight board had asked Judge Laura Taylor Swain to approve a schedule that would culminate with a confirmation hearing on a so-called plan of adjustment for Puerto Rico's core government debt and pension obligations commencing in October.

The scheduling motion followed the board's Feb. 9 announcement that it had reached a deal with an expanded group of bondholders to reduce \$35 billion of bonds and claims to about \$11 billion, moving Puerto Rico closer to exiting bankruptcy, which began in 2017.

But Puerto Rico Governor Wanda Vazquez objected to the deal's enhanced recoveries for some bondholders, while certain government retirees would still face the same pension cuts called for in an earlier plan the board announced in September.

In a court filing on Wednesday, Puerto Rico's fiscal agency said the revised plan of adjustment, which the board has not yet filed in court, was "unconfirmable."

"Unless the oversight board clearly articulates how it proposes to confirm the amended plan without government support and cooperation, any confirmation schedule is patently premature," the filing stated.

It added that the deal with bondholders requires legislative action to issue new general obligation

and junior lien sales tax-backed bonds, noting the board lacks the power to legislate under the 2016 federal PROMESA Act, which created the board and a form of municipal bankruptcy for the Caribbean island.

There was no immediate reaction to the filing from the board.

James Spiotto, managing director of Chapman Strategic Advisors and a municipal bankruptcy expert, said PROMESA does not allow the board "to enact legislation for a new bond issue or to incur new debt." He added it was doubtful the judge could order the government to take action.

"Hopefully both the oversight board and the legislature and the governor will realize they are all in it together and there is no benefit to delay or obstruction of any reasonable and fair resolution," he said. "But they have to be sure they have a proposed plan that is a reasonable and fair plan."

By Reuters

Feb. 19, 2020

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

Puerto Rico Goes to Court Against Debt-Restructuring Deal.

SAN JUAN, Puerto Rico — Puerto Rico's government went to court on Wednesday to fight a deal that a federal control board overseeing the U.S. territory's finances recently reached with bondholders to reduce the island's debt by \$24 billion.

In the motion, attorneys said it's unclear how the board plans to move forward with the deal without government support and cooperation.

The motion was filed more than a week after Puerto Rico Gov. Wanda Vázquez said she opposed the debt-restructuring deal, adding that while bondholders would receive additional benefits as part of the amended deal, it was unfavorable to retirees, some of whom would receive up to an 8.5% cut in their pension. The public pension system faces more than \$50 billion in unfunded pension benefits.

"The government has made abundantly clear that it will not support any plan proposal that it concludes is not in the best interest of the people of Puerto Rico," the motion states.

The deal with several groups of bondholders to reduce debt from some \$35 billion to roughly \$11 billion requires in part that Puerto Rico legislators pass a bill to issue new bonds.

Edward Zayas, a board spokesman, told The Associated Press that the board was still in talks with Puerto Rico's government.

"There is time to obtain government support in this process, but waiting and not doing anything about it in the interim would be a disservice to the goal of getting Puerto Rico out of bankruptcy," he said. "Puerto Rico needs to exit bankruptcy as soon as possible. to be able to build a foundation for sustainable economic growth and improve the lives of all Puerto Rico residents."

While the board did not approve of the deal unanimously, its executive director, Natalie Jaresko, has urged the governor to reconsider her position and said it's unfortunate Vázquez doesn't see the

merits of the agreement.

The deal is one of the largest since officials announced in 2015 that Puerto Rico was unable to pay its more than \$70 billion public debt load after decades of mismanagement, corruption and excessive borrowing to balance budgets. It then filed for the biggest U.S. municipal bankruptcy in May 2017.

Puerto Rico remains mired in a 13-year recession as it struggles to recover from Hurricane Maria and a magnitude 6.4 earthquake that hit last month and damaged hundreds of homes and buildings in the island's southern region.

By The Associated Press

Feb. 19, 2020

Real Estate Technology and Opportunity Zones, with Steve Nson.

How can real estate technology, or property technology, benefit Opportunity Zone marketplace participants? Steve Nson is founder of AnySizeDeals, a matchmaking platform for real estate investors that also organizes live events. Their upcoming AnySizeDeals Week event will focus on how real estate interacts with AI and robotics, innovation, Opportunity Zones, and blockchain. Click the play button below to listen to my conversation with Steve.

Read More »

Opportunity Db

February 19, 2020

KBRA Releases Comment - Puerto Rico Restructuring: An Ongoing Legacy of Injecting Uncertainty Into the Municipal.

Kroll Bond Rating Agency (KBRA) publishes its Puerto Rico Restructuring: An Ongoing Legacy of Injecting Uncertainty Into the Municipal Market commentary, following the release of the Commonwealth's amended plan support agreement (PSA) for certain obligations on February 9, 2020.

KBRA's principal takeaways from this development are as follows:

- Although the PSA is an important chronological step, the restructuring process is far from complete. Title III proceedings, and related litigation, are unlikely to conclude before 2021 or beyond.
- The challenge to the validity of certain general obligation bonds and the effort to apply lower recoveries based on this assertion, combined with the erosion of special revenue bond protections, all represent significant negative developments that have already roiled the municipal market. In KBRA's opinion, a knock-on macro effect emerging from these Title III proceedings is the imposition of rating ceilings by other NRSROs across various municipal asset classes.
- KBRA now expects less uncertainty to the overall outcome in the Title III proceedings. In KBRA's

view, recent developments suggest that severely negative recovery scenarios seem less likely, which is clearly positive. Further, very favorable bondholder outcomes seem less likely as well.

KBRA continues to monitor events to assess potential impacts on KBRA's insurance financial strength ratings.

To access the comment, click here.

Business Wire

February 20, 2020

Public Finance Attorney - St. Louis, MO

Gilmore &a Bell, P.C., one of the leading public finance law firms in the United States, is seeking an attorney to join our St. Louis office. Our offices are located downtown close to the Gateway Arch National Park, the St. Louis Cardinals' Busch Stadium, Ballpark Village, Stifel Theatre and the new St. Louis Aquarium at Union Station. We offer a friendly and collaborative office environment, parking, and excellent benefits.

Responsibilities:

- Represent states, counties, and other governmental and quasi-governmental entities or 501c3 organizations as bond counsel in bond and lease financings, economic development incentives and public-private partnerships.
- Act as underwriter's counsel and bank counsel in public finance transactions.

Requirements:

- J.D. with excellent academic credentials
- Interest in transactional legal work
- Superior verbal and written communication skills
- High attention to detail and accuracy and commitment to excellence
- Independent, action-oriented thinker who can successfully undertake and complete projects and major tasks with a minimum of supervision
- Ability to build and maintain strong client relationships
- Hardworking and a team player
- Able to fully embrace our firm culture of "Smarter, Faster, Nicer"

Preferred But Not Required:

- Prior work experience in public finance or tax
- General knowledge of municipal finance and bond terminology

To apply for this opportunity and start your career with our firm, please send a resume, transcript, and cover letter to ihain@gilmorebell.com

EOE/M/F/D/V

Hawkins Advisory: SEC Staff Bulletin

This Advisory provides a summary and analysis of the recent Staff Legal Bulletin from the SEC's Office of Municipal Securities.

Read the Advisory.

- SEC Legal Bulletin: Antifraud Provisions Apply to Public Statements by Public Officials Day Pitney Alert
- SIFMA Follow Up Letter to SEC in Response to Proposed Exemptive Order.
- Fitch Rtgs: Bondfield Default Highlights Project Completion Contractor Risk
- Final Tax Regulations Offer More Certainty to Opportunity Zone Fund Managers and Investors: Orrick
- BLX/Orrick 2020 Post-Issuance Compliance Updates Webinar.
- And finally, Like Looking In A Mirror is brought to us this week by <u>Paulos v. FCH1, LLC</u>, in which, "appellant Cristina Paulos experienced a mental health episode while driving in front of the Palms Resort and Casino in Las Vegas that led her to cause two car accidents. After the collisions, Paulos left her car and tried to enter the driver's side of the second car she had hit, whose owner was still in the driver's seat." An incident also known to your editor as, "a typical Tuesday afternoon."

ANNEXATION - ILLINIOS

Coldwater v. Village of Elwood

Appellate Court of Illinois, Third District - January 9, 2020 - N.E.3d - 2020 IL App (3d) 190247 - 2020 WL 97524

Village approved and recorded annexation ordinance that contained incorrect legal description of property to be annexed, which resulted in larger annexation of property that was agreed to by village and owners.

Owners filed lawsuit to nullify annexation of property due to village's error in reciting legal description of the property. Village filed motion to dismiss. The Circuit Court dismissed owners' complaint as time-barred. Owners filed petition to review certified question.

The Appellate Court held that statute setting forth one-year period for contesting annexation of territory to municipality bars parties from correcting errors in legal description after one-year statutory period has passed.

