
Florida Cat Fund in Best Financial Shape Ever.

BRADENTON, Fla. – The Florida Hurricane Catastrophe Fund says it's in its best financial shape ever, though $454 million in damage claims have been filed across the state because of Hurricane Matthew.

The FHCF – a state-run, nonprofit reinsurer can expect some insurance companies to trigger claims payments as a result of Matthew's impact, chief operating officer, Anne Bert, said Tuesday.

While Bert cautioned that insurance companies are still estimating damages, the Cat Fund's reinsurance losses could be less than $200 million, she said.

The storm damage update came during a biannual report on the financial strength of the Cat Fund, whose bonds are rated AA by Fitch Ratings and S&P Global Ratings, and Aa3 by Moody's Investors Service.

Although Florida has experienced two hurricanes this year – the first to affect the state since 2005 the Cat Fund remains in its "best financial shape ever," said financial advisor Kapil Bhatia with Raymond James & Associates Inc.

The Cat Fund's on-hand liquid financial resources total $17.5 billion, while its obligation to pay the claims of participating insurers totals $17 billion, he said.

In addition to funds on hand, the fund could also go to the municipal bond market and issue debt to pay claims.

The Cat Fund can expect $7.28 billion in bonding capacity to be available under current market conditions, according to combined estimates of the fund's five underwriters – Bank of America Merrill Lynch, Citi, JPMorgan, and Wells Fargo.

In addition to Hurricane Matthew, Florida also saw Hurricane Hermine make landfall in early September on the state's northwest coast as a category 1 hurricane.

To date, Hermine-related damage loss claims filed with private insurers have totaled $95 million, according to data collected by the Office of Insurance Regulation.

The Florida Hurricane Catastrophe Fund is a tax-exempt state trust fund created by the Legislature in 1993 to stabilize the property insurance market.

The FHCF has a private-letter ruling from the Internal Revenue Service and can issue tax exempt bonds to pay reinsurance claims after a hurricane hits.

The Bond Buyer

By Shelly Sigo

October 20, 2016go

October 20, 2016

Former TEB Head Says IRS Ignoring Violations.

WASHINGTON – The former head of the Internal Revenue Service's tax-exempt bond office is accusing the office of ignoring alleged tax law violations in a $228 million tax-exempt financing for a Syracuse mall that benefited from tax breaks sought by Hillary Clinton when she was a Senate candidate.

The bonds were issued in February 2007 by the Syracuse Industrial Development Agency (SIDA), which loaned the proceeds to Destiny USA Holdings LLC to finance an expansion of the Carousel Center shopping complex in Syracuse. They were supposed to be "qualified green building and sustainable design project" bonds issued under tax law provisions pushed for by Clinton and Sen. Chuck Schumer, DN.Y.

The IRS began auditing the bonds in March 2011 after SIDA and Destiny told the IRS in a letter that, because of a legal dispute and the recession, it had failed to meet the green bond requirements. The IRS later closed the audit with no change to the tax-exempt status of the bonds because SIDA had reasonably expected the requirements would be met.

Mark Scott, the former TEB director who spent 18 years at the IRS and represents whistleblowers in a private practice here, thinks the IRS is ignoring alleged tax law problems with the transaction because of politics.

Scott said he alerted IRS officials to roughly $30 million in fees paid to SIDA and Syracuse from bond proceeds as well as issuance costs that violated a 2% limit, both alleged tax law violations. The IRS told him it would not pursue these allegations.

Scott has written a five-page analysis of the transaction on his website detailing the alleged violations and warning that, by ignoring them, TEB is opening the door for other issuers to commit similar violations.

"In a stunning reversal of more than 30 years of existing law and its own Publication 5005, `Your Responsibilities as a Conduit Issuer of Tax Exempt Bonds,' the IRS Office of TaxExempt Bonds … has [decided] to not apply any limits on the amount of fees a government conduit issuer may be paid out of bond proceeds," Scott said in analysis.

IRS Publication 5005 states that while conduit issuers may charge fees payable out of bond proceeds, Section 148 of the Internal Revenue Code generally limits the size of such fees to prevent bonds from becoming taxable arbitrage bonds.

Scott argues that the issuer fees should have been added to the investment yield on the conduit borrower's obligation. Under the tax law, that investment yield should have been limited to one eighth of one percent. Instead, it was much higher, making the bonds arbitrage bonds.

“IRS officials are ignoring upwards of $30 million in issuer fees,” Scott said, calling this “the largest violation of this provision I have ever seen.”

“Any member of Congress worth his or her mettle would not allow their state or local government agencies to be penalized for behavior that the IRS has openly permitted to a much larger degree for another government agency,” he added.

Scott also said the IRS is ignoring issuance costs that significantly exceed the limit of 2% of bond proceeds for private activity bonds. The issue price of the 2007 bonds was $238.5 million, which should limit issuance costs to $4.8 million. But the underwriters’ discount for the bonds, in and of itself, took up most of the issuance costs, at $4.77 million.

Scott claims the 2% limit was exceeded by $2.6 million, which if included, would have pushed issuance costs over 3% of bond proceeds.

“As with its complete waiver of enforcing the previously described `issuer fee’ limit, the IRS will be hard pressed to walk back this broader [issuance cost limit] waiver policy now that it is publicly known,” Scott said in the analysis.

Scott told The Bond Buyer on Tuesday that his article is meant to prevent the TEB from hiding behind a “wall of secrecy” and to level the playing field for smaller issuers, who he believes would have been targeted for similar, but much smaller violations.

Scott said the decision not to proceed to pursue the alleged tax law violations was not made by one agent, but rather involved at least two IRS senior bond agents, a field manager, multiple senior managers, multiple senior analysts and multiple officials of the Tax Exempt & Government Entities Division, as well as Office of Chief Counsel officials,. As of Tuesday, neither the IRS TE/GE Division nor the Office of Chief Counsel had released formal or informal guidance on the issue. IRS officials did not respond to a request for comment. SIDA representatives also could not be reached for comment.

Scott believes the IRS has backed off this deal because of the appearance of impropriety and the election.

“In my view, there’s an appearance of impropriety because the developer was a Friend of Bill [Clinton] who contributed to the Clinton Foundation and because of Hillary Clinton’s involvement in getting legislation passed for this project,” he said.

In early 2009, Hillary Clinton told The New York Times, “I’ve been a big supporter of Destiny. I worked successfully to get the green bonds bill passed. I think it would be a big shot in the arm. It would be a destination site for the area.”

The mall has been rebranded Destiny USA.

The NYT reported that developer, Robert J. Congel, contributed about $100,000 to the Clinton Foundation at about the time Hillary Clinton helped secure the tax breaks. At that time, Congel told the NYT reporter: “There was no connection with Bill Clinton and the ‘green bonds’ and the contribution – none at all.”

A spokesman for Clinton told the NYT that she supported the expansion of the mall “purely as part of her unwavering commitment to improving upstate New York’s struggling economy and nothing more.”

Scott noted in his analysis that the bonds were “issued to finance a not-so-green shopping mall.”

Scott said he expects SIDA will issue refunding bonds this week to refund the 2007 bonds, adding that the roughly $30 million issuer fee and issuance cost problems will likely be carried forward into the new financing.

Scott said both of the alleged violations will “continue to taint” the tax-exempt status of the interest paid to holders of the 2007 bonds for at least three more years.

The Bond Buyer

By Evan Fallor

October 20, 2016

TEB Says Muni Audits Can Be Closed After Full Redemption.

CHICAGO — The Internal Revenue Service’s Office of Tax-Exempt Bonds has told its auditors that, if an issuer redeems 100% of the outstanding principal amount of its tax-exempt or tax-credit bonds, the audit can be closed without further TEB action.

But the interim guidance, which was released this week in a memo from Rebecca Harrigal, TEB’s director to amend the Internal Revenue Manual (IRM) to include a new resolution method for audits, has drawn criticism from a former TEB director who says it could lead to more tax law violations.

The guidance gives four factors auditors must consider when closing an audit with no further action: the reasons for noncompliance and whether it falls under an anti-abuse rule; whether the underwriter, conduit borrower or other user of proceeds with a financial interest in the transaction were involved in aspects of the deal that led to noncompliance; and whether the issuer or borrower took reasonable steps to ensure the bonds complied with law or attempted to self-correct the problem before the audit.

Speaking at the National Association of Bond Lawyers’ Bond Attorneys’ Workshop here on Wednesday, Harrigal said that the guidance “generally won’t affect bond issues.”

“If the guidance is going to resolve a problem you see then it is worth putting effort into the audits,” Harrigal said. “Certain times – yes it makes sense to close audits and other times that doesn’t make sense and we should continue audits.”

“The rules for re-opening a TEB exam are not as clear as I hope they would be,” she added. “There are very strict rules of re-opening a case that has already been reviewed.”

Should an auditor determine the bonds don’t comply with law, it can issue a closing Letter 5859, Full Bond Redemption – Compliance Issue Identified.

The new guidance does not apply if the bonds are redeemed with other tax-advantaged bonds or if they are direct-pay bonds. It also does not apply if the issuer did not make appropriate rebate payments on the bonds or if the issuer asks for a closing agreement. The guidance is applicable for two years.

Mark Scott, the former head of TEB who is now in private practice representing whistleblowers, said

that IRS officials are “clearly walking away from doing their job” and are trying to prevent the payment of what is owed. This could lead to bond counsel opinions that do not meet the NABL standard, he warned.

Because IRM provisions are not law and can be changed at will, Scott said the “unthinkable” provision should be revoked.

“This sounds like a pass for a bad bond counsel opinion,” Scott said. “This could lead to significantly aggressive tax opinions given by bond counsel in an industry that is already out of control.”

“If the only penalty that applies is redeeming and refunding bonds, then it is essentially encouraging tax counsel to not comply with tax laws,” he added.

Although redemption of bonds is important, he said, this guidance will lead to inappropriate actions and does not clearly state whether the issuer took reasonable steps if bond counsel gives an incorrect tax opinion.

The interim guidance comes as TEB continues to work with a diminished staff and limited resources. At BAW, Harrigal said that TEB lost eight employees in the past year for various reasons, including transfers and retirements. The office is now down to roughly 65 employees, she said, including 14 tax law specialists.

For this fiscal year, TEB will work on selecting audits with a higher risk of noncompliance, including specific returns as well as classes of returns.

She said the office is using market segments where there is information that there may be a high level of noncompliance for targeted audits, including sports facilities, advance refundings and government facilities with private activity. None of those market segment audits are closed, she said, though some are more than 80% complete, Harrigal said.

“We identify issues and fact patterns we hypothesize have a higher risk of noncompliance,” she said. “What we do with those is create a sample. We will pick out a statistical sample of returns and examine them. Some in there will be perfectly fine.”

In March, TEB released model closing agreements for both the general examination program and the Voluntary Closing Agreement Program (VCAP) to expedite and increase consistency. Harrigal said that VCAP “continues to be a priority and we will devote resources based on that,” but added that the office has gotten significantly fewer VCAPs since then.

TEB also said in its two-page work plan for fiscal 2017, which began this month, that the highest priority would be given to claims and referrals warranting audit resources.

Because of revisions made to the direct-pay bond refund process, TEB said it expects fewer direct-pay referrals in fiscal 2017, but that they will likely to have a higher risk of noncompliance than under the prior process.

Mike Bailey, a partner with Foley & Lardner in Chicago and chair of Wednesday’s panel, noted TEB typically audits bonds five-to-six years after their issuance to give it time to see how the proceeds were spent and other determining factors. He also noted that it marks six years since the issuance peak of direct-pay bonds and Build America Bonds (BABs), and asked Harrigal if a wave of audits can be expected.

Harrigal said it is “happening under the radar,” adding that BABs are included in the market

segment audits.

The Bond Buyer

By Evan Fallor

October 20, 2016

Chicago Readies $1.1 Billion O'Hare Refunding.

CHICAGO – Chicago heads into the market next week with nearly $1.1 billion of O'Hare International Airport paper.

The airport paper is one of the city's more digestible revenue-backed credits because it is generally insulated from the city's pension and budget ills.

The general airport revenue bond senior lien refunding issue is tentatively scheduled to price mid-week and would be followed the week of Nov. 28 with $1.2 billion of senior lien new money GARBs.

Bank of America Merrill Lynch is running the books on the refunding, which was approved by the Chicago City Council in September.

"Overall the city expects to achieve significant present value savings currently estimated at $111 million from this transaction," the city's deputy chief financial officer, Kelly Flannery, said in an investor presentation released this week. Frasca & Associates LLC and Columbia Capital Management LLC are advising the city on the deal.

The sale offers three series.

A $28.6 million series that matures in 2037 is subject to the alternative minimum tax and refunds 2006 paper.

A second series for $479.1 million of non-AMT bonds matures in 2041 and will refund 2008 and 2011 bonds.

A third series for $548.1 million of non-AMT bonds matures in 2038 and will refund 2008 bonds. The third series carries an additional backing of passenger facility revenue charges through 2018.

The bonds are rated A with a stable outlook by Fitch Ratings and S&P Global Ratings. The city did not ask Kroll Bond Rating Agency or Moody's Investors Service to rate the new issue.

Kroll assigns a higher rating of A-plus to existing O'Hare bonds. Moody's rates existing O'Hare bonds A2.

The ratings are more solid than the city's general obligation credit and recent O'Hare deals have seen minimal penalties in line with those typically imposed on any Illinois-based paper.

"We really look at the airport credit as a stand-alone credit that is independent" of the city's GO struggles, said Robert Miller, senior portfolio manager at Wells Capital Management.

The deal, however, faces general market headwinds that make a prediction on pricing or penalties

difficult.

“There is a lot of supply and the market is sloppy with new deals struggling and a general cheapening,” Miller said.

The city’s finance team, Aviation Commissioner Ginger Evans, and advisors used the investor presentation to highlight the airport’s role in the national and international air system and progress in its modernization program.

The airport is the second largest nationally, behind Atlanta, with more than 34 million passengers and 875,000 flights last year. It enjoys dual hub status, accounting for 18% of United Airlines revenues and 10.7% of American Airlines’ revenue.