Statute setting forth one-year period for contesting annexation of territory to a municipality bars parties to an annexation from correcting errors in legal description of annexed property after the one-year statutory period has passed; under unambiguous language of the statute, the one-year limitation shall apply "irrespective of whether such annexation may otherwise be defective or void," once an annexation is final, "defective" or not, the limitations period takes effect

Interpreting statute setting forth one-year period for contesting annexation of territory to a municipality as a bar to correcting errors in the legal description of the annexed property after one

year does not render statute pertaining to the effect, enforcement, and limitations of annexation agreements inoperative; statute pertaining to the effect, enforcement, and limitations of annexation agreements is available to compel performance of and enforce issues arising from annexation agreements not involving contests to final annexations under the one-year limitations statute.

SCHOOLS - MISSISSIPPI

Pearl River County Board of Supervisors v. Mississippi State Board of Education

Supreme Court of Mississippi - February 6, 2020 - So.3d - 2020 WL 581924

County brought action for declaratory and injunctive relief, seeking to undo the consolidation of a school district in its entirety into a second school district instead of its partial consolidation into a third school district within county.

The County Court granted summary judgment against county. County appealed.

The Supreme Court held that:

- Statute allowing aggrieved persons to seek review of school district consolidation orders provided the exclusive remedy;
- County board of supervisors was a "person aggrieved" with ten days to appeal consolidation orders;
- Publication of consolidations orders was not required to trigger the ten-day appeal deadline; and
- Chancery judge was not required to recuse herself based on her prior recusal in a separate civil action in which county was a party.

Statute allowing aggrieved persons to seek review of a school board order concerning the abolition, alteration, and creation of a school district provided the exclusive remedy for county to challenge the consolidation of a school district in its entirety into a second school district instead of its partial consolidation into a third school district within county, even though county's complaint sought injunctive and declaratory relief; county was attempting to obtain judicial review of school boards' consolidation orders.

County board of supervisors was a "person aggrieved" under statute allowing aggrieved persons to seek review of a school board order concerning the abolition, alteration, and creation of a school district, and thus county had ten days to appeal school board orders consolidating school districts, where county stated multiple times during proceedings that government property was at issue in the case and that the property it was addressing in the case was the property of residents who would be assessed ad valorem taxes.

Statutory requirement of publication, in newspapers, of the consolidation of school districts to allow the public to protest the school board's decision by petition did not apply to the ten-day appeal deadline for county to seek judicial review of school board orders consolidating a school district in its entirety into a second school district instead of its partial consolidation into a third school district within county; statute allowing the public to protest a school board's decision by petition was completely separate from statute allowing for judicial intervention of a consolidation order.

EASEMENTS - MONTANA

Barrett, Inc. v. City of Red Lodge

Supreme Court of Montana - February 4, 2020 - P.3d - 2020 WL 549053 - 2020 MT 26

Landowner brought action against city and school district, alleging inverse condemnation, negligence, and state constitutional violations, arising out of their use of his property for an secondary access route to high school.

City filed third party complaint that brought architecture firm into the litigation, alleging that firm was negligent in the design and building of access road across landowner's property. The District Court entered summary judgment in favor of architecture firm. Landowner appealed.

The Supreme Court held that city and school district obtained prescriptive easement over landowner's property.

City's and school district's use of landowner's property for secondary access route to high school was open and notorious, such that city and school district obtained prescriptive easement on the property, where access road was, by its nature, obviously visible and not undetectable to the untrained observer.

IMMUNITY - NEVADA

Paulos v. FCH1, LLC

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

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

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

The Supreme Court held that:

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

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

City police department was entitled to discretionary-act immunity from arrestee's negligent hiring,

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

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

SCHOOL DISTRICTS - OHIO

State ex rel. Dunn v. Plain Local School District Board of Education Supreme Court of Ohio - February 3, 2020 - N.E.3d - 2020 WL 525160 - 2020 -Ohio- 339

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

The Supreme Court held that:

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

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

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

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

HOME RULE - RHODE ISLAND

K&W Automotive, LLC v. Town of Barrington

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

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

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

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

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

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

SUMMARY

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

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

Read the SIFMA Comment Letter.

Fitch Rtgs: Bondfield Default Highlights Project Completion Contractor Risk

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

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

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

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

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

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

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

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

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

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

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

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

In total, 41,773 coal mining jobs were lost between 2011 and 2018 with the largest job losses

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

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

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

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

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

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

larger.

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

- Chicago's O'Hare International Airport
- Dallas-Fort Worth International Airport
- Guam International Airport
- Honolulu International Airport
- John F. Kennedy International
- Los Angeles International Airport
- Newark Liberty International Airport
- San Francisco International Airport
- Washington Dulles International Airport

Our findings are as follows:

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

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

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

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

Related Research

Global Credit Conditions: Coronavirus Casts Shadow Over Credit Outlook, Feb. 11, 2020 Unless Coronavirus Spreads More Widely, Its Impact On The U.S. Economy Should Be Modest, Feb. 11, 2020

Coronavirus To Inflict A Large, Temporary Blow To China's Economy, Feb. 7, 2020 Coronavirus Impact: Key Takeaways From Our Articles, Feb. 12, 2020 Australian And New Zealand Airports Brace For More Pain With Coronavirus Outbreak, Feb. 4, 2020 Coronavirus Will Take A Big Toll On China's Transport Operators, Feb. 3, 2020

This report does not constitute a rating action.

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

View the list.

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

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

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

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

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

The SEC staff provided that Rule 10b-5 applies to all issuer statements that are reasonably expected to reach investors, regardless of who the intended audience is and the method of delivery. Even though a statement was not made for the purpose of informing an investor it does not prevent liability or the application of Rule 10b-5. Such statements could include information on the issuer's

website, information in public reports to other governmental entities, and information made in speeches, interviews or press releases. This is a very broad list and could include any statements made or information provided by an issuer, including board members, staff and elected officials, that is then promulgated on the internet or social media. For that reason, the SEC staff encourages issuers to adopt policies and procedures, which establish information dissemination principles, designate a compliance individual, and establish training requirements for staff among other things.

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

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

CUSIP: Municipal Volumes Increase Year over Year.

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

Read Press Release.

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

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

Orrick's November 2018 client alert on <u>Opportunity Zones and Qualified Opportunity Funds</u>

<u>Accelerating U.S. Community Impact Financing</u> sets forth the key elements of the tax benefits provided by investment in Opportunity Zones. In large part, these key elements remain unchanged:

- WHAT ARE OPPORTUNITY ZONES: Qualified Opportunity Zones ("QOZ") are approximately 8,700 low-income census tracts, and areas contiguous to such tracts, throughout the United States and its territories that were selected by the chief executive (e.g., governor) of each state or territory and confirmed by the IRS. These will not change without an act of Congress.
- WHO IS ELIGIBLE TO RECEIVE TAX BENEFITS: Any U.S. taxpayer who invests capital gains in a QOF and elects to receive OZ tax benefits with respect to its investment.
- WHAT ARE THE TAX BENEFITS: Three types are offered by the OZ program: (1) the deferral of tax on capital gain being contributed as equity to a QOF, until 2026; (2) increase in basis related to a QOF interest, resulting in exclusion of a portion of capital gain from deferred tax; and (3) a further increase in basis related to a QOF interest, so as to exclude gain on a QOF interest if held for at least 10 years.
- WHAT IS A QOF REQUIRED TO DO: A QOF, organized as a corporation or a partnership, must meet a test (the "QOF 90% Test") each six months that requires the QOF to hold 90% of its assets in equity of a Qualified Opportunity Zone Business ("QOZB") or a Qualified Opportunity Zone Property ("QOZP"); QOZBs in turn must hold substantially all of their tangible property (i.e., 70%) as Qualified Opportunity Zone Business Property ("QOZB Property"). The QOF 90% Test has many technical aspects that led to confusion and uncertainty and resulted in hundreds of comments to the October 2018 and May 2019 Proposed Regulations that preceded the Final Regulations, and much of the 500 pages of the Final Regulations appear to be aimed at allowing for more flexible application of the QOF 90% Test. Failure to meet the QOF 90% Test for any six-month period can lead to a penalty being assessed on the QOF (and each partner in a QOF where the QOF is organized as a partnership) equal to the deficiency multiplied by the IRS's underpayment penalty rate, unless the QOF can show the failure was due to reasonable cause (i.e., factors beyond its control, such as delays in required government approvals).

The Final Regulations

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

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

Changes and Clarifications Introduced by the Final Regulations

Better Rules for Operating Businesses

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

• Substantially all (i.e., at least 70%) of the tangible property owned or leased in connection with the trade or business must be QOZB Property (this 70% requirement provides an incentive for QOFs to invest in QOZBs rather than directly into QOZP, because all of a QOF's investment in QOZP must

- otherwise qualify (not just 70%)). Under the Final Regulations, leased property can now qualify as QOZB Property if entered into at market rental rates (unless the lessor is a state, city or tribal nation where market rates are not required) and valued as set forth in the Final Regulations.
- Tangible property held in connection with a QOZB must either be "original use" or if not original use, "substantially improved" (i.e., improvements equal in value to the tax basis of the tangible property must be made by the QOZB). Under the Final Regulations, (i) this "substantial improvement" test can now be satisfied on an aggregate basis rather than on an asset-by-asset basis if the assets are in the same QOZ, are used in the same trade or business and they improve the functionality of the property to be improved, and (ii) brownfields and vacant land (i.e., land vacant for at least one year) are generally exempted from the "substantial improvement" test and treated as original use, except property that becomes vacant in a designated QOZ must be vacant for three years in order to be treated as original-use property. This loosening of the substantial improvement rules provides greater certainty to a wider variety of operating businesses, both as to how to measure substantial improvement and how to manage abandoned lots.
- The QOZB must satisfy certain operating tests, set forth below, all of which were loosened under the Final Regulations.
- (i) First, at least 50% of the total gross income of the QOZB must be derived from the active conduct of the trade or business in the QOZ. Under the Final Regulations, (i) this test can be satisfied based on where employees (which now includes independent contractors) are located (based on hours worked or compensation), based on the location of management and key tangible assets used in the business or based on facts and circumstances, all of which invite a wider range of businesses (operating business, start-up businesses, manufacturing businesses, tech businesses and others) to be able to be capitalized with OZ investment.
- (ii) Second, a substantial portion (i.e., at least 40%) of the intangible property of the QOZB must be used in the active conduct of the trade or business in the QOZ. According to the Final Regulations, intangible property is treated as used in an active trade or business if the use is normal, usual or customary in the conduct of the trade or business and the intangible property is used in the OZ in the business to contribute to the generation of gross income for the business. There may be uncertainty about the application of these principles in specific situations.
- (iii) Third, less than 5% of the average of the aggregate unadjusted bases of the property of the QOZB must be attributable to nonqualified financial property (e.g., cash and cash equivalents). The Proposed Regulations provided a safe-harbor to allowing capital contributed to the QOZB to be spent to develop a property over a period of 31 months, as long as there is a written plan and schedule in place for deploying the capital and the capital is actually used in a manner substantially consistent with the plan and schedule. The Final Regulations clarify that the 31-month spending period can be applied to a start-up operating business and provide that this period can be extended to 62 months if there are multiple tranches of capital contributions to the QOZB.
- The QOZB cannot be a so-called "sin business," such as massage parlors, tanning salons, tattoo parlors, liquor stores and golf courses, except that the Final Regulations permit a QOZB to have a small portion of its assets (i.e., less than 5%) in such businesses as part of a larger development, such as a liquor store that is part of a larger shopping mall or a tanning salon that is part of a hotel's spa facilities.

Better Rules for Commingled Funds and Multi-Tiered Investment

Sales of Property by Individual QOZBs. Under the Proposed Regulations, a QOF investor could only elect after a 10-year holding period to exclude gains from the sale of qualifying investments or capital gain property sold by a QOF operating in partnership or S corporation form, but not property

sold by its QOZB. This approach had a chilling effect on the formation of commingled funds that are invested in multiple properties or businesses, because it was very hard to plan a tax-free exit by the QOF for multiple assets at the same time in the future. The Final Regulations provide that capital gains from the sale of property by a QOZB that is held by such a QOF may also be excluded from income as long as the investor's qualifying investment in the QOF has been held for 10 years. In such event, the amount of gain from such QOFs or its QOZB's asset sales that an investor in the QOF may elect to exclude each year will reduce the amount of the investor's interest in the QOF that remains a qualifying QOF investment eligible for further QOF tax benefits.

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

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

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

Continuing Questions and Uncertainty

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

Conclusion

The issuance of Final Regulations represents another significant step toward providing diverse

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

February 7, 2020

Orrick, Herrington & Sutcliffe LLP

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

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

Antifraud Provisions

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

Scienter

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

Materiality

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

Information Reasonably Expected to Reach Investors

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

Information on Websites

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

Public Reports Delivered to Other Governmental Bodies

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

Statements Made by Issuer Officials

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

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

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

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

^[1] The Bulletin can be found here. Note that the statements in the bulletin represent the views of

the Office and the bulletin is not a rule, regulation or statement of the SEC and has no legal force or effect.

Publisher: Day Pitney Alert

Day Pitney Author(s) Namita Tripathi Shah

February 11, 2020

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The New York Times

By Mary Williams Walsh

Feb. 10, 2020

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

SAN JUAN — Puerto Rico's long-running bankruptcy could cross the finish line by the end of the

year under a schedule proposed by the U.S. commonwealth's federally created financial oversight board, according to a court filing on Monday.

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

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

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

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

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

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

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

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

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

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

By Reuters

Feb. 10, 2020

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

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

General-obligation bondholders reached an agreement, but the bankruptcy may hinge on

the treatment of other debt.

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

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

Continue reading.

Bloomberg Markets

By Brian Chappatta

February 11, 2020, 7:30 AM PST

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

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

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

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

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

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

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

"Louisiana has long been vulnerable to cyberattacks, and this bill offers the resources needed to

ensure protection against potential threats," said Richmond. "I'm proud to introduce this comprehensive measure to give Louisiana and other states across the country the proper framework they need to implement vital cybersecurity plans."

GOVTECH.COM

BY LUCAS ROPEK / FEBRUARY 12, 2020

Fitch Rtgs: Puerto Rico ERS Ruling Consistent with Expectations

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

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

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

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

rating analysis, and if we believe there is any ambiguity we perform additional legal analysis.

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

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Puerto Rico Strikes Debt Deal With Aurelius and Autonomy.

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

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

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

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

"The new and more favorable agreement is a win for Puerto Rico," José Carrión, chairman of the island's financial oversight board, which manages the commonwealth's bankruptcy, said in a

statement. "It lowers total debt payments relative to the agreement we reached last year, pays off Commonwealth debt sooner, and has significantly more support from bondholders, further facilitating Puerto Rico's exit from the bankruptcy that has stretched over three years."

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

Major Portion

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

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

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

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

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

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

Bloomberg Markets

by Michelle Kaske

February 9, 2020

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

The tentative agreement between Puerto Rico's financial oversight board and investors holding \$8 billion of the bankrupt commonwealth's debt brings together rival bondholder groups that had been

holding out for better terms. Still, that may not be enough to clinch the deal.

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

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

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

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

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

Broader Plan

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

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

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

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

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

Cancellation Fear

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

While some hedge funds and distressed buyers did scoop up the debt at those levels, others bought 8% general-obligation bonds in the primary market at 93 cents when Puerto Rico issued the debt in 2014.

Bloomberg Markets

by Michelle Kaske

February 12, 2020

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

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

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

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

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

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

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

Wall Street Journal Letters

by Susheel Kirpalani

Quinn Emanuel Urguhart & Sullivan

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

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

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

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

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

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

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

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

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

Bloomberg

By David R Baker

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

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

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

House infrastructure principles document.

The BDA Comments can be found here.

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

The letter can be viewed here.

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

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

Muni 101 and Infrastructure Hill Briefing

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

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

The BDA will provide a recap following the event.

Bond Dealers of America

February 12, 2020

Fitch Rtgs: Growing US Infrastructure Deficit Necessitates a New Paradigm

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

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

Addressing US infrastructure needs will require a significant uptick in annual new investment. Prior government proposals have been rather tepid, suggesting up to \$200 billion in new investment a year. While a good start, it is a drop in the bucket, as a multi-trillion dollar infrastructure deficit will

require a glide-path to trillion dollar annual investments at 5% of US GDP and more than double recent historical levels to have a meaningful impact. Direct federal spending on nondefense infrastructure, as a percentage of GDP, declined marginally over the past two years and was less than 0.1% of GDP in 2018.

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

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

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

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

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

California 2020 Roadmap to Shared Prosperity.

View document.

Dude, Where's My Infrastructure Funding?

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

Continue reading.

Nossaman LLP

By Shant Boyajian on 02.14.2020

TAX - MARYLAND

<u>Clear Channel Outdoor, Inc. v. Director, Department of Finance of Baltimore City</u>

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

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

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

The Court of Special Appeals held that:

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

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

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

by the ordinance actually raised revenue, which was placed directly into city's general fund.

TAX - OHIO

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

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

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

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

The Supreme Court held that:

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

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

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

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

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

Financial Accounting Foundation Board of Trustees Notice of Meeting.

Notice of Meeting.

[02/10/20]

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

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

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

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

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

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

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

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

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

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

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

Patel said she noticed that some new municipal-bond deals this week weren't met with the overwhelming demand that's become routine and left deals far oversubscribed. A move higher in

rates would likely lure investors who have been sitting on the sidelines, Patel said.

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

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

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

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

Bloomberg Markets

By Mallika Mitra and Amanda Albright

February 13, 2020, 8:02 AM PST

Foreign Yield Seekers Buying Taxable Munis.

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

Play Episode

Bloomberg Radio

February 13, 2020

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

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

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

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

"We've tapped into a new source of financing for affordable housing by using demand in the muni

market," said John Heppolette, Citigroup's head of municipal markets and finance. "More demand ultimately keeps the cost of financing affordable housing down."