The two account for about 80% of passengers traveling through the airport. Nearly 1,100 departures daily serve 166 non-stop destinations.

“The O&D [originations and destinations] market provides the strong foundation for O’Hare that makes it such an attractive hub in part,” Evans said.

Passenger levels rose 9.9% in 2015 and are up 2.5% for first eight months of 2016 after years of flat growth. “Our growth has been driven by both new carriers and new routes,” Evans said.

Airport consultant Ricondo & Associates said in the presentation that O’Hare’s compounded growth assumptions are conservative at less than 1% through 2025, compared to the Federal Aviation Administration’s 2.5% national estimate. The city must maintain 1.1 times debt service coverage and narrowly meets the requirement with coverage projected at about 1.13 times through 2025.

Cost per passenger rises to $25.50 in 2025 from $17.49 this year. The city currently has a $420 million O’Hare commercial paper program with no outstanding balance and plans to establish a $180 million credit agreement note program.

The city and key O’Hare airlines reached agreement earlier this year on the next $1.3 billion phase of the O’Hare Modernization Program, which includes a final runway and new gates.

About $1.6 billion of projects remain under the roughly $10 billion OMP unveiled more than a decade ago.

“Future requirements are still significant and rely heavily on future debt borrowings for funding,” Fitch Ratings said.

The primary purpose of OMP is to redesign and expand the airport’s runways, shifting to a parallel design from an intersecting layout that forces the closure of runways during poor weather, as well as provide additional capacity if needed.

The city has completed four of six new runways.

The airport also has a $1.8 billion five-year capital improvement program. “We are continuing to take significant steps to reconfigure and modernize our airport for long term growth,” Evans said.

Projects that will receive funding from the new-money sale include a runway, new hangars, a centralized de-icing pad, and taxiway improvements. The OMP also called for a new terminal on the western edge of the airport. That has been put on hold without airline support.

Fitch Ratings in May upgraded O'Hare's $6.4 billion of senior lien general airport revenue bonds rating to A from A-minus. The rating reflects O'Hare's "strong local market, the strategic location of Chicago as a hub, and the demonstrated importance" to United and American, Fitch wrote in its new report.

Leverage is high compared to most large-hub airports at the A level but is expected to taper off and align with A level rated counterparts. Rating risks include changes in the airport's traffic base influenced by hubbing operations and higher debt costs.

Fitch said overall GARB debt levels are projected to rise to about $8.5 billion over the next five years. Coverage levels on overall airport debt are expected to remain largely at the minimum required 1.10 times level but will require substantial increases in airline fees to cover higher debt costs.

"The ratings incorporate our view of O'Hare's steady financial performance, relatively high traffic levels, generally stable demand characteristics, local economy that we consider deep and diverse, and status as one of the world's largest and most important connecting hub airports," S&P analyst Joseph Pezzimenti wrote in the new report.

Challenges include the significant additional debt needs, exposure to connecting traffic, and moderately high air carrier concentrations.

The city acknowledges future debt demands and the 2018 expiration of the existing airline use agreement under "investment considerations." It also warns of substantially higher pension contributions should two of the city's four pension funds become insolvent in the next decade.

The city has proposed restructurings that call for higher contributions but final approval is needed from state lawmakers. The city's pension burden has dragged its general obligation ratings down as low as junk.

O'Hare enterprise revenue accounts for $18 million of the city's $267 million municipal fund payment scheduled for 2017; $2.3 million of the city's $36 million laborers fund contribution; and $18.3 million of the city's $727 million police and fire contribution, according to the offering statement.

"The stable outlook on the GARBs reflects our expectation that GARB debt service coverage will continue at or above 1 times, ORD's liquidity position will stay near current levels, and enplanements will be relatively stable," S&P wrote.

Morgan Stanley will run the books on the November new money GARB issue.

The city also is planning later this year to issue up to $500 million of new money and refunding PFC backed bonds with Loop Capital Markets selected as the bookrunner. About $600 million of existing PFCs carry A-level ratings.

The Bond Buyer

By Yvette Shields

October 19, 2016

Chicago Schools' Labor Deal Boosted by TIF Infusion.

CHICAGO – Chicago's tax-increment financing program is in the spotlight after the city said it would release a bigger-than-planned chunk of surplus TIF revenues to help Chicago Public Schools pay for a new teachers' contract.

Mayor Rahm Emanuel unveiled a proposed 2017 budget Tuesday that declares a $175 million TIF surplus.

Based on the distribution formula, the city will receive about $40.5 million while about $88 million will flow to the financially distressed school district.

CPS had only built $32 million of TIF money into its fiscal 2017 budget, expecting the city to declare a more modest $60 million surplus.

The remainder will go to other area taxing bodies. CPS received $103 million in fiscal 2016.

Word began to circulate of the expected action in the early morning hours of Tuesday shortly after CPS and the Chicago Teachers' Union reached a tentative agreement on a new four-year contract that averted a strike set to begin Tuesday.

The city has annually freed up surplus TIF revenue but it has resisted political pressure by limiting the amount with the annual releases varied in size.

The action — promoted and endorsed by some city council members and union officials and initially resisted by Emanuel — has prompted debate over a series of issues.

They include questions over the appropriate use of TIF revenues, which are supposed to be set aside for development purposes, whether even more should be freed, and whether the funds provided too easy a political escape hatch for the district, which was seeking deeper concessions from the Chicago Teachers' Union.

They also have spurred questions over whether or not the revenue represents a non-recurring revenue stream that can't be counted annually to cover an annual operating expense, a position Emanuel seemed to previously back in statements.

That position has now changed.

"I don't see TIF surplus at this stage as a one-time revenue," city budget director Alexandra Holt said when asked about the issue during a meeting with Crain's Chicago Business' editorial board. "I see it as an ongoing revenue."

Much of the surplus funding being freed up comes from frozen, canceled, and expiring TIFs as well as the "declared" amount.

Holt projected that surpluses will be available for well over a decade, and therefore should not be considered a so-called one-shot.

Holt made her case during an interview along with Emanuel and chief financial officer Carole Brown that Crain's posted on Facebook.

The majority of this year's surplus comes from the seven downtown TIF districts that were frozen

last year and will be retired when existing projects are paid off.

Those districts will generate about $250 million in surplus revenue over the next five years, according to the city's annual financial analysis.

Market participants, rating agencies, and budget watchdogs warn against relying on non-recurring revenue streams to cover recurring operational expenses as they drive up structural gaps.

The district's heavy use of one-shots, from debt restructurings to a three-year partial pension holiday to cover past deficits, have driven the school district's structural deficit up to $1 billion and helped sink its ratings deep into junk territory.

One of Emanuel' top council allies acknowledged TIF funding is only a temporary salve.

"TIF is a one- or two-year fix," Emanuel's floor leader, Alderman Patrick O'Connor, said on WTTW's Chicago Tonight program. "We've done it this year so we can keep the schools open…but what we need to do is find a permanent solution."

TIF has long been used to support school capital projects — the city committed funds to bond issues in 2007 and 2010 under former Mayor Richard Daley's school modernization program — so it's not improper to now use to help with an operating expense, O'Connor added.

Chicago's 146 TIF districts are expected to generate $475 million next year. The program began in 1984 and Daley used it heavily to spur development resulting in criticism that it provided subsidies for wealthy downtown developers for areas some might not consider "blighted."

Once designated a TIF district, the amount of property taxes that flows to general government coffers is frozen and revenue growth goes to fund qualified work in the district to support development for 23 to 24 years. The city has also issued bonds backed by the revenue.

Emanuel implemented reforms after taking office in 2011 and signed an executive order in 2013 that required the city to declare a surplus from TIF districts annually of at least 25 % of the available cash balance after accounting for current and future projects or commitments.

Emanuel froze the downtown TIFs last year.

Since 2011, a total of $853 million of surplus revenue has been distributed but the amount has varied significantly.

In 2011, a $276 million surplus was distributed to taxing bodies.

That dropped to $97 million in 2012, $43 million in 2013, $65 million in 2014, $84 million in 2015, $113 million in 2016, and now $175 million will be released in 2017.

The use of revenue that can't be relied upon annually, at least at the level being freed up in 2017, heightens worry over the district's prospects because of its precarious liquidity, reliance on credit lines to keep afloat, and the uncertainty over some funding streams in its budget.

The state committed $215 million to help fund teachers pensions' but only if Gov. Bruce Rauner and Democratic lawmakers can bridge their partisan divide that has blocked passage of a state budget and agree on state pension reforms. An additional $130 million of state aid is also uncertain beyond fiscal 2017.

CPS has further fueled concerns by failing to provide a price tag for the new teachers contract.

“For the district, not only does this deal provide teachers with a raise and secure their pensions, it also achieves meaningful savings that helps stabilize our finances,” CPS spokeswoman Emily Bitner said in a statement that offered no dollar figures.

The union’s House of Delegates will meet next week and decide whether to recommend a rank-an--file vote.

The district’s $5.4 billion fiscal 2017 budget was based on figures from a January offer that was rejected by union delegates.

It counted on $30 million in savings this year assuming the district would phase out the $130 million annual expense of covering 7% of teachers’ 9% pension contribution.

But the tentative agreement leaves intact that benefit for existing teachers. It phases the cost out for teachers hired after Jan. 1 but gives them a 7% base pay raise.

Cost-of-living raises proposed in January were scaled back and occur in only year three and year four.

Teachers also agreed to healthcare concessions.

An early retirement offer for some teachers adds to the unknown costs of the deal.

The contract would be retroactive to last year, when the previous pact expired.

“Chicago Public Schools are in big financial trouble, they did not budget anything for additional spending,” said Laurence Msall, president of the Civic Federation, adding that the budget is “already over reliant on things coming from Springfield that haven’t been fully settled.”

Emanuel defended the deal and denied that it too generously favored the union.

“Getting the agreement that didn’t adversely affect the classroom was the goal,” he said, acknowledging that the district had to relent on the pension pickup.

Emanuel argued the present value of the contract is not that far off from the January offer after the raises were scaled back.

But his administration offered no figures to support that assessment.

The Bond Buyer

By Yvette Shields

October 13, 2016

S&P Q&A: U.S. State Rating Methodology.

In this edition of CreditMatters TV, Senior Director John Sugden and Director Sussan Corson discuss our updated criteria for rating U.S. state governments and territories. They explain the key changes

and impact on existing ratings.

Watch the video.

Oct. 17, 2016

The Bond Buyer Web Seminar: Muni Compliance Update

Muni Compliance Update: Top lessons for compliance and business leaders

November 9, 2016 | 2 pm ET/11 am PT

Join muni industry veterans Gregg Bienstock from Lumesis Inc. and Kim McManus from Alternative Regulatory Solutions for a discussion on Muni Compliance aimed at both compliance and business professionals. Topics will includea 15c2-12 and MCDC recap that reviews best practices emerging across the industry and what seems to be coming next from the SEC and FINRA for both Underwriters and Issuers. They will also dive into the Municipal Advisor Rule and how to solve for G-42 requirements, the latest on Best Execution and also the link between best practices in Underwriting and Time-of-Trade compliance.

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Featured Presenters:

Gregg Bienstock
CEO and Co-Founder
Lumesis, Inc.

Kim McManus
President
Alternative Regulatory Solutions

S&P: Revised U.S. State Rating Methodology Is Published.

NEW YORK (S&P Global Ratings) Oct. 17, 2016—S&P Global Ratings today updated its methodology for rating United States state governments. The revised rating criteria is effective immediately.

“The changes are intended to better align our criteria with new pension reporting and disclosure, and provide additional transparency and guidance with respect to potential rating caps and overrides,” said credit analyst Sussan Corson.

The updated methodology applies to all U.S. state governments and U.S. territories. We do not expect any rating changes as a result of the revised criteria.

Concurrently, we published an FAQ on the revised criteria, as well as a process summary. The revised rating criteria follows the publication on May 25, 2016, of our Request For Comment on proposed changes to our methodology. The new criteria fully supersede the U.S. State Ratings Methodology that we published on Jan. 3, 2011. The articles published today are:

- U.S. State Ratings Methodology
- Credit FAQ: Changes In U.S. State Ratings Methodology
- RFC Process Summary: U.S. State Ratings Methodology

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

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MSRB Responds to Issuer Complaints and Improves Bank Loan Disclosures On EMMA.

In late September, the Municipal Securities Rulemaking Board ("MSRB") announced that it had taken steps to enhance the bank loan disclosure submission process and the display of these documents on MSRB's Electronic Municipal Market Access ("EMMA") system.

This latest announcement is in keeping with the MSRB's previously released advisory notices, in which the self-regulator advocated for state, local and municipal bond issuers to voluntarily disclose bank loans and other alternative financings. Specifically, the MSRB has expressed concerns that these so called "bank loans" could, among other things, potentially impair the rights and seniority status of existing bondholders or adversely impact the liquidity or credit profile of an issuer.

Bank loan financings are entered into directly between an issuer and a bank without the involvement of an underwriter and are not subject to the continuing disclosure rules of Securities and Exchange Commission ("SEC") Rule 15c2-12. As such, no offering disclosure documents are prepared and issuers are not required to provide information about bank loans via EMMA. Bank loans are seen,

therefore, as a less expensive alternative to traditional publicly issued bond transactions.

However, due to the lack of explicit requirements for issuers to disclose bank loans, there is a concern that the investing public may not become aware of an issuer's bank loan(s) until such issuer's next public offering or the release of such issuer's audited financial statements. In the eyes of the MSRB, this "delay" in the release of information related to an issuer's bank loan(s) could adversely impact the holders of the issuer's outstanding bonds, as well as potential future investors. In January 2015, the MSRB released Notice 2015-03, Bank Loan Disclosure Market Advisory, in which it encouraged issuers to voluntarily post information about their bank loan(s) "to foster market transparency and to ensure a fair and efficient municipal market."

The new disclosure submission process is the result of several discussions between the MSRB and market participants which took place earlier this year. Many state, local and municipal officers complained that the submission process was confusing and actually seemed to lose some of the submitted documentation. The officers emphasized that the lack of disclosure of bank loans had less to do with the issuers' failing to disclose and more with the complexity of the submission process previously in place which made it difficult to correctly submit and find the disclosed materials.