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

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

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

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

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

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

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

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

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

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

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

into the muni-bond market.

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

Bloomberg Markets

By Martin Z Braun

February 12, 2020, 10:30 AM PST

Chicago Lags Behind Other Big Cities in Opportunity Zones Projects.

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

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

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

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

Continue reading.

THE REAL DEAL CHICAGO

February 10, 2020 02:00 PM

Staff

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

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

Read More »

Opportunity Db

February 12, 2020

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

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

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

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

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

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

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

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

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

been "vilified and maligned" and branded as "selfish" for lobbying against the project.

Since residents voted in a divisive June 2017 election to dedicate some \$850,000 to the Swampscott trail, including an unspecified amount of money for eminent-domain seizures, the town has continued to work to design and fund the project. But an attorney hired by 28 homeowners says he has warned town officials that this battle may be more costly than they anticipate. "There are properties along this path whose value could be substantially diminished," says Peter E. Flynn. "Juries tend to be sympathetic to property owners if they can afford to fight a case like this in court, and I have seen court awards that can bust the budget of a town."

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

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

The New York Times

By Steven Malanga

Feb. 14, 2020 5:19 pm ET

Mr. Malanga is senior editor of City Journal.

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

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

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

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

The credit impact of HB 653 on retail electric utilities would be mildly positive in Fitch's view. Transfer payments typically approximate 6% of total system revenues, which Fitch does not consider financially burdensome. However, given their importance to the host government, Fitch views transfer payments as a fixed obligation for retail utilities, and as such includes them in the analysis of financial performance. Systems that elect to return excess cash flow to customers through lower utility rates would likely benefit from improved rate competitiveness, affordability and overall revenue defensibility; whereas systems that elect to use the excess free cash flow to build cash reserves or fund additional capital spending and/or pay-off existing debt would likely benefit from lower system leverage. Fitch views either scenario as positive for utilities.

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Additional information is available on www.fitchratings.com

<u>S&P Bulletin: Proposed Sales Tax Changes In Texas Would Transform</u> Revenue Distribution

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

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

majority of Texas municipalities would benefit from the proposed change.

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

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

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

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

This report does not constitute a rating action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Tracy Johnson, who heads the Commercial Association of Realtors for Wisconsin, said adding an

incentive could get more people to participate in the program.

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

Wisconsin Public Radio

By Corrinne Hess

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

BLX/Orrick 2020 Post-Issuance Compliance Updates Webinar.

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

<u>Click here</u> to learn more and to register.

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

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

<u>Click here</u> to learn more and to register.

GFOA Budgeting Best Practices in Albuquerque.

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

Click here to learn more and to register.

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

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

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

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

Continue reading.

The Heartland Institute

By Matthew Glans

FEBRUARY 14, 2020

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

IMMUNITY - TEXAS

Texas Department of Criminal Justice v. Rangel

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

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

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

The Supreme Court held that:

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

• Riot exception applied to TTCA's immunity waiver.

PUBLIC EMPLOYMENT - CALIFORNIA

People ex rel. Lacey v. Robles

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

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

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

The Court of Appeal held that:

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

REFERENDA - FLORIDA

Dinerstein v. Bucher

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

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

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

The District Court of Appeal held that:

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

City's payment of \$43,200 to local political consulting company for planning, management, and execution of voter education campaign before city election was not a political advertisement constituting the functional equivalent of express advocacy for passage of ballot measure, and, thus, did not violate statute barring the expenditure of public funds for a political advertisement or constitutional provision reserving political power in the people, where city provided literature indicating what citizens should know about ballot initiatives, created website where citizens could learn more information, disseminated a voter's guide, and generated robocalls providing website

address and hotline number, none of which expressly advocated a position on ballot measure.

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

EMINENT DOMAIN - FLORIDA

TLC Properties, Inc. v. Department of Transportation

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

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

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

The District Court of Appeal held that:

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

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

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

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

6907324

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

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

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

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

PARKS & REC - MINNESOTA

Hayden v. City of Minneapolis

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

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

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

The Court of Appeals held that:

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

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

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

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

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

LICENSES - NEW HAMPSHIRE

Boyle v. City of Portsmouth

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

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

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

The Supreme Court held that:

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

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

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

In re Financial Oversight and Management Board for Puerto Rico

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

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

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

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

BANKRUPTCY - PUERTO RICO

In re Financial Oversight and Management Board for Puerto Rico
United States District Court, D. Puerto Rico - February 5, 2019 - 361 F.Supp.3d 203

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

The District Court held that:

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

Portsmouth 2175 Elmhurst, LLC v. City of Portsmouth

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

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

The Circuit Court upheld assessments. Taxpayer appealed.

The Supreme Court held that:

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

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

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

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

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

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

After multiple meetings at the SEC including with the Chair, all Commissioners, and staff leadership at the Office of Municipal Securities and Trading and Markets, today (1/28/20) the BDA submitted comments to the SEC that would narrowly tailor the proposed exemptive order. Following extensive work with the BDA working group and outside counsel Davis Polk and Nixon Peabody, comments were developed that create distinct parameters, limiting instances where non-dealer MA's can place securities.

The comments can be viewed here.

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

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

Bond Dealers of America

February 4, 2020

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

Key Takeaways

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

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

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

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

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

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

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

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

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

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

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

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

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

Response Planning Is Key To Credit Stability

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

Communication and transparency are also key when responding to cyber incidents. Even during severe cyber incidents, the served citizens' implicit trust in their governments is underlined by their expectation that critical components (such as water) continue to function. Despite disruptions, cyber attacks should not affect the accountability of utilities to their customers to provide essential services and doing their upmost to maintain the public's trust and protect personal information. Thus, a robust response plan should include how the breach is represented, how quickly to alert the

public, and what management is doing to mitigate the problem. It is also critical for response plans to be regularly reviewed and analyzed to include new approaches and revise procedures in the constantly evolving world of cyber risk.

Recovery Is Easiest When Planned For Before An Actual Attack

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

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

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

This report does not constitute a rating action.

Primary Credit Analyst: Omid Rahmani

Secondary Contacts: Theodore A Chapman, Geoffrey E Buswick

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

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

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

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

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

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

Continue reading.

Bloomberg

By Mallika Mitra

February 5, 2020, 7:11 AM PST

SEC Signals Heightened Scrutiny of Cybersecurity Practices.

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

2020 Examination Priorities: Information Security

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

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

information

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

OCIE Cybersecurity and Resiliency Observations

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

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

Recommended action

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

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

appropriate or necessary.

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

February 4 2020

GASB Issues Omnibus Statement Addressing Wide Range of Practice Issues.

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

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

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

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

GASB Outlook E-Newsletter Winter 2020.

Read the Newsletter.

02/04/20

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

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

As previously covered, the MSRB updated the interpretive notice on MSRB Rule G-17 ("Conduct of Municipal Securities and Municipal Advisory Activities") to codify underwriters' disclosures and focus on the risks and conflicts associated with their transactions. The MSRB stated that the interpretive notice is intended to reduce disclosure burdens on underwriters, as well as the burden on issuers to acknowledge and review disclosures of risks that are (i) unlikely to materialize, (ii) not unique to a particular transaction or underwriter where a syndicate is formed, or (iii) otherwise duplicative.

Cadwalader Wickersham & Taft LLP

February 3 2020

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

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

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

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

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

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

Among other changes, MFAR revises standards for approving healthcare-related taxes in ways that could limit states' ability to use this important Medicaid funding source. The Medicaid and CHIP Payment Access Commission (MACPAC) reports 49 states and the District of Columbia use such taxes, and the General Accounting Office reported in 2014 that provider taxes made up at least 10% of states' Medicaid contributions. MACPAC reports states spent \$230 billion on Medicaid in federal fiscal year 2018.

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

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

Investment firms are using spatial data mining to visualize dangers.

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

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

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

Continue reading.

Bloomberg Green

By Amanda Albright and Mallika Mitra

February 6, 2020, 2:00 AM PST

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

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

View the Rating Actions.

5 Feb, 2020 | 18:25

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

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

Fitch believes the recent management changes, lawsuits challenging the validity of certain purchased power obligations, and the recently abandoned proposal to sell the utility, are all

currently credit neutral to JEA. However, the resignation of JEA's board chairperson early last week, followed by notification from the City of Jacksonville's Mayor's office later that same day that the remaining six JEA board members intend to continue in their roles only until Feb. 28, 2020, leaves the utility with the possibility a governing quorum will not be in place starting next month as well as some uncertainty regarding the utility's longer-term strategic direction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Bloomberg Markets

By Danielle Moran

February 6, 2020, 10:56 AM PST

States Take the Reins in Resilience Planning.

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

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

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

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

Continue reading.

Next City

By Kate Elizabeth Queram,

FEBRUARY 9, 2020 02:57 PM ET

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

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

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

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

Continue reading.