In response to these concerns, the new process the MSRB announced last month provides step-b--step instructions for issuers to use when submitting information on bank loans and alternative financings to EMMA and contains advanced search functions that will allow EMMA users to search for securities associated with bank loan disclosures.

The general consensus among those in the public finance industry is that the issue of disclosing bank loans would be better addressed with a change to the SEC's Rule 15c2-12. However, the MSRB's facilitating the process of disclosing bank loans could be seen as indicative of where the federal regulatory authorities are heading.

Last Updated: October 19 2016

Article by Gordon Knox

Miles & Stockbridge

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

SEC Will Tell All MCDC Submitters If They Face Enforcement Action.

CHICAGO – While the Securities and Exchange Commission remains silent on whether there will be more settlements under its continuing disclosure enforcement initiative, an SEC official said any party that voluntarily submitted potential violations will be told whether the commission plans to take action against them.

LeeAnn Gaunt, chief of the SEC enforcement division's public finance abuse unit, made the remark on Thursday during a panel discussion of hot topics in securities law at the National Association of Bond Lawyers' Bond Attorneys' Workshop here.

Gaunt acknowledged that the questions about the future of the commission's Municipalities Continuing Disclosure Cooperation initiative have been popular and "are very understandable," but

said she is not in a position to comment.

However, she explained that while there may not be a statement from the commission on MCDC's future, the enforcement division's standard practice is to notify parties "at the earliest opportunity that [it] can do so" if it decides not to recommend an enforcement action.

"I can assure you that anyone who has made a submission will hear from us one way or another," Gaunt said.

Ken Artin, a shareholder with Bryan Miller Olive and past-president of NABL, argued during a similar hot topics panel earlier in the day that the SEC should refrain from pursuing any more settlements.

"The fact is everybody is very much aware of continuing disclosure undertakings" after MCDC, Artin said, adding that "further enforcement actions probably aren't going to drive that point home anymore."

Joseph "Jodie" Smith, a shareholder with Maynard, Cooper & Gale who moderated the two panels, noted that many market participants said the SEC achieved its goal of boosting the market's focus on disclosure as soon as it announced MCDC.

The MCDC initiative promised underwriters and issuers would receive lenient settlement terms if they self-reported instances over the last five years where issuers falsely said in offering documents that they were in compliance with their continuing disclosure agreements.

The most recent SEC action related to the initiative came on Aug. 25 when the SEC publicized 71 settlements with issuers from 45 states.

The settlements included disclosure failures that occurred between 2011 and 2014 and marked the first group of issuers who settled under the initiative. The SEC took action under MCDC against a single issuer, California's Kings Canyon Joint Unified School District, in July 2014.

The issuers that settled included: two states; seven state authorities; 29 localities; seven local authorities; nine school districts or charter schools; six colleges or universities; five health care providers; five utilities; and one retirement community.

Those issuers joined 72 underwriters that represented 96% of the underwriting market by volume and paid a combined $18 million under MCDC settlements. The underwriter settlements were released in three batches, adding to speculation among market participants that there may be more issuer settlements in the future.

During the panel discussion, the audience members, who were primarily bond lawyers, were asked to raise their hands if they had an issuer or conduit borrower client that made an MCDC filing before the initiative's deadline. A large percentage of those in the audience raised their hands in response.

However, when they were asked to do the same if they had a client that was included in the list of 71 issuer settlements, a far smaller number responded affirmatively, showing there are still a large number of issuers that will be waiting for the responses the SEC has promised.

Bond lawyers and others have raised questions about the SEC's prior statement that it intended to pursue actions against non-reporting entities after it finishes settling with those who reported. Gaunt noted she could not comment about the possibility of ongoing enforcement activity but said non-reporters make up an area "in which we are certainly interested."

She also said that while individuals were explicitly not a part of the MCDC initiative, pursuing individuals outside of the initiative “continues to be open to us.”

The Bond Buyer

By Jack Casey

October 21, 2016

SIFMA Submits Comments to the MSRB on Clarifying Exceptions to Minimum Denomination Rule.

On October 18, SIFMA filed a comment letter with the MSRB regarding its draft proposal to clarify regulatory provisions that generally prohibit dealers from buying or selling bonds below the minimum denomination allowed in a bond offering document. These revised provisions would form a new stand-alone rule. SIFMA is pleased with some of the proposed changes, such as the elimination of the reference to increments and the elimination of the liquidation statement in the case of securities purchased from other dealers. However, some of the proposed changes result in less liquidity for customers and create additional and unnecessary challenges for dealers.

SIFMA Comment Letter on Clarifying Exceptions to Minimum Denomination Rule (Oct 2016)

SIFMA Comment Letter regarding draft amendments to MSRB Rule G-15(f) on minimum denominations (May 2016)

NABL: TEB Adds Exam Resolution Method.

The Internal Revenue Service (IRS) Office of Tax Exempt Bonds (TEB) has announced it will amend Internal Revenue Manual (IRM) 4.81.5 to include an additional resolution method. The additional method is available when, during an exam of a tax-exempt or tax-credit bond issue, an issuer redeems 100 percent of the outstanding principal amount of the bonds. In that case, the examiner and group manager should consider whether to close the exam without further TEB action, although there may be a referral to another IRS business unit. The memorandum communicating the new method sets out factors to be considered in making the determination to close the exam. The new resolution method is available as of October 18, 2016.

The memorandum is available here.

MSRB Announces Regulatory Topics to be Discussed at October Board Meeting.

The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) will meet October 26-27, 2016 in Washington, DC, where it will discuss mark-up disclosure, pre-trade price transparency and syndicate practices, among other rulemaking and policy topics.

View the MSRB Board of Directors' meeting discussion items.

SEC's Ceresney Tells Muni Market Enforcement Focus is 'Here to Stay'

WASHINGTON – The Securities and Exchange Commission enforcement division's heightened attention on the municipal market and application of new legal techniques to that enforcement are "here to stay," according to the commission's top cop, Andrew Ceresney.

Municipal market participants also shouldn't be surprised if they continue to see the SEC use new-to-the-market techniques like civil penalties for issuers, individual accountability under control person liability, and increased coordination with agencies investigating criminal conduct, he said.

Ceresney made his comments during a keynote speech at this year's Securities Enforcement Forum held here on Thursday.

While the SEC had pursued several larger actions related to munis and public pensions before 2010, Ceresney said, the creation of a specialized unit in that year to address misconduct related to the municipal market and public pensions "by every measure … has paid off in a big way."

Since 2013, the SEC has brought enforcement actions against: 76 state or local government entities, including four states; 13 obligated persons; and 16 public officials. That compares to enforcement actions against 6 government entities, 6 obligated persons, and 12 public officials in the 10 years between 2002 and 2012.

The rise in enforcement actions has been coupled with "important" behavioral changes in market participants, Ceresney said.

For example, in an August 2015 case against Edward Jones, the firm, which was part of a syndicate, settled with the SEC over charges that, instead of selling new bonds to customers at the initial offering price as required, it took bonds into its own inventory and then improperly sold them to customers at higher prices. In some cases, the firm failed entirely to underwrite and offer the new bonds to investors until secondary market trading began, according to the SEC.

Ceresney said the case prompted conversations about whether such activity was endemic to the market.

He also pointed to comments by market participants that the SEC's Municipalities Continuing Disclosure Cooperation initiative has made disclosure a top priority. The initiative promised underwriters and issuers would receive lenient settlement terms if they self-reported instances over the last five years in which issuers falsely said in offering documents that they were in compliance with their continuing disclosure agreements.

The SEC's specialized Public Finance Abuse Unit plans to continue such work and may, over time, normalize some of the first-of-their-kind actions the market has seen.

Issuers, for example, "should not expect a pass on civil penalties," which are a recent development in muni enforcement, Ceresney said.

The SEC first hit an issuer with a civil penalty in a November 2013 action against a public facilities district in the state of Washington. The commission has since reached a settlement with California's

largest agricultural water district that included a $125,000 fine and will have to act on a proposed $1 million settlement with the city of Miami after a federal jury found the city guilty of securities fraud last month.

“Enforcement will scrutinize the nature of the issuer and the sources of funds available to pay a penalty and, with commission approval, seek penalties where appropriate,” Ceresney said. “And in particularly egregious cases, we will pursue penalties even when the source of those funds is the taxpayer base.”

The commission also intends to continue pursuing individuals under a section of the Securities and Exchange Act that allows the SEC to hold public officials responsible for violations based on their control of the municipal entity that engaged in the fraud, Ceresney said. It has pursued charges under the section’s control person liability in two 2014 actions, one against the former mayor of Allen Park, Mich. and the other against the mayor of Harvey, Ill.

Ceresney also reiterated past indications that the SEC is coordinating more with criminal authorities on public finance matters, as it is doing in a pending case against Ramapo, N.Y., its local development corporation, and four town officials. The SEC is alleging the defendants covered up the town’s deteriorating finances while pursuing a number of financings.

The commission also intends to work with units within the U.S. Attorney’s Office and Federal Bureau of Investigation on public corruption matters.

“Our sense is that, where public officials are engaging in public corruption in other contexts … we may also find there is corruption in the awarding of underwriting business or investment advisory contracts for public pension funds,” Ceresney said.

The Bond Buyer

By Jack Casey

October 14, 2016

MSRB Amends Its Quorum Requirements to Include Municipal Advisors.

WASHINGTON – The Municipal Securities Rulemaking Board must now have at least one municipal advisor representative board member present to constitute a quorum under a rule change it filed with the Securities and Exchange Commission on Friday.

The amendment is immediately effective and changes MSRB Rule A-4 on meetings of the board.

The new requirement “ensures representation of all categories of persons required to be members of the board in any quorum established under Rule A-4,” according to the filing.

“The MSRB … believes the proposed rule change appropriately complements the board’s governance procedures that are structured to obtain the diverse views of the public and various entities that are subject to the MSRB’s regulation and oversight and to provide for their representation in the decision-making processes of the board,” the self-regulator said in its filing.

Under the MSRB’s previous quorum requirements, two-thirds of the board’s members had to be

present and of those members, there had to be at least one: public representative; broker-dealer representative; and bank representative. If those conditions were met, any action that was approved by a majority vote of the present members constituted official board action.

The new amendment does not change the rule's previous requirements aside from adding the MA representative portion and making several technical changes to clarify the rule.

The change relates to the Dodd-Frank Act's charge to the MSRB to create a regulatory regime for municipal advisors and municipal advisory services. As part of the new regulatory structure, the MSRB was required to ensure that at least one individual on its 21-member, majority public board was associated with an MA. Any MA board member is considered a regulated member.

The MSRB filed the amendment without asking for or receiving industry comment. However, any participants that would like to comment on the rule change can file a submission with the SEC.

The Bond Buyer

By Jack Casey

October 14, 2016

Dealers: Proposed MSRB Minimum Denomination Rule Would Hurt Liquidity.

WASHINGTON – Dealer groups are concerned that a proposed Municipal Securities Rulemaking Board standalone minimum denomination rule would hurt liquidity and adversely affect participants in the market.

The MSRB's proposed Rule G-49 would incorporate requirements in the board's existing Rule G-15 on confirmation, which was amended in 2002 to prohibit dealers from engaging in transactions with customers in amounts below the minimum denominations of municipal securities set by the issuers. The proposed rule also would include four exceptions to the rule, two of which were included with the 2002 prohibition and two that were proposed in April of this year to help maintain liquidity for below-minimum positions.

The minimum denomination for a bond is the lowest amount of the bond that can be bought or sold, as determined by the issuer in its official statement for the bonds. Issuers sometimes set higher minimum denominations on bonds that are risky to discourage retail investors from buying them. In addition to a minimum denomination, issuers can also set a trading "increment" for their bonds. An increment of $10,000 for example would mean a dealer could sell a customer $110,000 of bonds but not $105,000.

Mike Nicholas, chief executive officer for Bond Dealers of America, said in a comment letter submitted to the MSRB that the proposed rule "is extraordinarily complex and dealers have serious concerns with confusion arising regarding different interpretations of what is a permissible transaction under the rule."

"From a practical standpoint, the result of this complexity is that customers will be left with positions in municipal securities that they will not be able to trade or will only be able to trade at inferior prices," Nicholas said.

He added that the rule should be more narrowly tailored to focus only on those minimum denominations that an issuer sets because of suitability concerns for investors that are not considered sophisticated.

“This change will allow bonds with minimum denominations set due to normal market convention to freely trade without a detrimental impact on liquidity, pricing, or investor protection,” Nicholas wrote.

Leslie Norwood, managing director and co-head of municipal securities for the Securities Industry and Financial Markets Association, said that while SIFMA thinks there are some improvements in the standalone rule, it is overly complex and contains several changes that would “result in less liquidity for customers and create additional and unnecessary challenges for dealers.”

One change proposed by the MSRB would be the elimination of the current requirement that a dealer, in some situations, must obtain a “liquidation statement” from a party that isn’t the dealer’s customer and is the party from which the dealer purchased the securities. The liquidation statement must be obtained before the sale of securities to another customer and must confirm that the original selling customer has fully and completely liquidated its below-minimum position. Dealers had said in previous comment letters that the requirement can be an impediment to using alternative trading systems or broker’s brokers to sell below-minimum positions because of concerns about disciplinary actions, among other things.

While the MSRB is proposing to delete the requirement for liquidation statements, it makes clear in its request for comment that it would still require a dealer purchasing a below minimum position from one of its customers and selling it to another to confirm that the selling customer has fully liquidated its position.

The liquidation statement is key to one of the existing exceptions the MSRB adopted as part of Rule G-15. Under that exception a dealer could sell a below- minimum denomination amount of a bond to a customer if the sale is a result of another customer liquidating his or her entire position in the bonds.

The elimination of the liquidation statement requirement would also affect another exception that was proposed in April and would have required such a statement. That exception would allow a dealer that has bought a customer’s liquidated position in an amount less than the minimum denomination to sell those bonds to one customer with no prior holdings of the bonds and to any customers who already have positions in the bonds.

SIFMA said in its most recent comment letter that it supports the elimination of the liquidation statement, but noted that its reading of the new proposed rule finds the MSRB narrowed the exception that was proposed in April and would be affected by the liquidation statement change. The exception in the proposed rule says that a dealer can use the provision if the below-minimum position it is selling was acquired by the dealer in an interdealer transaction and the amount being sold is the same amount as the below-minimum denomination position that the dealer acquired in the interdealer transaction, according to SIFMA.

Norwood said that it “seems inappropriate” that the proposed rule allows a dealer to use the exception if the dealer acquires the position in an interdealer transaction but doesn’t allow a sale under the exception if the dealer acquired the position from a customer.

“By limiting this exception to positions acquired from dealers, the MSRB is effectively limiting liquidity for customers that have below-minimum denomination positions,” SIFMA said. “We believe

[the exception] should … be available to dealers, regardless of whether the bonds were purchased from a customer or a dealer …. The source of the bonds should not matter in this instance, as that fact has no impact on whether additional below-minimum denomination pieces are being created."

Norwood added that if the proposed rule is amended as SIFMA is requesting, another exception that the MSRB had written into the rule would become redundant and should be eliminated. That exception would allow a dealer to sell bonds to any customer with a prior position as long as the sale brings the customer to or past the minimum denomination. The dealer could then sell the remaining below-minimum position to any number of customers that already hold the bonds.

She also said SIFMA believes a section of the proposed rule that the MSRB called a "new safeguard" in light of its elimination of the need for a liquidation statement should be deleted. The safeguard would prohibit a dealer engaged in an interdealer trade from selling less than all of a below-minimum denomination position that the dealer acquired either from a customer that fully liquidated its below-minimum position or from another dealer. That prohibition would satisfy the MSRB's goal by preventing the creation of additional below-minimum denomination positions, the board said.

Norwood, who emphasized the point of the rule is to prevent dealers from engaging in transactions with customers, not dealers, below the minimum, said the MSRB's idea is "unwarranted, harms liquidity and is inconsistent with the original purpose of the rule of customer protection."

Nicholas made a similar argument, saying that "the practical result of [the rule] denying dealers … flexibility is that dealers will be left with positions that will not trade and, therefore, dealers will not provide liquidity in certain situations."

He cited an example where a dealer buys a customer's liquidated position and then sells only a portion of that position to another customer to bring the second customer above the minimum denomination. Under the proposed rule, Nicholas says, the dealer could only sell the remaining part of the original liquidated position to one or more customers with an existing position in the issue and could not sell the remaining position to another dealer.

"BDA members believe that, in this instance, interdealer sales should be given the same treatment as customer sales," Nicholas said.

SIFMA additionally raised concerns about compliance costs to market participants from the rule and asked that the MSRB more effectively leverage its EMMA system to increase transparency related to below minimum denomination transactions. Part of that effort should be amending MSRB Rule G-32 on disclosures in connection to primary offerings to require the filing of minimum denomination information on EMMA on all transactions, according to SIFMA.

In the proposed rule, the MSRB would eliminate a condition it had put into its two additional exceptions proposed in April that would have required a dealer's sale to a customer to be consistent with any restrictions in the issuer's official statements regarding increment amounts.

Commenters had said the increment condition would unnecessarily limit the transfer of positions held by customers instead of providing more flexibility.

The draft rule will also carry over provisions that applied to past exceptions and require a dealer to use account records it has or written statements the customer provides when the dealer is buying from or selling to a customer. Dealers will also still be required to give or send to purchasing customers written statements telling them that the quantity of securities being sold is below the minimum denomination for the bonds and that its below-minimum nature may adversely affect the

liquidity of the customer's position.

The Bond Buyer

By Jack Casey

October 20, 2016

TAX - KENTUCKY

Wilgreens, LLC v. O'Neill

Court of Appeals of Kentucky - September 23, 2016 - S.W.3d - 2016 WL 5319593

Taxpayer appealed determination of the Board of Tax Appeals upholding county property valuation administrator's property tax assessment on commercial real property, asserting administrator overvalued property under income generation approach by including income generated under commercial lease.

The Circuit Court affirmed. Taxpayer appealed.

The Court of Appeals held that:

- Taxpayer failed to present evidence demonstrating that property tax assessment overvalued property, and
- Property tax assessment under income generation approach, which included rental payments, was reasonable and did not overvalue property.

Taxpayer failed to present evidence demonstrating that property tax assessment by county property valuation administrator overvalued property by using income generation approach for estimating fair cash value, which required consideration of present value of all future benefits, including net rental income generated under triple net lease for retail pharmacy that encumbered property, and thus assessment's prima facie validity was required to be upheld, though taxpayer asserted income from lease was above-the-market. Taxpayer attempted to show property was overvalued by relying on properties very different from the subject property, as none of the allegedly comparable properties were located on same major throughway or anywhere similar.

Property tax assessment of commercial property by county property valuation administrator under income generation approach for estimating fair cash value, which required consideration of present value of all future benefits, including net rental income generated under triple net lease for retail pharmacy that encumbered property, was reasonable and did not overvalue property, though taxpayer asserted lease was above-the-market; lease was part of property, property was capable of generating kind of income derived under lease with or without retail pharmacy by virtue of its location on major throughway, several properties located in same area, such as national grocery store chain, generated similar benefits for their owners, and fact that property was able to generate such income made it more valuable.

Muni Pros Bemoan Lack of Detail in Tax Plans for Infrastructure, Muni

Exemption.

WASHINGTON – As the presidential campaigns have become increasingly focused on personality and name calling, municipal finance pros are begging for more defined infrastructure spending plans and clarity on how the muni tax exemption will fare in the event of tax reform.

The Tax Foundation, in what may be its final evaluation] before Election Day, released its latest report, estimating Hillary Clinton's proposed tax plan would increase federal tax revenue by $1.4 trillion over the next decade.

But in the eight-page report, the think tank said that Clinton proposed several tax policies without indicating exactly how they would work, a criticism that has been made of both candidates.

"Because campaigns are not in the business of crafting legislative language, it is often the case that many proposals are too vague to model precisely," the report read. "As a result, it is necessary to make assumptions about how campaign proposals would operate."

In its report released on Oct. 12, the Tax Foundation said Clinton's plan would increase federal tax revenue by $1.4 trillion over the next decade on a static basis and $663 billion after accounting for the smaller economy and narrower tax base it would create.

The report is an update from the group's January analysis of the Clinton plan. The most recent report accounted for new policies the Democratic nominee introduced, which the Tax Foundation said "significantly" impacted its growth and revenue estimates. These included a 28% limit on the tax benefit from specified deductions and exclusions, leaving the muni exemption standing in question.

The Tax Foundation's January analysis assumed the 28% cap would only apply to itemized deductions but that the limitation would be identical to the cap President Obama has proposed in his last several budget requests.

Mike Nicholas, chief executive officer of Bond Dealers of America, stressed the importance of tax-exempts for infrastructure as uncertainty over the muni exemption lingers.

"If a concern of either candidate is in reducing fiscal burdens on localities, while simultaneously rebuilding the nation's infrastructure and putting people back to work, then maintaining the tax exemption should be of paramount importance," Nicholas said. "It is our hope that this tool is not compromised by placing any cap or limit on the value of the tax exemption."

Tax Foundation director of federal projects Kyle Pomerleau, who compiled the report, said most of the revenue gain is due to increased individual income tax revenue that the group projected to create roughly $817 billion over the next decade. Clinton's proposed estate tax changes will raise an additional $310 billion over the next decade, while increased corporate and payroll taxes would account for $300 billion in revenue, the group said.

The $1.4 trillion projection is in line with a Clinton plan estimate released this month by the Tax Policy Center, which also projected an additional $2.7 trillion in raised revenue over years 11-to-20 of implementation.

TPC also estimated that Donald Trump's plan would increase the federal debt by $7.2 trillion, which the Republican took exception to, calling it a "fraudulent analysis."

Trump's revised plan included reduced marginal tax rates and increased standard deduction

amounts but lacked many “important details,” TPC said, leaving analysts to make many assumptions.

Late last month, the Tax Foundation released an updated analysis of Trump’s plan – which would reduce the current individual income tax brackets to three from seven with a 33% top rate. The planwould also reduce the corporate rate to 15% from 35%. The Tax Foundation analysis estimated Trump’s plan would reduce federal revenues by $11.98 trillion over the next decade.

Many muni participants have pegged 2017 as the year for long-awaited tax reform legislation, leaving some eager for more detailed proposals as the presidential election nears.

Frank Shafroth, the director of the Center for State and Local Government Leadership at George Mason University, said Monday that estimates can be made with the plans in their current forms, but more detail would be welcome.

“It clearly makes it harder,” Shafroth said. “But you get a general idea. The mainstream organizations that have evaluated Trumps plan have said would it would increase the debt and deficit. There’s some consensus that the Clinton plan would modestly reduce the deficit.”

He called the Trump plan a “double whammy” in its current form due to the fact that it would substantially lower rates and enhancing the benefits from capital gains. This could discourage investment in munis, he said.

The U.S. Conference of Mayors earlier this month called on both candidates to maintain the tax-exempt standing of munis in their tax plans or risk costing cities billions of dollars. Should the incoming president cap the muni exemption at 28%, as President Obama has proposed in his last several budget requests, cities would see roughly $200 billion in additional costs.

Should the exemption be removed entirely, the group said that figure could balloon to $500 billion and prohibit cities from making much-needed investments in infrastructure. Nicholas also stressed the economic effects of any limit or removal.

“We would hope that [Trump] views tax-exempt municipal bonds as a proven, economically efficient solution to the U.S. infrastructure problem,” Nicholas said. “BDA urges both candidates to avoid eliminating or placing an unnecessary limit or cap on the value of the municipal bond interest exemption and we look forward to learning more about their individual tax plans in the coming days leading up to the election.”

Using figures provided by the Tax Foundation and the Tax Policy Center, the Committee for a Responsible Federal Budget (CRFB) estimated that Clinton’s infrastructure spending could cost up to $300 billion, while Trump’s could cost between $500 and $600 billion.

Clinton has proposed allocating $25 billion to direct public investment as well as $25 billion to a new national infrastructure bank that would be leveraged to support additional loans as well as Build America Bonds, which would be renewed and expanded under her plan.

Still, CRFB said that both proposals lack the infrastructure spending details needed to make anything beyond a preliminary cost estimate, especially Trump’s, which it said is “assumed to be insignificant.” Trump’s estimate was based on statements he made planning to double the cost of Clinton’s infrastructure plan.

The Bond Buyer

By Evan Fallor

October 17, 2016

Ceresney Warning: Expect Continued SEC Enforcement Activity Regarding Municipal Securities.

In the keynote address at the 2016 Securities Enforcement Forum last week, Andrew J. Ceresney, Director of the SEC's Division of Enforcement, made clear that the SEC will continue and even expand its focus on the public finance market, particularly in the municipal securities area.

Ceresney noted that enforcement activity in the municipal securities arena has increased substantially. In the 10 years from 2002 to 2012, the SEC filed enforcement action against 6 government entities, 6 obligated persons and 12 public officials. In contrast, the Commission has filed enforcement actions against 76 government entities, 13 obligated persons and 16 public officials in the last 3 1/2 years.

The SEC has been conducting well-publicized enforcement sweeps in the area. Perhaps the most well-known of those is the Municipal Continuing Disclosure Initiative (reported about here), which caught up 72 broker-dealers and 71 municipal underwriters. Also of note was the Puerto Rico Junk Bond sweep, which illustrates the increased use of surveillance in the area. The junk bond offering was considered appropriate for only institutional investors and therefore had a minimum denomination of $100,000. Recognizing that some dealers might nevertheless try to break up the bonds into smaller denominations for retail customers, the SEC staff surveilled the trading, identifying a number of sales below $100,000. Settled enforcement actions were brought against 13 firms as a result.

In addition to the sweeps, the Commission has been using remedies and theories that, up until recently, have been seen only in the non-municipal context. Among those are the following:

- **Temporary Restraining Orders.** In 2014, the first request for a temporary restraining order was filed to stop an offering of bonds by the City of Harvey, Illinois, until certain safeguards regarding the use of the proceeds could be put into place. The SEC alleged that in connection with prior offerings city officials had diverted $1.7 million in proceeds to pay the city's operational expenses, as opposed to the projects that were supposed to be funded by those earlier bonds.
- **Civil Penalties Against Municipal Issuers.** The first imposition of a civil penalty against a municipal issuer occurred in 2013. In that case, a public facilities district in the state of Washington, which had issued about $42 million in bond anticipation notes, was alleged to have misled investors by failing to disclose that an independent consultant had questioned the projections contained in the official statement for the notes. Ceresney cautioned that the Commission will continue to pursue penalties against municipal issuers when appropriate, "even when the source of those funds is the taxpayer base."
- **Controlling Person Liability for Government Officials.** In 2014, the SEC used section 20 of the 1934 Act for the first time against a former government official. That case concerned a bond offering by the City of Allen Park, Michigan, to finance a movie studio project. The SEC alleged that the offering documents contained misleading statements about both the viability of the project and the financial condition of the city, including its ability to service the bond debt. The SEC alleged the former mayor of Allen Park was liable as a controlling person because of his authority and control over the city.
- **Injunctions Against Participation in Future Offerings.** The SEC is also seeking to enjoin issuer officials from participating in future municipal bond offerings. Thus, for example in the City

of Harvey case discussed above, the mayor agreed to an order enjoining him from participating in future offerings.

- **Coordination with Criminal Authorities.** In 2014, the SEC's increased coordination with criminal authorities in the municipal finance area resulted in what may be the first filing of municipal bond-related criminal securities fraud charges. On April 14, 2016, the SEC brought civil fraud charges against Ramapo, New York, its local development corporation and four town officials, alleging they hid deteriorating financial conditions from bond investors. That same day, the U.S. Attorney for the Southern District of New York unsealed an indictment against a former town supervisor and executive director of the development corporation, charging them with securities fraud, wire fraud and conspiracy. Ceresney promised that coordination between the SEC and the public corruption and public integrity units of the U.S. Attorneys' offices and the FBI will continue to increase, particularly in the investigation of whether there is corruption in the awarding of underwriting business.