NEXT CITY

by GREGORY SCRUGGS

FEBRUARY 8, 2020

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

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

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

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

Continue reading.

Bloomberg Markets

By Brian Chappatta

February 5, 2020, 4:00 AM PST

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

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

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

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

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

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

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

Price gains slash yields to lowest in over six decades

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

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

friendly as January has been."

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

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

Bloomberg Markets

By Danielle Moran

February 4, 2020, 10:38 AM PST

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

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

Watch video.

Bloomberg MarketsTV Shows

February 5th, 2020, 10:20 AM PST

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

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

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

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

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

"The technicals are way, way overwhelming," said George Huang, an analyst who follows state and local government debt for Wells Fargo & Co. That "would point to further tightening of spreads and

yields across all munis and also for comparatively yieldier Illinois bonds."

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

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

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

"There is very limited supply," Solender said.

Bloomberg Markets

By Shruti Singh

February 5, 2020, 10:30 AM PST

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

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

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

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

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

The VanEck fund would also take a rules-based approach to choosing its investments, the filing says.

It will incorporate ratings from independent research firm HIP Investor Inc., which measures investments' impact on society. Those investments could include bonds for affordable housing, hospitals and green spaces, the filing says.

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

Bloomberg Markets

By Amanda Albright

February 6, 2020, 7:53 AM PST

Tough-to-Disrupt Municipal Market Attracts Blockchain Developer.

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

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

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

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

Continue reading.

Bloomberg Cryptocurrencies

By Amanda Albright

February 4, 2020, 6:00 AM PST

ConsenSys Tokenizing \$3.8T Municipal Bond Market.

Improving finance one bond at a time.

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

Is There a Blockchain for That?

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

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

ConsenSys' Attempt at "Mini-Bonds"

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

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

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

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

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

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

Crypto Briefing

by Liam Kelly

Feb. 4, 2020

Understanding the New Wave of Green Debt.

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

The new wave of green municipal debt instruments has many investors talking and potentially

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

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

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

Continue reading.

municipalbonds.com

by Jayden Sangha

Feb 05, 2020

Muni Bond Deals Continue to Help Global Green Issuance.

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

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

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

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

Bringing More Buyers

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

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

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

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

Bloomberg

by Caleb Mutua and Mallika Mitra

February 7, 2020

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

Read the report.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Bloomberg

by Michael McDonald

February 7, 2020

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"There aren't too many folks who have just fallen off the turnip truck," Mr. Nolte said. "The gardenvariety financial adviser has a grasp of the risks in the market when you're buying an investment with a long duration." **INVESTMENT NEWS**

BY MARK SCHOEFF JR.

February 5, 2020

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

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

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

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

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

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

Bloomberg

Amanda Albright

February 6, 2020

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

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

"The WIFIA program's success is a key component of President Trump's efforts to modernize our nation's aging infrastructure, strengthen public health protections, and create jobs," said EPA

Administrator Andrew Wheeler. "I have seen first-hand the impact this program has had on local communities in just a short amount of time. The WIFIA program has proven to be a tremendous tool in achieving environmental protections and fostering economic growth in communities across the country."

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

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

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

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

02/06/2020

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

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

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

In an effort to create uniformity and resolve discrepancies in the management of parking spaces in and around Hyannis Harbor, a subcommittee of the Barnstable Town Council proposed in December, 2015 to amend the town's zoning ordinance to create the HPOD. The proposed amendment, identified as Item No. 2016-54, sought to authorize as-of-right certain parking lot operations, with

site-development standards governing operation of the lots within the HPOD. After a public hearing on the proposal, the Barnstable Planning Bboard voted not to recommend adoption of Item No. 2016-54. The Town Council then rejected the proposed amendment in a split vote in March, 2016.

A few weeks later the Town Council docketed a new zoning proposal concerning parking, Item No. 2016-166, and scheduled it for a public hearing on July 21, 2016. Item No. 2016-166 differed from Item No. 2016-54 in three ways, but the new proposal also dealt with the management of commercial parking. After this public hearing the Planning Board voted to recommend approval of Item No. 2016-166. The Town Council then voted that Item No. 2016-166 was "not a proposed zoning ordinance . . . previously acted upon unfavorably" as Item No. 2016-54, and voted to adopt Item No. 2016-166. Neighboring homeowners challenged the Town Council's adoption of Item No. 2016-166, arguing, among other things, that the vote was invalid under M.G.L. c. 40A, § 5, sixth par., because it came within two years of the council's rejection of Item No. 2016-54.

The statute states:

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

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

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

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

Pierce Atwood LLP - Michelle N. O'Brien

February 7 2020

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

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

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

Nossaman LLP

By Donna Brady on 02.05.2020

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

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

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Opportunity Db

February 5, 2020

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

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

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Opportunity Db

February 5, 2020

Puerto Rico Bondholders Reach Tentative Deal With Oversight Board.

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

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

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

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

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

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

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

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

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

The Wall Street Journal

By Matt Wirz and Andrew Scurria

Updated Feb. 5, 2020 3:52 pm ET

TAX - OHIO

Willacy v. Cleveland Board of Income Tax Review

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

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

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

The Supreme Court held that:

- Taxpayer's exercise of stock options generated taxable "qualifying wages" under municipal law, and
- City's taxation of income from exercise of stock options did not violate due process.

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

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

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

MUNICIPAL CORPORATIONS - CALIFORNIA

City of Huntington Beach v. Becerra

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

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

The Superior Court granted petition. Attorney General appealed.

The Court of Appeal held that:

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

IMMUNITY - CALIFORNIA

Hedayatzadeh v. City of Del Mar

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

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

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

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

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

ZONING & PLANNING - MAINE

Town of Gorham v. Duchaine

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

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

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

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

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

PREEMPTION - MINNESOTA

Graco, Inc. v. City of Minneapolis

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

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

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

The Supreme Court held that:

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

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

Minnesota Fair Labor Standards Act (MFLSA), providing minimum wage rates which varied

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

MUNICIPAL ORDINANCE - MISSOURI (entirely different state than Kansas) <u>City of Bellefontaine Neighbors v. Carroll</u>

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

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

The Court of Appeals held that:

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

TRANSPORTATION - MONTANA

Montana Independent Living Project v. Department of Transportation Supreme Court of Montana - December 31, 2019 - 454 P.3d 1216 - 2019 MT 298

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

The District Court to DOT. Provider appealed.

The Supreme Court held that:

- Statute governing DOT's award of funds was a proper delegation of legislative authority;
- DOT did not engage in unauthorized rulemaking by adopting State Management Plan and applying it to its awards;
- Adoption of State Management Plan did not violate provision of Montana constitution entitling citizens to a reasonable opportunity to participate; and

• DOT did not violate provision of Montana constitution requiring legislature to "insure strict accountability of all revenue received and money spent" by state and local government by making its awards to lead agencies.

PUBLIC UTILITIES - OHIO

In re Ohio Power Company

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

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

The Supreme Court held that:

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

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

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

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

Ambler v. Board of School Directors of the Hatboro-Horsham School District Commonwealth Court of Pennsylvania - December 12, 2019 - A.3d - 2019 WL 6754781

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

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

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

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

BANKRUPTCY - PUERTO RICO

In re Financial Oversight and Management Board for Puerto Rico United States Court of Appeals, First Circuit - January 30, 2020 - F.3d - 2020 WL 486163

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

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

The Court of Appeals held that:

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

With respect to entities holding bonds issued by the Puerto Rico Employees Retirement System (ERS) prior to enactment of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), the section of the Bankruptcy Code governing the postpetition effect of security interests, as incorporated by PROMESA, prevented bondholders' security interest in "pledged property" from attaching to employer contributions that were made postpetition; under applicable

Bond Resolution, ERS did not have a prepetition property right, and bondholders did not have a security interest, but a mere expectancy, in any right to receive postpetition employer contributions, such that those contributions were not "proceeds" of any prepetition property right, bondholders did not have liens on "obligations" of employers to solve deficiency in pension system, and amendment to Article 9 of Puerto Rico Uniform Commercial Code (UCC) did not render employer contributions as secured "proceeds."

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

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

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

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

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

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

Continue reading.

Bloomberg Markets

By Romy Varghese

January 29, 2020, 6:00 AM PST

Fitch Rtgs: Coronavirus Places Limited Pressure on Airport Revenues

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

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

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

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

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

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

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

Fitch Ratings-New York-03 February 2020: Though likely over a decade away from widespread

usage, automated vehicles (AVs) will have a transformative effect on travel and traffic patterns for toll roads, according to Fitch Ratings.

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

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

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

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

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

Federal policy could take very different paths due to deep political polarization. In addition to

bipartisan views, there are philosophical differences regarding healthcare policy among Democratic presidential candidates. Democratic proposals including "Medicare For All", "Medicare For All Who Want It", and "The Public Option" are top of mind as Iowans caucus today.

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

Healthcare is a considerable portion of the economy, representing nearly 18% of GDP in 2018, according to the US Centers for Medicare and Medicaid. The federal government shoulders much of this cost, spending nearly \$1.1 trillion on Medicare, Medicaid, the Children's Health Insurance Program, and veterans' medical costs, out of a total federal outlay of \$4.1 trillion in federal fiscal year 2018.

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

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

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

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

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

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

Key Takewaways

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

Continue reading.

Special Assessment Debt: S&P Criteria Implementation Summary

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- Observation On Criteria Implementation
- California's High Revenue Flexibility Puts It Ahead Of Florida In Positive Rating Actions
- Special Assessment Financings May Proliferate Outside Of California

Key Takeaways

- We've reviewed all credits under our revised special assessment criteria since its publication in April 2018.
- Overall, the direction of rating actions to date has met our expectations, though the magnitude of
 positive rating actions has slightly exceeded our expectations.
- In particular, the frequency of upgrades for credits in California was more than double that of other states.
- Rated issuers consist almost entirely of fully or highly developed districts with minimal developer exposure, supporting credit quality.
- Although property value appreciation has begun to slow in most major real estate markets and
 distress metrics have increased slightly, real estate demand remains robust, and we believe that
 assessment areas with mature development will maintain strong credit characteristics.

Continue reading.

S&P USPF 2020 Outlooks.

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

Download Report.

New Form 8038-CP Just Released: Hawkins Advisory

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

State Legislation Prompts San Diego to Explore Creating a City-Owned 'Public

Bank'

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

SAN DIEGO — New state legislation allowing cities to establish government-run "public banks" has prompted San Diego officials to begin exploring the idea, including four City Council members who want to spend \$250,000 on a feasibility study.

San Diego would join Los Angeles, Oakland and several other cities that have begun analyzing the pros and cons of public banks, which aim to boost city revenue and direct more capital to priorities like affordable housing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SAN DIEGO TRIBUNE

By DAVID GARRICK

FEB. 2, 2020 5 AM

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

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

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

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

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

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

PG&E shares rose 14% Monday in New York after the company outlined plans late Friday to

overhaul its board of directors as part of a broad reorganization proposal aimed at winning state approval for its bankruptcy exit.

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

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

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

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

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

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

San Francisco's Bid

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

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

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

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

Bloomberg

by Romy Varghese

February 3, 2020

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

Climate change risks are becoming clearer for municipal issuers and market participants are

counting on more disclosure about how those risks affect credit and global investor perceptions of the market.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Issuers have a strong opportunity in 2020 to tell the story of the municipal market to a much broader investor pool through disclosures on climate risk, ESG factors and green bonds," said Will MacPherson, managing director at IHS Markit (INFO). "An international audience is growing for such disclosures and given the trend in taxable supply and interest in long-dated investments, tools are available to seamlessly expand the conversation into these new pockets of interest. The data is there; it simply needs to be articulated."

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

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

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

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

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

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

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

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

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

BlackRock."

By Lynne Funk

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

GFOA Releases New Report on Cyber Security.

A Byte of Prevention: Best Practices in Cybersecurity

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

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

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

Download Report

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

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

Watch video.

Bloomberg MarketsTV Shows

January 29th, 2020, 9:36 AM PST

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

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

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

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

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

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

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

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

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

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

Bloomberg Markets

By Amanda Albright and Danielle Moran

January 31, 2020, 6:15 AM PST

Issuers Oppose Broad Interim Disclosure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

guidance from the working group and the SEC.

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

The Bond Buyer

By Sarah Wynn

January 28 2020, 1:27pm EST

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

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

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

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

Continue reading.

Bloomberg Politics

By Shruti Singh

January 29, 2020, 7:16 AM PST

SEC Proposes Amendments to the Advertising and Solicitation Rules: Dechert

View pdf.

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

January 31 2020

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

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

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

MacKay Municipal Managers - Top Five Municipal Market Insights for 2020

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

investment management and prudent security selection.

5. **Beware of fleeting income.** Coupon will likely be king this year but only when the quality of the income source is high. We believe that assertion will hold true in both the investment grade and high yield segments of the municipal market. Investors should verify that their portfolio income is not reliant on strategies employing hidden leverage, excessive duration, speculative project bets or short call bonds on the verge of retirement. While market conditions in the last number of years were very forgiving with respect to such tactics, a turnaround would bring to light the fragility of those investment approaches.

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

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

The Securities Industry and Financial Markets Association is making its own last push to limit or kill a Securities and Exchange Commission order that would grant non-dealer municipal advisors more latitude to facilitate private placements for their issuer clients.

SIFMA made its case in a letter to the commission dated Jan. 31 and provided to The Bond Buyer on Monday. It follows close behind a similar Bond Dealers of America letter, as dealers seek to restrict or potentially even completely kill the SEC's proposal to allow non-dealer MAs to facilitate at least some private placements of municipal bonds. Dealers view such activity as properly performed by a registered broker-dealer acting as a placement agent, while MAs view it as consistent with their fiduciary duty under federal law.

"We believe the law is pretty clear on this issue," Leslie Norwood, SIFMA's head of municipals, said in an interview.

To qualify for an exemption from dealer registration under the SEC proposal, the MA would have to make written disclosures to an investor saying that it represents the interests of the issuer, not the investor. In return, the MA would have to get written acknowledgment of that disclosure from the investor.

The SEC opened a comment period on the proposal in October 2019. To qualify for an exemption from dealer registration under that proposal, the MA would also need to get written representation from the investor that they are capable of independently evaluating the investment risks of the transaction. Also the entire issuance would have to be placed with a single investor and the MA would have to continue to comply with regulations governing municipal advisors.

SIFMA's nine-page letter is consistent with SIFMA's previous comments, arguing that allowing muni advisors with a fiduciary duty to issuers but no duty to investors to sell securities on behalf of their clients would negatively impact market transparency and put investors at risk.

"If approved in its current form, the proposed exemptive order would allow municipal advisors to place municipal securities with a broad audience of purchasers, including state-registered investment advisers," SIFMA told the SEC. "As discussed above, these placements could be made without the municipal advisors making even minimal disclosures or engaging in basic due diligence regarding the municipal securities being sold. A municipal advisor's fiduciary duty to its issuer client would not undo or somehow cure these lapses in municipal securities market transparency and information disclosure."

Norwood said she believes the SEC is looking for ways to narrow the proposal, and while SIFMA believes the order is not appropriate it provided several suggestions along those lines in an effort to be productive in its discussions with the commission.

The suggestions, made in an appendix, include among other things a requirement that the bonds be investment-grade or are on parity with outstanding bonds of the issuer that are investment grade. They would need to be subject to continuing disclosure requirements and be sold in one tranche to one investor.

SIFMA also wants the offerings to be capped at \$1 million, made only to certain "qualified providers" such as a bank, and for the municipal advisor to have to receive a statement from the buyer that the investor intends to hold the bonds until maturity or redemption.

SIFMA further believes that all applicable Municipal Securities Rulemaking Board rules be appropriately amended prior to the effective date of any exemptive order. Such an undertaking would almost certainly take years.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 02/03/20 01:14 PM EST

Dealer Groups Want the SEC to Approve FIMSAC Recommendation.

Both major securities dealer groups have asked the Securities and Exchange Commission to approve a recommendation to allow investment advisers affiliated with broker-dealers to offer and sell negotiated new issue muni bonds during the order period that the dealer also participates in as a syndicate manager or syndicate member.

The Fixed Income Market Structure Advisory Committee's Municipal Securities Transparency Subcommittee recommended last year to change its rule under section 206(3) of the Investment Advisers Act of 1940, amid what broker-dealers say is a sustained trend toward an increase in advisory accounts.

"The effect of these changed circumstances will be an increased demand for relief from Section 206(3)'s disclosure and consent requirements, particularly during times of market stress," said the Securities Industry and Financial Markets Association in its letter released on Thursday.

FIMSAC is recommending the SEC consider a rule that permits a broker-dealer that negotiates and underwrites a new-issue muni bond or is a co-manager or member of a syndicate to meet the requirements under section 206(3) of the Advisers Act when acting in a principal capacity to sell new-issue muni bonds during the negotiated order period.

Under current rules, a broker-dealer that negotiates and underwrites a new issue muni bond or is a co-manager or member of a selling group can't sell bonds in the offering to its advisory clients without meeting the disclosure and consent requirements of the Advisers Act.

Dealer groups say advisers have to make certain written disclosures and obtain consent from a client each time the adviser and client want to engage in a principal transaction.

"The process of making disclosures and obtaining consent for each covered principal transaction is

cumbersome and impractical," Mike Nicholas, Bond Dealers of America CEO, said in his June 2019 letter. "Consequently, many RIAs (registered investment advisers) simply refrain from engaging in covered principal transactions with advisory clients."

Current rules are causing clients to lack access to the bonds that meet their investment criteria or only have access to the bonds in the secondary market at potentially higher prices, FIMSAC said.

According to FIMSAC, this has resulted in few or none of the underwriting dealer's advisory clients buying bonds in initial offerings.