Ceresney closed with a warning to the municipal securities industry: "[O]ne municipal securities industry commentator recently observed of the last 3½ years that '[t]here is a definite change in tone.' I am here to say that this change in the tone of Enforcement is here to stay. You can expect continued activity in this area to protect investors."

Barnes & Thornburg LLP

by Anna N. DePerez

Tuesday, October 18, 2016

Anne N. DePrez is a member of Barnes & Thornburg LLP's Litigation and Corporate Departments. Co-chair of the firm's Financial, Corporate Governance and M&A Litigation Practice Group, she is also a member of the White Collar Crime Defense and Government Litigation Practice Groups. She concentrates her practice in the areas of securities and business litigation. Her securities litigation practice includes representing issuers, directors, underwriters, broker-dealers and others clients in securities fraud class actions, securities regulatory matters, and customer…

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Cities, States Need Top Financial Talent, but Fall Short on Pay.

Help wanted: Top-notch financial talent needed to face intense regulatory scrutiny; no bonuses or equity awards; modest civil servant's paycheck.

That is not a job that would appeal to most of the nation's best and brightest financial executives, who enjoy the big cash and stock incentives—not to mention the prestige—offered by the private sector. But states and towns increasingly need such executives to manage bond sales and pension deficits, as they come under closer government oversight.

"Getting people in government is not easy," said Robert Mayer, chief fiscal officer for the town of Fairfield, Conn. "They're all making more than the mayor."

Municipal finance chiefs in the Midwest earn between $85,000 and $160,000, depending on the town's size and affluence, while those working on either coasts can expect slightly more, said Heidi Voorhees, head of GovHR USA LLC, an Illinois recruiter for the public sector and nonprofit groups. By contrast, the median compensation package—salary, bonus and stock options—for public-company finance executives was valued at $3.57 million, based on proxies filed as of late June.

"It's always our toughest recruitment," said Ms. Vorhees.

Adding to the difficulty: Municipalities and for-profit businesses follow very different bookkeeping and budget rules, she said.

One thing many public-sector CFOs have in common with private-sector peers is that they have to answer to the Securities and Exchange Commission. The agency regulates municipal-bond sales, as well as corporate offerings, and can impose fines for violations.

While most corporations have the resources they need to monitor compliance, SEC disclosure rules pose a special challenge for cash-strapped states and cities, which are under pressure to do more with less. While disclosure rules are less stringent for municipalities than for companies, that doesn't get them off the hook for even small lapses.

If a municipality is 30 days late in filing its budget with state and federal regulators, the SEC considers that a disclosure violation, even if the delay is unlikely to harm its bondholders.

The SEC is "really naive in their understanding of what municipalities are capable of," said Jeffrey Esser, chief executive of the Government Finance Officers Association, which has about 18,000 members in the U.S. and Canada.

In August, the SEC reached settlements with 71 municipalities and other public entities across 45 states over alleged bond-disclosure violations. Many of the parties that settled had voluntarily reported their violations, such as failing to disclose a change in tax-revenue forecasts.

The town of Fairfield was among those that self-reported, a move that tends to win leniency. It settled with the SEC without admitting or denying wrongdoing or paying a monetary penalty.

Mr. Mayer, Fairfield's fiscal chief, is a career finance executive who left Wilkes-Barre, Pa., where he held a corporate job as a divisional chief executive, to be closer to his wife and daughters, who didn't want to relocate.

"To keep myself a little bit busy I ended up getting into local politics," he said. In 2012, Fairfield's first selectman appointed him chief of staff. When the CFO job later opened up, Mr. Mayer was asked to step in. "Most good CFOs could make a positive impact," he said of government service.

Most towns, hard-pressed to find money for such projects as pothole repair, park upgrades or a new public-transportation extension, are reluctant to spend precious cash staffing up their finance departments to ensure regulatory compliance. "The attention isn't there, the budget isn't there," Mr. Mayer said.

Despite such pressures, municipalities and related entities don't get a free pass, Andrew Ceresney, director of the SEC's enforcement division, said at a conference last week. They have a total of over $3.7 trillion in outstanding debt, spread across about 44,000 issuers, compared with the about 8,600 corporate issuers the SEC regulates, he said.

Mason Neely, finance chief of East Brunswick, N.J., voluntarily reported to the SEC that his town

failed to let investors know that S&P Global Ratings dropped coverage of the town's sewer bonds when it decided to pay them off early. He said that while he takes responsibility for not immediately informing bondholders, the violation was minor.

Another potential pitfall for public-sector CFOs is that their predecessors often leave them with decades worth of financial information they know little about. When their town or regulators want to investigate something, "Well, I didn't know that" is a common refrain, said J.T. Klaus, a partner at Kansas law firm Triplett Woolf Garretson LLC.

Succession planning is also nearly impossible for some towns and cities, said Mr. Klaus, who represents Andover, Kan., one of the 71 municipalities and related nonprofits that recently settled with the SEC. "There are not enough people living in the community who can do the job," he added.

Mr. Klaus declined to discuss specifics of the town's settlement.

To lure financial talent, towns need to modernize and be more flexible when it comes to issues like work-life balance, given they lack the pay scale to compete with the private sector, said Elizabeth Kellar, CEO of the Center for State and Local Government Excellence, a research group focused on helping municipalities meet staffing needs. "The governments that are making the best decisions are upgrading on technologies," she said.

THE WALL STREET JOURNAL

By MAXWELL MURPHY

Oct. 17, 2016 4:21 p.m. ET

New Jersey, Alaska deals Will Lead Big Week in Muni Supply.

U.S. municipal market supply will likely be among the highest in a decade when an estimated $16.7 billion of bonds and notes goes up for sale next week, lead by deals from New Jersey and Alaska.

With $16.5 billion in expected bond sales and $213 million in notes, according to Thomson Reuters estimates on Friday, the week would be one of the 10 biggest for supply in the last 10 years. Looking at just bonds, it would be the biggest since December 2006.

New Jersey will sell $2.76 billion of highway reimbursement notes through Bank of America Merrill Lynch, and Alaska plans to offer $2.35 billion of taxable pension obligation bonds via Citigroup, with both deals set to price on Wednesday.

Muni supply is surging lately. This week, an estimated $15.9 billion of bonds and notes hit the market.

"We expect the issuance pipeline to remain robust over the next few weeks as some issuers look to place deals prior to the November general election and a potential (Federal Reserve) rate hike in December," Barclays analysts said in a Friday report.

Barclays said the weakness in the muni market "is technical in nature, and as soon as supply subsides, the market should regain its footing."

As this week's big supply hits, U.S. municipal bond funds' net flows turned negative for the first time

since the end of September 2015, according to Lipper, a unit of Thomson Reuters Corp. Funds reported nearly $136 million of net outflows in the week ended Oct. 19.

Next week's biggest competitive offering comes from Maryland, whose department of transportation will sell more than $690 million of new and refunded bonds in a two-part deal on Wednesday.

Reuters

Fri Oct 21, 2016 | 3:20pm EDT

By Nick Brown

(Reporting by Nick Brown and Karen Pierog; Editing by Lisa Shumaker)

Q3 2016 Municipal Credit: It's Never Boring In Muniland!

There was a tremendous amount of volatility in the quarter in terms of state ratings. This is unusual because state ratings tend to be sticky – it takes major deterioration to cause a downgrade. States have vast resources and the ability to institute revenue increases and reduce budgets. States are also prohibited from filing for bankruptcy – they cannot just fold up and go away – which is true of most municipal issuers as well. States can manage spending by reducing funding to state instrumentalities and municipalities in the state as well as by reducing services provided, thus reducing the budget. However, as has been cited in our past commentaries, the factors that have caused state ratings to be weakened and eventually downgraded include (1) the severe underfunding of pensions due to overpromising and falling short on both required contributions and investment returns; (2) slow or declining revenue and economic growth combined with dipping into reserves rather than cutting budgets or raising revenues – also referred to as structural imbalance; and (3) exposure to the oil and gas industry, which has led to volatile revenue and economic growth and financial operations.

Five states were downgraded during the third quarter:

- Alaska was downgraded by Moody's to Aa2 due to political instability, structural imbalance, outsized pension liabilities, and economic difficulties caused by low oil prices -basically, for all the reasons cited above!
- Mississippi was changed by Fitch to AA from AA+ due to weaker than expected operating performance and, in this case, a change of methodology in Fitch's rating of states.
- Kansas was downgraded by S&P to AA- due to structural budget pressures, drawdown of reserves, and deferral of pension contributions.
- West Virginia was downgraded by Fitch to AA because of economic and fiscal challenges associated with the state's dependence on the coal industry, and Fitch continues to maintain a negative trend on the state's rating as a consequence of significant domestic and international momentum to reduce coal utilization.
- Finally, Illinois was again downgraded by S&P to BBB on September 29thafter just having been downgraded by the agency in June. The downgrade reflects continued weak financial management and increased long-term and short-term pressures tied to declining pension funding levels. Illinois pensions are 41% funded, compared with an average funding level of 75% for the states, per a recent Pew Charitable Foundation brief.

New Mexico's Aaa rating was put under review for a downgrade by Moody's because of an extremely large revision in 2016 and 2017 revenues, resulting in a large drawdown of reserves. The New Mexico legislature has a history of promptly addressing issues and has scheduled a special meeting. Expect a downgrade if the structural imbalance is not addressed. Although not a downgrade, the flooding in Louisiana (Aa3/AA by Moody's and S&P, both with negative trends) devastated a state already weakened by exposure to the oil and gas industry. However, the long-term ramifications remain to be seen, as the economic stimulus from rebuilding may help the state's revenues.

Pennsylvania received a reprieve in the form of Moody's changing the negative trend to stable on its Aa3 rating. The revision of the commonwealth's outlook to stable recognizes that Pennsylvania's problems – while sure to persist – are unlikely to lead to sharp liquidity deterioration, major budget imbalances, or other pressures consistent with lower ratings for US states. After the revision to stable, Pennsylvania resorted to interfund borrowing, which is a credit negative, though Moody's maintained the stable trend.

Alaska's AA+ S&P rating was removed from CreditWatch negative – which indicates S&P was conducting a review that may have resulted in a downgrade; instead, it put in place a negative trend – a contrast to Moody's downgrade action. Both agencies recognize that the state has a sizable structural imbalance, i.e., annual expenses exceed annual due to low oil prices and dependence on the oil industry; but the state still has substantial reserves. However, Moody's views more negatively Alaska's political instability resulting from ineffective governance and a divided legislature, which impacts long-term decision making.

States continue to be pressured, though there are bright spots.

Hawaii was upgraded by Moody's and S&P to Aa1 and AA+, respectively, due to economic and revenue growth resulting in restoration of strong reserves and strong fiscal management. Minnesota was upgraded to AAA by Fitch – above the Moody's and S&P ratings of Aa1 stable and AA+ positive – due to its broad-based economy, low debt, stable employee benefits, and strong, flexible finances and management.

To put this in perspective, the average rating for a state is AA and has recently been trending down. Generally, a state rating in the single-A category is considered very low.

Ten states are rated AAA by all three rating agencies. They are: Delaware, Georgia, Iowa, Maryland, Missouri, North Carolina, Tennessee, Texas, Utah, and Virginia. They stand in contrast to those states that have not been faring so well and that we have expounded on in the past. These include Illinois (rated Baa2, BBB, BBB+) – plagued by huge pension and revenue issues, New Jersey (A2/A/A) – dealing with revenue, economic, and pension issues, Kentucky (Aa2, A+, AA-) – affected mostly by pension issues, and Connecticut with all three ratings in the double A category at Aa3, AA-, AA-, but the ratings are tenuous due to the inability of the state to come up with long-term solutions as it continues to lose population.

The continuing pressure on state ratings puts other areas on our radar screen, including the increasingly visible burden of OPEB (other post-employment benefits), in addition to pension benefits, that will now need to be disclosed in a concise manner in accordance with GASB 74 and 75, to be instituted for fiscal years ending after June 15, 2016 and June 15, 2017, respectively. Many states and municipalities fund on a pay-as-you-go basis, so to estimate future obligations may add, or rather make more visible, significant liabilities. Governments can change other post-employment benefits more easily than pensions, which are constitutionally mandated; however, OPEB burdens are growing.

We will also be sensitive to state agencies and municipalities that may experience reduced funding from the state. We will evaluate credits to make sure there is financial flexibility in the form of strong reserves and revenue flexibility – which are characteristics of highly rated bonds. For example, the State of Maryland has announced it will be reducing funding to counties in the state. For the most part, Maryland counties are strong, although like most counties they have few revenues and numerous social service spending obligations. State institutions of higher education and state housing agencies have traditionally been hit by state reductions; however, these institutions are currently displaying resilience, and many should be able to handle reduced state funding.

Other developments over the quarter were:

Zika spread to the United States and may have credit implications for Puerto Rico and Miami – these situations will be watched for long-term implications. We will also watch for spread of the virus to other locales. Immediate effects may be a decline in tourism and population, while longer-term implications could be increased social service spending. These outcomes will depend on preventative measures, which may be helped by recent congressional approval of Zika funding.

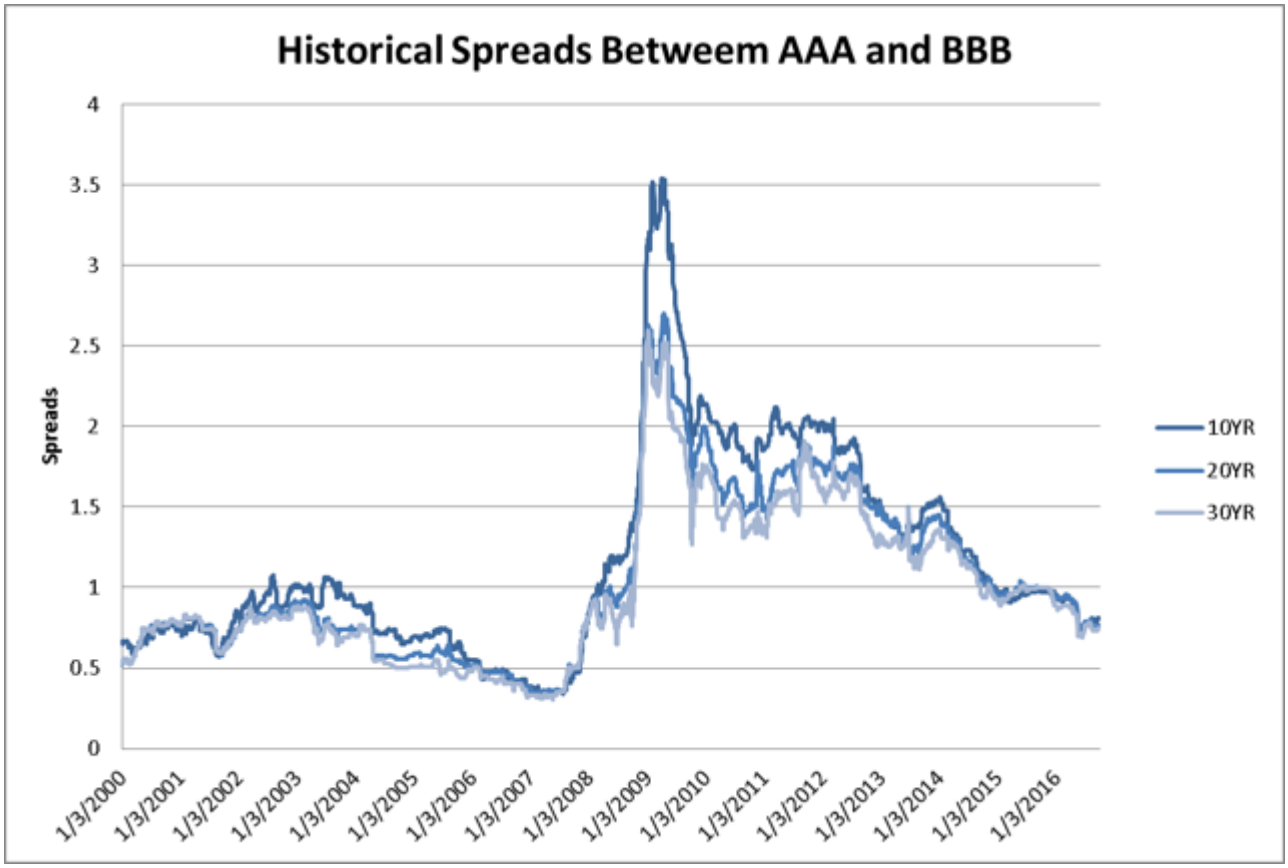
Bond insurance industry strength was affirmed after rating agencies reported that bond insurers' exposure to numerous defaulted entities in Puerto Rico would not affect their claims-paying ratings. Moody's, KBRA, and S&P all published reports or updates in the quarter.

Insurer Ratings	Moody's	KBRA	S&P
AGC	A3	AA+	AA
AGM	A2	AA+	AA
National	A3	AA	AA-

The City of Chicago, suffering from pension problems and political gridlock, approved a rate increase for its water and sewer utility to help prop up one of its severely underfunded pension funds. We will be watching to see if this move causes contagion risk to other city utility systems.

One reason municipal utilities have gotten stronger is limits on the ability of municipalities to use utilities as a cash cow. This trend came about at least 20 years ago when utilities needed market access to fund improvements to their systems to comply with clean water and clean drinking water acts. Rating agencies and investors looked unkindly on unlimited and unscheduled transfers, so there was pressure to make transfers predictable. Consequently, transfers to the general fund of a municipality from its utility are generally limited to something akin to a tax or a fixed percentage of revenues. This provides certainty for the utility to accumulate funds for operations, maintenance, and capital improvements as well as reserves for unexpected events – and to maintain strong credit ratings. As has been widely reported, there is considerable underfunding of our nation's infrastructure, including water and sewer systems. Thus, we expect increased debt issuance from the sector, so any extra "tax" on the system to fund something outside of the system will be scrutinized for its overall burden on the utility involved.

Our strategy of investing in higher-rated bonds will continue as we move into a rising interest rate environment. Some pundits think that because municipal bonds are generally so safe, lower-rated and longer-dated bonds will provide enough yield to compensate; however, credit spreads tend to widen with rising interest rates. You can see the narrowing spread as interest rates decline in the following chart, which compares the yields of AAA-rated bonds with BBB bonds over time.



Source: RBC Capital Markets, LLC

Interest rate increases contribute to outperformance of higher-quality credits. Although the absolute return may be negative, the performance of AA and AAA-rated bonds will be better than that of lower-rated bonds.

This is why Cumberland Advisors invests predominantly in AA bonds and single A-rated bonds that are stable or improving.

David Kotok
Registered investment advisor, portfolio strategy
Cumberland Advisors

By Patricia Healy, CFA

Oct.23.16

P3 Digest: Week of October 17, 2016

Powered by P3 INGENIUM: The most comprehensive source for P3 project updates in North America

State-level debates over how to fund transportation projects continued to dominate the landscape over the past week with proposals ranging from gas and sales tax hikes to toll charges to mileage-based fees. Meanwhile, legislators continue to consider bills that would make it easier for agencies

to enter into transportation P3s and one state continues to spur innovation by encouraging developers to submit original proposals for such projects.

Continue reading.

Presidential Politics a Boon to the Muni Market?

This year has seen a boost in bonds sold by states and localities in the municipal market. Experts are predicting 2016 will be the busiest year in a half-decade. RBC Capital Markets' Chris Mauro said this week that October will likely represent the third consecutive month of record bond issuance volume. In fact, he predicts that total issuance this year "will likely exceed the $433 billion record set in 2010 — a particularly impressive accomplishment, given that Build America Bond issuance greatly inflated 2010 volume."

The Takeaway: A big driver of all this activity on the governments' end is uncertainty. The biggest question mark has been over who will win the presidential election, followed closely by whether or not the Federal Reserve will raise short-term interest rates by the end of the year. Given the vastly different positions of the candidates, governments are unwilling to gamble on the tax and spending policies of a new administration. As such, Mauro predicts bond issuance could creep up to $450 billion by the end of the year.

GOVERNING.COM

BY LIZ FARMER | OCTOBER 21, 2016

Feeling the Squeeze: Pension Costs Are Crowding Out Education Spending.

Abstract

Almost every state increased retirement benefits for teachers in the booming 1990s, but the additional promises were not accompanied by responsible funding plans. By 2003, the funding for teacher pension plans overall was short by $235 billion; and by 2009, pension debt had more than doubled, to $584 billion. The strong bull market since the Great Recession has barely put a dent in the shortfall, which still totals approximately $500 billion. Another way of understanding the scale of the problem is by looking at pension debt per pupil—which increased by an inflation-adjusted $9,588 between 2000 and 2013. Over this period, the growth of pension debt per pupil was more than nine times larger than the increase in total annual education expenditures per pupil. Almost every state has experienced large pension cost increases, but eight states—Arizona, Colorado, Indiana, Michigan, North Carolina, Nevada, Texas, and Wisconsin—experienced the double whammy of declining per-pupil expenditures and growing pension contributions.

Key Findings

Taxpayer contributions to teachers' retirement plans are expected to grow substantially over the next decade. But the underfunding shortfall is so large that aggregate pension debt will also continue to grow. Retirement costs per pupil are already approaching 10% of all education expenditures. Without meaningful reform, these costs, as well as the aggregate pension debt vowed

to teachers' plans, will continue to rise and continue to crowd out education spending on the state and local levels.

Per-pupil spending on equipment, facilities, and property fell by 26% between 2000 and 2013, likely resulting in a growing backlog of expensive repairs and replacements that will need to be made sometime down the road. Spending on instructional supplies (e.g., textbooks) declined by 10% per pupil. More than half of states (29) spent less per pupil on instructional supplies in 2013 than in 2000; in several states, the decline was substantial: Arizona (37%), California (30%), Michigan (39%), and Oklahoma (30%). Teachers' salaries overall were basically flat between 2000 and 2013, and retirement benefits were reduced in almost every state, sometimes by very large amounts.

The vast majority of taxpayer contributions into teachers' pension plans are now used to pay down pension debt owed for past service rather than to pay for new benefits earned by today's teachers. As the value of this debt has increased, most current teachers have experienced stagnant salaries and reduced retirement benefits, while pending on classroom supplies, equipment, and building upkeep has declined relatively or even absolutely.

Read the full report.

The Manhattan Institute

by Josh B. McGee

October 18, 2016

Josh B. McGee is a senior fellow at the Manhattan Institute and vice president of public accountability at the Laura and John Arnold Foundation. In 2015, McGee was appointed to chair the Texas Pension Review Board by Governor Greg Abbott.

Funds From Japan to Europe Pivot to Munis as Credit Appeal Wanes.

If you're a pension fund or insurer from Europe or Japan, U.S. investment-grade credit may be getting a little passe.

That's the view of Principal Global Investors, which sees taxable municipal notes becoming a more popular alternative for some overseas-based institutional investors as they chase additional yield in a world of record-low central bank interest rates. Tax-free munis typically have little appeal for overseas buyers, who may not benefit from the securities' exemption, although local government notes with taxed payouts do draw buyers from abroad.

"From a non-U.S. investor standpoint, taxable munis have the same yield as you get from U.S. investment-grade credit," said Mark Cernicky, who oversees about $100 billion at Principal in London. "It's higher credit quality, they have much lower default rates, and it's also a play in infrastructure."

The average yield on taxable munis due in 5-to-10 years is 3 percent and the rate on similar tenor U.S. corporate notes is 2.95 percent, Bank of America Merrill Lynch indexes indicate. While data compiled by Bloomberg show issuance of investment-grade corporate bonds in the U.S. has already topped $1.17 billion this year and is running at a record pace, Cernicky said the advanced age of the current credit cycle will spur investors to pivot more toward taxable munis.

The increasing prevalence of behavior that's more friendly to shareholders than creditors — such as acquisitions — may also encourage that shift, as could the prospect that the European Central Bank will eventually dial back stimulus measures that have supported the corporate bond market, he said in an interview in Sydney on Thursday.

"You're going to continue to see that diversification trend in taxable munis," Cernicky said. Local governments sell taxable bonds when the issues don't meet Internal Revenue Service standards for tax-exemption, such as for pension funding because the money is invested to make a profit, or if a certain amount of proceeds goes toward commercial use.

Pension funds and other institutional buyers are also looking to do more private lending to companies as a way of diversifying the riskier part of their portfolios away from speculative-grade bonds, Cernicky said. There's been a "significant increase" in requests for such arrangements among Japanese and European clients, he said.

"They're reducing high-yield exposures and going into private credit, illiquid credit or private lending," he said. "You get a similar type of return, but you get no mark-to-market volatility."

The shift has come amid a reduction in junk bond sales this year, with new issuance in the U.S. 19 percent less than at the same point in 2015, according to data compiled by Bloomberg. Cernicky is tipping that to turn around next year, with energy, metals and mining companies leading the charge in the world's biggest non-investment-grade note market. He also expects more industrial companies to make their debut in the European junk bond market next year.

"The story in 2017 is likely going to be about high-yield issuance, not so much the IG issuance," he said. "In Europe, you see a lot of new companies coming into the market which is actually pretty positive."

Bloomberg Business

by Ruth Liew

October 20, 2016 — 8:28 PM PDT

California Finds Wells Fargo Absence Doesn't Dent Demand.

California Treasurer John Chiang's decision to ban Wells Fargo & Co. from underwriting state debt isn't interfering with demand for the securities of the municipal market's biggest issuer.

Citigroup Inc., Morgan Stanley and Jefferies LLC each bought portions of California's $1.65 billion general-obligation bond deal Tuesday, with 10-year tax-exempt securities priced to yield 1.93 percent, according to data compiled by Bloomberg. That's about 0.2 percentage point more than benchmark securities, a gap that's narrower than the 0.24 percentage point difference for debt issued by Washington, which is ranked two steps higher than California.

In a deal in which Loop Capital replaced Wells Fargo earlier this month, 10-year lease revenue bonds were priced to yield 1.94 percent, or about 0.19 percentage point less than an index of similarly-rated revenue securities, data compiled by Bloomberg show.

While politics are at the forefront, what's got investors' attention is the state's economy. Tax

collections beat projections in September for the second straight month, according to the state controller. A real-estate market revival and an economy driven by Silicon Valley's technology industry, coupled with measures such as automatic allocations into reserves, have helped turn around a spate of deficits into surpluses.

"We like what's going on there," said Nathan Harris, senior analyst in Boston for Appleton Partners, which manages $7 billion in municipals and will consider buying some of the debt. "They certainly have the economic tailwind."

Even through the extra yield on California 10-year debt over top-ranked securities is creeping up, it's far short of the 0.67 percentage point high most recently reached in June 2013.

Although Wells Fargo is barred from underwriting negotiated bond offerings for a year, the firm could have won Tuesday's competitive deal because of laws requiring the state to pick the lowest bids, said Chiang's spokesman Marc Lifsher. Gabriel Boehmer, a spokesman for Wells Fargo, said he couldn't comment before the sale, which Lifsher said is likely the last general-obligation one for the year.

The winning banks should find eager buyers. High tax rates on the wealthiest residents boost the value of the tax exemption of the securities. Even with lower yields, "if you're a California resident and you're in the one of the top tax brackets, it can still be attractive for you," Harris said.

At the same time, headwinds loom. With income-tax revenue dominated by the wealthiest, who tend to own stocks, California is highly susceptible to equity-market swings. Temporary increases in sales and income taxes approved in 2012 — which helped the state rebound from the recession — will expire. Governor Jerry Brown's administration expects that the loss would help create a $4 billion budget gap by fiscal 2019-2020.

A November ballot measure asks voters if the income-tax hikes should continue through 2030. But even its rejection wouldn't necessarily set back the state, said Ben Woo, senior analyst in Minneapolis for Columbia Threadneedle Investments, which manages $24 billion in local debt. He said it might deter lawmakers from spending beyond their means, which would boost the state's creditworthiness. The firm may consider buying the new securities, he said.

"With the low double A rating and the strong economic recovery in the state in general, it gives a reasonable level of comfort to investors," Woo said.