"Advisory clients that wish to buy these bonds will buy them after the deal is closed and the bonds are free to trade — typically at a price higher than the original offer price," FIMSAC wrote.

"The goal here is to provide retail investors with access to as broad a swath of the municipal new issue market as possible," said Michael Decker, consultant to BDA.

Decker said there has been a shortage of bonds available to retail, without much tax-exempt inventory and a portion of the market moving to private placements.

The SEC did have a temporary rule in 2007, Rule 206(3)-3T, that permitted advisers who were also registered as broker-dealers and who offered non-discretionary advisory accounts to engage in certain principal transactions with their advisory customers without requiring transaction-b-transaction, written disclosure and consent.

Clients make trading decisions in a non-discretionary account, while discretionary accounts give dealers freedom to make decisions for their clients.

Rule 206(3)-3T was extended several times before it sunsetted in December 2016.

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 01/10/20 11:28 AM EST

OMB Releases Proposed Changes to the Uniform Guidance Covering Grants and Agreements.

The U.S. Office of Management and Budget has published for comment changes to sections of Title 2 of the Code of Federal Regulations (CFR) Subtitle A – OMB Guidance for Grants and Agreements, commonly referred to as the Uniform Guidance. The changes are in a number of areas but are geared toward aligning with the work already underway as part of the President's Management Agenda to standardize the grants management business processes and data, build shared IT infrastructure, manage risk, and achieve program goals and objectives.

NASACT is requesting comments on these important proposed changes no later than March 11.

There are a number of changes that could affect state government, however, below are a few areas of specific interest.

Government Quality Audit Project

J. Changes to Performing the Governmentwide Audit Quality Project - Proposed revisions to 2 CFR §200.513 include a change in the date for the requirement for a governmentwide audit data quality project that must be performed once every 6 years beginning with audits submitted in 2018. This date has been changed to 2021, given the significant changes to the 2019 Compliance Supplement in support of the Grants CAP Goal.

Aligning Federal Assistance with Federal Acquisitions

To further align implementation of FFATA, as amended by DATA Act, between the Federal financial assistance and acquisition communities, OMB proposes revisions to Federal awarding agency and pass-through entity reporting thresholds. For Federal awarding agencies, OMB proposes revisions to 2 CFR Part 170 to require agencies to report Federal awards that equal or exceed the micropurchase threshold as set by the FAR at 48 CFR Subpart 2.1. Consistent with the FAR threshold for subcontract reporting, OMB is proposing to raise the reporting threshold for subawards that equal or exceed \$30,000. OMB seeks comments that includes an analysis on the advantages and disadvantages of raising this threshold.

Addressing Pension Costs

E. Aligning 2 CFR with Authoritative Sources - OMB proposes a revision to 2 CFR Section 200.431 Compensation—fringe benefits to allow states to conform with Generally Accepted Accounting Principles (GAAP), specifically Governmental Accounting Standards Board (GASB) Statement 68, and to continue to claim pension costs that are both actual and funded. OMB proposes this revision because GASB issued Statement 68, Accounting and Financial Reporting for Pensions which amends GASB Statement 27 and allows non-Federal entities (NFE) to claim only estimated pension costs in their financial statements. OMB's revision will allow non-Federal entities to continue to claim pension costs that are both actual and funded."

Using System for Award Management (SAM)/Unique Identifier

OMB's proposal to expand the applicability of Federal financial assistance in 2 CFR Part 25 beyond grants and cooperative agreements so that it includes other types of financial assistance that Federal agencies receive or administer such as loans and insurance will impact small entities, but it will not have a significant impact on a substantial number of small entities. Currently, 2 CFR Part 25 requires all non-Federal entities that apply for grants and cooperative agreements to register in the System for Award Management (SAM). OMB proposes to require all entities that apply for Federal financial assistance such as loans and insurance to register in SAM, which requires the establishment of a unique entity identifier. In practice, some Federal awarding agencies already require SAM registration for all types of Federal financial assistance and the proposed change would make this practice consistent among agencies.

There are many other areas to highlight including but not limited to:

- Domestic preferences for procurement. OMB is proposing to add 2 CFR 200.321 (Domestic preferences for procurement), encouraging Federal award recipients, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States when procuring goods and services under Federal awards. This Part will apply to procurements under a grant or cooperative agreement.
- A Proposal to standardize terms across 2 CFR part 200 to support efforts under the Grants CAP Goal to standardize the grants management business process and data.
- Proposing to clarify areas of misinterpretation such as the responsibilities of the pass-through entity to address only a subrecipient's audit findings related to their subaward.

OMB is also providing a few resources to assist in review of the proposal, including a <u>redlined</u> <u>version of the proposed changes</u>.

Additionally, OMB will be <u>hosting a listening session</u> on the proposed revisions at 3:30 PM ET on February 4.

Comments on the proposal are due directly to OMB by March 23. To include your comments in NASACT's response, please send them to Cornelia Chebinou by Marcy 11.

For those filing direct comments to OMB, please visit <u>Regulations.gov</u> and search for the reference ID "OMB-2019-0005." OMB is also requesting commenters include the section of the guidance that their comment is referencing by beginning each comment with the section number.

Indoor Vertical Farming in Opportunity Zones, with Zale Tabakman.

Why might indoor vertical farming be ideally suited for Opportunity Zones? Zale Tabakman is founder and president of Baltimore-based Local Grown Salads, an indoor vertical farming company that has its own Opportunity Zone fund. Click the play button below to listen to my conversation with Zale. Episode Highlights The benefits of locally grown indoor vertical farming versus traditional farming. Why Local Grown Salads believes Baltimore...

Read More »

January 29, 2020

Municipal Bond Perspective: Approach High Yield With Caution In 2020.

Summary

- The municipal bond market presents a number of unique features and characteristics that set it apart from traditional asset classes.
- Only around 10% of the municipal market would be considered below investment grade, based on the traditional breakdown of credit ratings (i.e., bonds rated BB and below).
- Historically, wider spread levels have provided opportunities for credit selection to drive incremental upside results, given the potential for spread compression amid improving fundamentals.

As we head into 2020, municipal bonds will likely remain attractive for many tax-sensitive investors, but their performance potential could prove to be relatively muted compared to 2019, according to Sheila Amoroso, director of our Municipal Bond Department. She and her team say this is due to the general level of interest rates and tighter yield spreads, particularly for lower-rated segments of the municipal market. They believe that while now may be a good time to consider a more cautious approach, they still see potential for high levels of tax-exempt income.

Continue reading.

Franklin Templeton Investments

By Sheila Amoroso, Senior Vice President, Director, Municipal Bond Department, Franklin Templeton Fixed Income Group; Daniel Workman, CFA, Vice President, Portfolio Manager, Franklin Templeton Fixed Income Group; Francisco Rivera, Vice President, Municipal Bond Department, Franklin Templeton Fixed Income.

Jan. 28, 2020

Muni Bond Investors Beware: 'Staged' Bond Defaults Are Back.

At first it seemed like we were starting off the new year on a happy note. Five bond defaults as of the first day of the year that were immediately remedied by a bond call at full value, plus 1%, payable on the last day of the month.

Having been around the horn, however, it seems more to me that "staged defaults" in municipal bonds are back. Such defaults are the bane of the municipal bond market since they are generally motivated by a desire to get out of a high coupon bond that has no early call provision. We saw a wave of such defaults in the 1980s as we came down from the high rates back then and I suppose, with the benefit of 20/20 hindsight, we can expect quite a few in 2020.

I was struck by the January 10, 2020 announcement by the Huntington National Bank that five of the bond issues it is trustee for, had not made their interest payments to the bank and therefore, the January 2 interest payment to bondholders would not be made. The bonds were thus declared in default. This was followed by a second letter from the trustee, dated the same day, advising that all the bonds from the five issues were being called by the obligor on January 31, 2020 at par plus a 1% premium plus accrued interest.

A call to the Huntington National Bank was not returned. I then turned to a recipient of the January 1 notice letter, Waldrep Law, which describes itself as "a boutique law firm specializing in business bankruptcy, healthcare restructuring and insolvency, and long-term care. We offer a unique combination of top-tier credentials and efficient, individualized client service." As soon as I identified myself and why I was calling, I received a "no comment" and a hang-up. I then called Tortoise Credit Strategies LLC, a firm that represents itself as a "Bondholder Representative." No call back from them either. I suspect they hold these bonds for investor clients.

Continue reading.

Forbes

by Richard Lehmann

Jan 27, 2020

MSRB Seeks Comment on Potential Changes to Board Governance Rule.

Washington, DC – Following a comprehensive review by its Governance Review Special Committee, the Municipal Securities Rulemaking Board (MSRB) today published a <u>request for comment</u> on potential amendments to its rule establishing the parameters for composition and selection of its

Board of Directors.

The proposed amendments to MSRB Rule A-3 include tightening the independence standard required of public representatives on the Board by requiring a minimum of five years of separation from a regulated entity before an individual would be eligible to serve as a public member.