Bloomberg Business

by Romy Varghese

October 18, 2016 — 2:00 AM PDT Updated on October 18, 2016 — 11:02 AM PDT

San Franciscans Turn to Bonds to Dodge 75 Hours Stuck in Traffic.

A key part in San Francisco's economic engine is sputtering.

The San Francisco Bay Area Rapid Transit District, which runs trains connecting San Francisco to two nearby counties, transports about 20 percent of the local payroll. While the region's tech-fueled economy is booming, the agency is struggling to handle the record ridership that has grown by more

than 25 percent in five years.

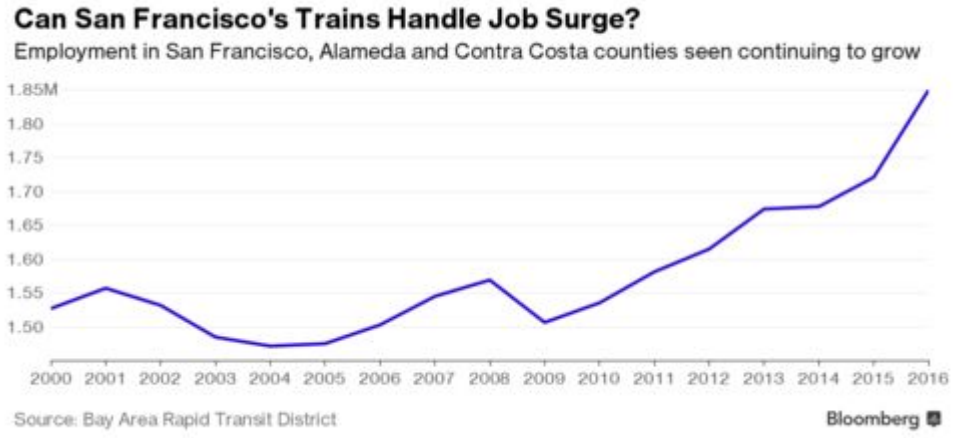
To keep pace, officials are asking voters in San Francisco, Alameda and Contra Costa counties on Nov. 8 to authorize the sale of $3.5 billion in general-obligation debt, part of an overall $9.6 billion capital plan. The agency wants to replace original rails and power cables and modernize stations in a bid to cut delays now estimated at more than 400 hours annually.

Without a fix, commuters could abandon the service called BART — exacerbating clogged freeways, undermining new corporate relocations and setting back the area that's already straining under the most expensive residential real-estate market in the country. Drivers in the San Francisco area wasted an average of 75 hours last year sitting in traffic, tying it for the second-worst congestion behind Los Angeles with Washington, D.C., according to analytics firm Inrix.

Voter Outlook

"Having a wider economic growth in the Bay Area requires a reliable mass transportation infrastructure," said Ben Woo, senior analyst in Minneapolis for Columbia Threadneedle Investments, which manages $24 billion in local debt, including the agency's bonds. "If BART becomes unreliable, and whether that would have any implications to the economic growth in the Bay Area, that for us is a valid question we have to ask and answer if the ballot is not passed."

No independent polls have gauged support for the measure, which voters are facing along with a record number of local initiatives and 17 statewide ones. The sheer volume creates uncertainty over which ones will pass, said Howard Cure, head of municipal research in New York at Evercore Wealth Management. At the last presidential election, about 58 percent of county measures such as the district's that require approval of two-thirds of the electorate passed, according to Michael Coleman, fiscal policy adviser for the League of California Cities.



The agency started in 1972 with 12 stations and carried 100,000 passengers its first week. Now, trains with cushioned seats and hanging straps rumble by 45 stations and pick up more than 400,000 people on an average weekday. Jobs in the region number 1.8 million, according to Fitch Ratings.

Officials expect daily ridership to increase to 500,000 by 2025 and 600,000 by 2040 — if they can maintain the system in good working order. As is the case with many transit agencies across the country, BART found more federal funding — and more eager local politicians — to expand lines rather than to invest in the existing nuts and bolts of the system. The average age of rail cars is 30

years, compared with 26 in Chicago and 21 in New York, according to an agency presentation.

Earlier this year, the district acknowledged to commuter outrage that 70 percent of the cameras in trains were decoys. New trains will have working surveillance.

BART officials say they have invested in capital projects with more operating revenue than is typical for a transit agency, with $500 million over the past five years. But repairs can no longer suffice as parts and technology become obsolete.

Employment Boom

“We just couldn’t get enough money and get this done fast enough to keep up with the failing infrastructure,” said Dennis Markham, manager of financial programs and planning for the agency. At the same time, the regional job boom continues. Employment in the three counties served by the rail will grow by about 30 percent over 19 years and the population by 18 percent, bond documents show.

It was general-obligation debt that funded the first tracks, with $792 million issued from 1963 through 1969. Voters last approved general obligations in 2004 for earthquake safety. If they sign off on this measure, the annual property tax bill on average would increase by 80 cents to about $17.50 per $100,000 of assessed value, according to district estimates.

“It’s really unsexy infrastructure stuff, but it’s core in keeping us a safe and reliable system,” said Alicia Trost, a spokeswoman.

If the ballot measure fails, it won’t “cripple” the system since it generates enough to fund repairs, said Eric Friedland, director of municipal research in Jersey City, New Jersey, for Lord Abbett, which manages $20 billion of local debt including the agency’s. More than 70 percent of the operating expenses of the district, which S&P Global Ratings grades at the top AAA rank, is covered by fares compared with about 40 percent for many transit agencies, Friedland said.

Still, at some point they need to find a significant source of revenue, he said. Fitch Ratings, which ranks the district the second-highest step of AA+, said any failure to sustainably address its backlog of projects could lead to a downgrade.

“There’s just nothing else that’s as big a risk to them as consumers thinking that they are not a reliable way to get to work on time,” said Andrew Ward, a Fitch analyst in San Francisco. “They need to address this, period. The longer they delay, the more it will cost them.”

Bloomberg Business

by Romy Varghese

October 21, 2016 — 2:00 AM PDT Updated on October 21, 2016 — 12:10 PM PDT

Atlantic City Approves Airfield Sale in Bid to Avoid Takeover.

Atlantic City’s council voted to approve a proposal to sell a closed municipal airfield to its water authority, part of strategy hatched by local lawmakers to avoid a state takeover after failing to comply with the parameters of an aid agreement with New Jersey.

The city council voted five to four in favor of the $110 million sale of Bader Field to the water utility. In September, Atlantic City breached the terms of a $73 million state loan when it failed to dissolve the utility, which serves as collateral for the agreement. Proceeds from the sale could cover the $62 million already advanced by the state.

“You’d rather deal with us, like us or not, than have Chris Christie or his administration come in here and wreck havoc on the town,” Council President Marty Small said while discussing the upcoming five-year plan.

The airfield sale still needs approval from the New Jersey Department of Community Affairs in order to proceed.

Wednesday’s city council meeting is just over two weeks before Atlantic City’s five-year budget plan is due to the state. Mayor Don Guardian released details of the plan on Monday, projecting that it could save roughly $73 million by 2021. Should New Jersey reject it, the state could sell its assets and change labor contracts.

Bloomberg Business

by Katherine Greifeld

October 19, 2016 — 3:15 PM PDT

Connecticut Fiscal Strain Adds to Yield Premiums on Bonds.

Connecticut is paying a price in the municipal-bond market for the state’s lingering financial stress.

The state sold $650 million of general-obligation bonds in a negotiated sale Tuesday that saw the yield premiums demanded by investors rise on some maturities compared with a similar bond offering in August, according to data compiled by Bloomberg.

“There’s pessimism in the market based on their financials,” said Michael Hamilton, who runs a $284 million Connecticut open-end mutual fund at Nuveen Asset Management. “The state just can’t seem to put it together yet.”

In the series E portion of the securities, the 5 percent bonds maturing in 2026 were priced to yield 2.45 percent, or about 72 basis points over benchmark securities, according to data compiled by Bloomberg. In August, a bond with a similar maturity and the same coupon were priced to yield 2 percent, or 51 basis points over its benchmark.

“Connecticut had a lot of company this week with $15 billion of supply in the municipal market,” Treasurer Denise Nappier said in an e-mail. “Despite this heavy volume, we successfully sold $650 million of general-obligation bonds at an attractive overall interest rate of 3.01 percent.”

Connecticut has grappled with issues such as a pension fund that is about 50 percent underfunded, a growing deficit and high taxes driving corporations out of state, according to Hamilton.
S&P Global Ratings and Fitch Ratings cited persistent revenue shortfalls when both companies downgraded Connecticut by one level to AA- in May, each company’s fourth-highest investment grade rank.

About $65 million of Tuesday's offering were green bonds, meaning that the debt is dedicated toward financing an environmentally beneficial project. Such debt has the potential to attract investors who otherwise might not have looked at Connecticut, according to James Dearborn, head of tax-exempt securities at Columbia Threadneedle. Dearborn said that he's still in the process of looking at the debt.

"We do appreciate that they're using green bonds, but we do focus on what are the proceeds for, and how is it different than what you would have done otherwise?" said Dearborn, portfolio manager of Columbia's U.S. Social Bond Fund, which seeks to fund "socially beneficial activities and developments," according to its website.

Bloomberg Business

by Katherine Greifeld

October 18, 2016 — 2:11 PM PDT Updated on October 19, 2016 — 6:18 AM PDT

Bloomberg Brief Weekly Video - 10/20

Taylor Riggs, a contributor to Bloomberg Briefs, talks with Joe Mysak about this week's municipal market news.

Watch the video.

October 20, 2016

Fitch Teleconference Replay: Ontario International Airport Authority, CA

Fitch Ratings will host a test teleconference on Thursday, October 13th at 11:00am EDT to discuss our recent ratings on Ontario International Airport Authority and the ownership and operational transfer:

– Ontario airport refunding financing will complete a rare government-to-government transfer of Ontario International Airport's ownership and operation. This contrasts to efforts by other U.S. airports to engage with privatization of airport control

– Direct federal action was needed to effectuate the transfer, including unique financial arrangements for Ontario. Does this have implications to the airport's credit?

– Ontario airport traffic trends have a history of elevated volatility. Will this continue?

Speaker
Seth Lehman, Senior Director, Global Infrastructure Group

Listen to the Teleconference.

Following prepared remarks, we will open the call for a question and answer session. Questions can also be emailed in advance to Danielle Riles at danielle.riles@fitchratings.com.

The related report/press release can be viewed here:
https://www.fitchratings.com/site/pr/101276

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Beware the Pitfalls of Muni-Bond Funds.

Individual investors' focus on higher yield and propensity to follow trends stoke volatility; for some clients, try separately managed accounts

Although retail municipal-bond mutual funds continue to be widely used by registered investment advisers as cost-effective investment vehicles for their clients, many advisers may not be aware that those funds are susceptible to hidden risks.

These funds may be significantly more costly than they first appear as they cater to retail, or individual, investors, are often focused on maximizing yield at the cost of credit quality and diversification, are subject to ill-timed flows of assets in and out of the fund, and are often susceptible to thin liquidity in the market.

A key problem with the municipal-fund market stems from the fact that the funds are typically owned by untrained individual investors. Many of those investors focus on yield rather than the riskiness of the underlying bonds in the fund, resulting in funds that are overconcentrated in risky securities.

Further, individual investors' decisions to purchase or redeem shares largely dictate fund managers' decisions. Managers are continuously buying and selling securities in order to provide returns or liquidity for investors, a process that makes it difficult for those managers to put their knowledge of the market to work for their clients.

Research shows that retail fund flows have historically followed past performance in the muni market, with the inflow of cash into funds typically following periods of high returns and outflows often coming in the wake of falling or negative returns. In other words, individual investors time the market poorly by buying high and selling low. As a result, as bond prices fall as interest rates rise, investment managers often find themselves forced to sell their municipal-bond holdings.

Although mutual-fund shares can be immediately liquidated, the actual liquidity of the underlying assets can vary. Often this means mutual funds sell the highest quality, most liquid securities to raise the cash for the individual investors redeeming their fund shares. For those fund investors who have a long-term buy-and-hold approach, that kind of activity lowers the overall quality of the securities in the fund and actually increases the riskiness of their investment.

For advisers of clients who are long-term investors, it is wise to explore alternatives to standard municipal-bond mutual funds. There are options that enable investors to avoid individual co-investors altogether or carefully choose co-investors whose investment behaviors more closely mirror the patience of institutional investors.

One strategy to consider is separately managed accounts with low fees and minimums that are on

par with low-cost mutual funds. These accounts provide access to the muni market, but unlike a mutual fund, investors have ownership of the individual securities and control over the transactions of those securities—an important feature during times of rising rates.

Rather than selling shares of a muni-bond fund, which must be done at the net asset value of that fund, managers of separately managed accounts have the ability to sell individual securities. That allows the manager to potentially select and sell shorter duration bonds within the account, which will be less negatively affected by rising rates.

For clients with less in assets, there are also options to purchase mutual funds that are limited to approved investors only. In this case, the fund manager limits investment exclusively to institutionally minded investors and investors working with investment advisers. Without being subject to the whims of individual investors, the fund's management can avoid frequent flows in and out of the funds.

While rates are low and markets are still liquid, it's a good time to begin having conversations with clients about the hidden risks of municipal-bond mutual funds, and make any adjustments necessary to position them well for the future.

THE WALL STREET JOURNAL

by STEVEN SIMPSON

Oct. 20, 2016 2:42 p.m. ET

Steven Simpson has worked in the financial-services industry for more than 20 years, and was most recently president and managing partner at Gurtin Municipal Bond Management in Solana Beach, Calif. Voices is an occasional feature of edited excerpts in which wealth managers address issues of interest to the advisory community. As told to Alex Coppola.

Investors Sense Opportunity in One Corner of the Money Markets.

A reform-driven rise in short-term borrowing costs is focusing attention on an often-overlooked corner of the market: municipal debt.

Three-month AAA munis are offering the equivalent of about 1.3% in taxable yield when adjusting for those who would ordinarily pay the top income tax rate, according to Ned Davis Research Group. By comparison, buying U.S. Treasury debt for five years would offer a lower annual yield of 1.24%.