The proposal also includes reducing the size of the Board to 15 members, with eight members representing the public and seven representing regulated entities. To facilitate the possible transition to the new Board size, the MSRB currently is not seeking applicants for new Board members for Fiscal Year 2021.

"The MSRB is uniquely positioned as a self-regulatory organization to bring together expertise from across the market to effectively and efficiently safeguard the integrity of the \$4 trillion municipal securities market, which is responsible for the bulk of our nation's infrastructure," said MSRB Board Chair Ed Sisk.

MSRB Governance Review Special Committee Chair Bob Brown said, "As an independent, majority-public Board, we must continue to hold ourselves to the highest standards of integrity to maintain the confidence of municipal securities investors and issuers."

The MSRB's proposal addresses many of the issues raised by Senator Kennedy (R-LA) and cosponsors Senators Warren (D-MA) and Jones (D-AL) in their proposed legislation, S. 1236, the Municipal Securities Rulemaking Board Reform Act of 2019, as well as recommendations identified as a result of the Special Committee's review and assessment of the Board's governance practices. The MSRB is subject to oversight by both Congress and the Securities and Exchange Commission.

The MSRB established a 60-day comment period for the proposal, with comments due by March 30, 2020. After considering comments on the proposal, the MSRB would file any proposed changes to its rules with the SEC for approval.

Date: January 28, 2020

Contact: Leah Szarek, Director of Communications 202-838-1500 lszarek@msrb.org

Avoiding Redemption Risk In This New Municipal Environment.

Summary

- Growing threats to Municipal bondholders.
- Little known provisions can lay waste to bond values.
- Recommendations and strategies to escape getting burned.

Municipal bond issuers are under increasing pressure to fund their ballooning pension costs. Red flags are abundant in muni-land right now since many public entities are selling their assets – sewer and utility systems among them. Some are even merging with private entities to fund their growing liabilities. These types of transactions can have enormous negative repercussions and should put municipal bond investors on high alert. Specifically, investors should fear the triggering of Extraordinary Redemption Provisions (ERPs), explained below. I'll also recommend safe alternatives

to buy, what to avoid, and what steps do-it-yourself investors can take to reduce risk in the muni market.

Significant events involving one of your municipal bond issues can trigger Extraordinary Redemption Provisions. This provision appears in the municipal bond's Official Statement. It states that if a certain event occurs, the issuer can redeem the bonds early. Sometimes this redemption can occur at par value \$100, which can have huge downside ramifications for those who own bonds trading at a premium (above \$100). ERP trigger events include unexpended proceeds, determinations that the status of the bonds are no longer tax free, changes in uses of proceeds, failure of issuer to appropriate funds, or destruction of facilities from which the bonds are payable. These events can cause massive losses if your bond has appreciated in market value and trades at a premium, such as \$120. That premium can be lost in a heartbeat unless you have done the proper credit analysis.

Although this still happens only rarely, it has become more frequent of late. We are increasingly seeing privatization of municipal assets, as the issuers strain to fund their pension liabilities. We see this with water and sewer bonds. These were once considered the gold standard of the muni market. They were essential services, isolated from a municipality's pension liabilities. As some move from public to private they become far riskier.

Continue reading.

Seeking Alpha

Jan. 21, 2020

Alexander Anderson

Senator Mulls Bill Giving States A Mulligan On Choosing Opportunity Zones.

One of the opportunity zone bill's original sponsors is coming around to revising the program.

Sen. Tim Scott (R-SC) said at the United States Conference of Mayors on Wednesday that he is considering a bill that would allow local and state governments to revisit a small percentage of the census tracts that were, or were not, designated opportunity zones in 2018, <u>Bloomberg Tax reports</u>.

Scott said he is in discussions with Sen. Cory Booker (D-NJ), his fellow co-sponsor on the original legislation, and the Senate Finance Committee's ranking Democrat, Ron Wyden (D-OR), on a new bill.

Continue reading.

Bisnow

Matthew Rothstein

January 29, 2020

Federal Tax Bulletin: Final Qualified Opportunity Zone Regulations Adopt Many Changes

Read the Bulletin.

Vorys | Jan. 30

TAX - LOUISIANA

Herman E. v. Robinson

Court of Appeal of Louisiana, First Circuit - December 27, 2019 - So.3d - 2019 WL 7206881 - 2019-0213 (La.App. 1 Cir. 12/27/19)

Taxpayers sought review of decision of Board of Tax Appeals finding that their claim for refund of state income taxes from Department of Revenue was prescribed.

The Court of Appeal held that:

- Burden was on Department prove claim was prescribed, and
- Department failed to prove claim was prescribed.

The burden of proving that a cause of action has prescribed rests with the party pleading prescription; however, when the face of the plaintiff's petition shows that the prescriptive period has run, and the plaintiff is contending there is a suspension or interruption of prescription, the burden is on the plaintiff to prove suspension or interruption.

Burden was on Department of Revenue to prove taxpayers' claim for refund of state income taxes was prescribed due to untimely filing, where taxpayers' appeal of decision of Board of Tax Appeals alleged they filed tax return seeking refund within proper time frame.

Department of Revenue failed to prove taxpayers' claim for refund of state income taxes was prescribed due to untimely filing, despite argument that certified mail receipt showed tax return seeking refund was received after deadline for filing, where mailing date, not date of receipt, constituted filing date, and certified mail receipt did not show when return was mailed.

NFMA Annual Conference in New Orleans.

The National Federation of Municipal Analysts will return to New Orleans in 2020. This year's Jazz Fest will begin on April 23. We have an event website where all information may be found in one place: <u>Click here.</u>

Or look at the following links:

- To view the event schedule, click here.
- To view confirmed speakers, click here.
- To register, click here.

BofA Muni-Bond Banker Fink to Seek House Seat in New York.

- Democrat cites experience with infrastructure, public transit
- · Says he'd also seek to reinstate subsidies for refinancings

Washington dealt a major blow to Wall Street's municipal-bond industry with its 2017 tax changes. Now, one banker from New York says he wants to fight back from inside the walls of Congress.

Christopher Fink, a managing director at Bank of America Corp., the biggest underwriter of state and local government debt, said he plans to mount a Democratic primary challenge against longtime Representative Eliot Engel. If Fink wins, he said he'd help reverse the tax-law changes that crimped bond sales by pulling subsidies from a key type of debt refinancing.

Fink, who lives in New York's Westchester County town of Pelham, made the election announcement on Tuesday at an industry conference hosted by the Bond Buyer. "Hopefully I'll come back a year from now and tell everybody that we've reinstated the advance refunding rules," he said to laughs.

It won't be an easy election. Engel has been a congressman since 1989 and is chairman of the House Foreign Affairs Committee. The seat is also being challenged by a middle school principal from the Bronx who is supported by the Justice Democrats, the insurgent group that backed Representative Alexandria Ocasio-Cortez, according to the New York Times.

Fink's campaign website says he'll pull on his banking experience to help improve infrastructure and public transportation. But he's also focused on issues with broader scope, including gun control, protecting women's reproductive rights and pushing back against President Donald Trump's administration.

Bloomberg Politics

By Amanda Albright

January 28, 2020, 8:45 AM PST Updated on January 28, 2020, 9:29 AM PST

S&P: Governor's Veto Keeps New Jersey School Districts' Budgets Crunched

New Jersey (NJ) Bill S-4289, sponsored by the senate president, would have allowed certain school districts to raise property taxes above the 2% state-mandated levy limit to make up for sharp state aid reductions without seeking voter approval; however, the governor vetoed the bill on Jan. 13, 2020, citing the state's already high local property taxes, and presenting another challenge to school districts. New Jersey school districts are constrained by a state-imposed tax levy limit and aid reductions, and despite the difficult funding environment, have generally maintained steady credit quality and fiscal stability. In the past two years, New Jersey school district ratings have also remained stable: of the 309 districts rated by S&P Global Ratings, only 30 experienced a rating or outlook change. Although our analysis has not assumed school districts would be afforded the flexibility provided in this bill, we still believe the veto could ultimately have negative implications for district operations and finances.

The current state aid disputes trace back to New Jersey's fiscal 2018 budget, which included a state aid realignment that would increase aid for approximately two-thirds of school districts, but would

eventually decrease it for nearly one-third of them over the course of seven years. That one-third is now trying to present balanced budgets, and several have implemented or are considering layoffs, program cuts, and school closures to achieve this.

State aid reductions had ratings implications for several New Jersey school districts in the past three years. The majority of affected districts have maintained structural balance either through cost-cutting measures or the modest use of reserves. However, since the aid reductions have been implemented, we have made six negative outlook revisions or downgrades to our rated portfolio. Those include outlook changes to negative from stable for Brick Township Board Of Education (BOE) and Weehawken Township BOE, and downgrades to Freehold Regional High School District, Plumsted Township BOE, and Flemington-Raritan Regional school district. We also lowered our rating on Vernon Township BOE and assigned a negative outlook.

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