Municipal borrowers, who typically issue tax exempt debt to finance state and local projects, are paying higher rates to borrow thanks to new money market reforms that went into effect last week. Prime money market funds now have the ability to charge redemption fees or stop withdrawals during times of market turbulence.

In anticipation of those reforms, investors pulled hundreds of billions of dollars from prime funds, which typically invest in high-grade corporate or municipal debt. More than $100 billion fled municipal money market funds specifically, according to Pacific Investment Management Co.

Lower demand from that traditional buyer has led to higher short-term borrowing costs for municipalities. But many are also looking at it as an opportunity, echoing, and at times exceeding,

investor excitement over short-term corporate debt that has also offered higher yields due to money market reform.

The new buyers include taxable money funds, separately managed accounts, hedge funds, and longer-term bond funds, according to Colleen Meehan, the director of municipal money market fund strategies for BNY Mellon Cash Investment Strategies.

“The beauty of that product is that they can move up rates to entice non-traditional buyers,” she said. “And that’s exactly what has happened.”

The yields look attractive to those investors in an otherwise low-rate world. The yield on three-month Treasury notes, for example, was recently at 0.33% Friday.

Another benchmark for municipal yields, the SIFMA Municipal Swap Index, was recently at its highest since the financial crisis, according to Pimco. Variable rate demand notes, which have rates that float, are typically reset based on the swap index rate, making them and other floating-rate instruments attractive buys, Pimco said in research this week.

The amount of outstanding VRDNs surpassed the amount of money in municipal money-market funds in recent months, a sign that new buyers are stepping into the space to replace those which are leaving, according to Ms. Meehan.

THE WALL STREET JOURNAL

By BEN EISEN

Oct 21, 2016 2:45 pm ET

GASB Proposes Implementation Guidance for Other Postemployment Benefit Plans.

Norwalk, CT, October 18, 2016 — The Governmental Accounting Standards Board (GASB) has issued an Exposure Draft of a proposed Implementation Guide that contains questions and answers intended to clarify, explain, or elaborate on the requirements of GASB Statement No. 74, *Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans.*

The proposed Implementation Guide provides answers to more than 150 questions about the GASB’s new standards on financial reporting for postemployment benefit plans other than pension plans. These plans are referred to as other postemployment benefit plans (OPEB plans), and the benefits they administer (primarily retiree healthcare) are referred to as other postemployment benefits (OPEB).

The Exposure Draft of Implementation Guide No. 201X-X, *Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans*, is available on the GASB website, www.gasb.org. Stakeholders are encouraged to review and provide comments by December 19, 2016.

- SEC Approves Fund Liquidity Rules, Sparking Concern for Munis.

- Dealers to SEC: Markup Proposal Overly Complex, Would Hurt Liquidity.
- With Soaring Demand Come Weaker Assurances for U.S. Municipal Investors.
- Electronic Muni Debt Platform Gains Traction with Ohio.
- More on Rev. Proc. 2016-44: What Light Is Shed on Net Profits Compensation?
- IRS Requests Comments on Tax-Exempt Bond Forms.
- IRS PLR: Organization Is Instrumentality of State Political Subdivisons.
- *Nichols v. City of Rehoboth Beach* – Court of Appeals holds that debt incurred by city from bond issue approved by special election was insufficient basis for taxpayer to have municipal taxpayer standing in her action against city alleging that election violated the Fourteenth Amendment with regard to requirements to vote in election, where city did not expend funds from bonds on the allegedly illegal elements of the special election.
- *In re City of Detroit, Michigan* – Court of Appeals holds that equitable mootness is viable doctrine that applies in Chapter 9 cases just as it applies in cases under Chapter 11.
- And finally, Stating the (Painfully) Obvious is brought to you this week by *Foust v. Forest Preserve Dist. of Cook County*, in which the court ruled that a tree limb was not a condition of a forest preserve trail. Um, ok. And why was this seemingly uncontroversial question at issue? Because the limb in question broke off and crushed a woman to death as she was innocently riding her bike down the trail. That's one atrociously unlucky cyclist or one viciously homicidal tree. Regardless, we'll take this as further proof (as if we needed any) that fresh air, nature, exercise, and all that will definitely kill you. Consider yourselves warned.

PENSIONS - ALABAMA

Southern States Police Benevolent Association, Inc. v. Bentley

Supreme Court of Alabama - September 23, 2016 - So.3d - 2016 WL 5338749

Police officers and police union brought action against governor and members of the Board of Control of the Employees' Retirement System of Alabama (ERS), the chief executive officer and secretary-treasurer of the Retirement Systems of Alabama (RSA) and the ERS, and the State comptroller, seeking injunctive relief and a judgment declaring that participants in ERS pension plan could make retirement contributions, and therefore receive increased retirement benefits, based upon their "earnable compensation," to include payments received for overtime worked.

The Circuit Court entered summary judgment for defendants. Plaintiffs appealed.

The Supreme Court of Alabama held that:

- "earnable compensation" refers to the full rate of compensation that would be payable to an employee if he or she worked the full normal work-time, and does not include overtime pay;
- State's changing its interpretation of "earnable compensation" did not unconstitutionally infringe on contractual rights of vested members in the ERS plan; and
- Amended statute did not make mandatory overtime part of a member's annual base compensation.

State's changing its interpretation of "earnable compensation," for purposes of determining allowed retirement contributions to Employees' Retirement System (ERS) pension plan, following issuance of attorney general's opinion concluding that "earnable compensation" did not include overtime pay, did not unconstitutionally infringe on contractual rights of police officers who were vested members in the ERS plan at the time of the policy change. Legislature did not clearly intend to contractually bind itself to any definition of "earnable compensation" that would include overtime payments, no statute was amended to officers' detriment, and a longtime erroneous interpretation of governing

statute failed to bind the State in any respect.

Amended statute including overtime payments within the meaning of earnable compensation for purposes of determining allowed retirement contributions to Employees' Retirement System (ERS) pension plan, and explicitly providing that earnable compensation could not exceed 120 percent of annual base compensation, did not make mandatory overtime part of a member's annual base compensation. Had the legislature intended to create some distinction between mandatory overtime and voluntary overtime it could have done so.

MUNICIPAL ORDINANCE - ALABAMA

Breland v. City of Fairhope

Supreme Court of Alabama - September 30, 2016 - So.3d - 2016 WL 5582405

Property owner brought action against city, seeking a declaration that property owner was entitled to fill the property without further approval from city, and asserting a claim for money damages based on alleged negligence of city.

The Circuit Court entered summary judgment in favor of city, and property owner appealed.

The Supreme Court of Alabama held that:

- No statute of limitations applied to bar property owner's requests for prospective relief as expressed in his declaratory-judgment claims challenging the validity of city's permitting ordinances;
- Two-year statute of limitations for negligence claims applied to property owner's backward-looking claim for money damages against city based on city's purported negligence in refusing to issue land fill permits; and
- Property owner's negligence claims accrued each time city enforced its ordinances to stop property owner from filling activity on his property, for purposes of triggering the applicable two-year statute of limitations.

No statute of limitations applied to bar property owner's requests for prospective relief as expressed in his declaratory-judgment claims challenging the validity of city's permitting ordinances, when the ordinances presented a current and ongoing infringement of his property rights.

Two-year statute of limitations for negligence claims applied to property owner's backward-looking claim for money damages against city based on city's purported negligence in refusing to issue land fill permits.

Property owner's claims for money damages against city, based on city's purported negligence in refusing to issue land fill permits, accrued each time city enforced its ordinances to stop property owner from filling activity on his property, for purposes of triggering the applicable two-year statute of limitations for negligence claims.

BONDS - DELAWARE

Nichols v. City of Rehoboth Beach

United States Court of Appeals, Third Circuit - September 7, 2016 - F.3d - 2016 WL

4651383

City called a special election to vote on the issuance of up to $52.5 million in general obligation bonds to finance an ocean outfall project. At the special election, city accepted only voters who were either property owners or who had been residents for a minimum of six months. Corporations and other artificial entities that owned property in the city were also permitted to vote.

Taxpayer alleged that persons who owned several parcels of property in the city through the ownership of artificial entities were granted one vote for each parcel owned. Taxpayer further alleged that those who qualified as residents and who owned property were granted two votes.

Taxpayer brought action against city challenging the special election on the grounds that the city violated the Fourteenth Amendment by a) requiring voters to live in, or hold property in, the city for six months before being entitled to vote as residents, and b) allowing property owners to vote more than once.

The United States District Court for the District of Delaware dismissed action. Taxpayer appealed.

The Court of Appeals held that:

- Debt incurred from bond issue was insufficient basis for municipal taxpayer standing;
- City's expenditure of municipal funds to hold a special election for approval of bond issue was insufficient basis for municipal taxpayer standing; and
- City's purchase of advertisement in local newspaper to inform voters of special election was insufficient basis for municipal taxpayer standing.

Debt incurred by city from $52.5 million bond issue approved by special election was insufficient basis for taxpayer to have municipal taxpayer standing in her action against city alleging that election violated the Fourteenth Amendment with regard to requirements to vote in election, where city did not expend funds from bond on the allegedly illegal elements of the special election.

City's expenditure of municipal funds to hold a special election for approval of bond issue was not sufficient basis for taxpayer to have municipal taxpayer standing in her action challenging certain voting procedures used in special election under Fourteenth Amendment in her action against city, where taxpayer did not assert that city expended funds on the allegedly unconstitutional aspects of the special election, special election itself would have been held regardless of procedures city employed in holding election, causing city to expend the funds regardless of voting requirements used, and funds expended on special election were de minimis.

City's purchase of advertisement in local newspaper to inform voters of special election for approval of bond issue was not sufficient basis for taxpayer to have municipal taxpayer standing in her action challenging certain voting procedures use in special election under Fourteenth Amendment in her action against city, where purported illegality of election procedures had nothing to do with expenditure of funds for advertisement, and cost of advertisement was de minimis.

ANNEXATION - GEORGIA

Fulton County v. City of Atlanta

Supreme Court of Georgia - October 3, 2016 - S.E.2d - 2016 WL 5758991

City filed petition seeking declaratory judgment that its annexation of unincorporated county

property would be lawful.

The Superior Court entered declaratory judgment for the city. County appealed.

The Supreme Court of Georgia held that city's action amounted to a request for an improper advisory opinion in absence of any municipal legislation to annex the property.

City's action for declaratory judgment, seeking to confirm its right to annex property in unincorporated county into its municipal boundaries, notwithstanding a putative prohibition against annexation or incorporation of such property in a local constitutional amendment, amounted to a request for an improper advisory opinion and raised no justiciable controversy in the absence of any municipal legislation to annex the property, where controversy between the city and county was founded upon proposed legislation and had no immediate legal consequences.

IMMUNITY - MASSACHUSETTS

Brown v. Office of Com'r of Probation

Supreme Judicial Court of Massachusetts, Suffolk - October 11, 2016 - N.E.3d - 2016 WL 5888408

Suit was brought against Commonwealth under anti-discrimination statute. The Superior Court Department, Suffolk County, Paul E. Troy, J., entered judgment for Commonwealth employee, and awarded compensatory and punitive damages, attorney fees, and costs, but denied employee's subsequent motion for postjudgment interest on award of punitive damages, attorney fees, and costs.

Appeal was taken. The Appeals Court affirmed the denial of postjudgment interest. The Supreme Judicial Court allowed further appellate review.

The Supreme Judicial Court of Massachusetts held that as a matter of first impression, section of antidiscrimination statute providing for award of punitive damages and reasonable attorney's fees and costs does not expressly or by necessary implication waive sovereign immunity from liability for postjudgment interest on such awards.

IMMUNITY - ILLINOIS

Foust v. Forest Preserve Dist. of Cook County

Appellate Court of Illinois, First District, Fifth Division - September 30, 2016 - N.E.3d - 2016 IL App (1st) 160873 - 2016 WL 5706935

Administrator of deceased bicyclist's estate brought survival and wrongful death action against county forest preserve district alleging negligence and willful and wanton conduct.

The Circuit Court dismissed counts based on negligence and certified questions. Both parties filed petitions for leave to appeal questions, which were allowed and consolidated.

The Appellate Court held that:

- Forest preserve grove was intended to be used for recreational purposes, but

- Tree with limb that broke off and fell onto bicyclist was not condition of trail.

Forest preserve grove, including tree located seven feet from edge of bicycle path, which had limb overhanging approximate width of path that broke off and fell onto bicyclist on path, was intended to be used for recreational purposes, and, thus, county forest preserve district was immune from liability for negligence under provision of Tort Immunity Act setting forth immunity for property used for recreational purposes in survival and wrongful death action brought by administrator of deceased bicyclist's estate. According to brochure, grove was suitable for picnicking, hiking, cycling, in-line staking, cross-country skiing, and fishing, which were quintessentially recreational activities.

Tree located seven feet from edge of bicycle path, which had limb overhanging approximate width of path that broke off and fell onto bicyclist on path, was not condition of trail under provision of Tort Immunity Act setting forth immunity for access roads and trails and, thus, county forest preserve district was not immune from liability in survival and wrongful death action brought by administrator of deceased bicyclist's estate. While path was trail, as it ran through forest preserve grove, and there were trees, shrubs, and other vegetation in close proximity to edges of path, plain language of provision required that injury be caused by condition of trail and only reasonable interpretation of language was that for there to be immunity, there had to be something on trial itself that caused injury, and, thus, tree from which limb broke off and fell onto bicyclist was not condition of trail.

BANKRUPTCY - MICHIGAN

In re City of Detroit, Michigan

United States Court of Appeals, Sixth Circuit - October 3, 2016 - F.3d - 2016 WL 5682704 - 63 Bankr.Ct.Dec. 45

Hearing was held on city's proposed Chapter 9 plan. The United States Bankruptcy Court for the Eastern District of Michigan entered order confirming proposed plan, and pensioners filed separate appeals, which were all dismissed as equitably moot in separate orders entered by the District Court. Pensioners Appealed.

Consolidating appeals, the Court of Appeals held that:

- Pensioners' appeals from Chapter 9 plan confirmation order were equitably moot, and
- Equitable mootness was viable doctrine that applied in Chapter 9 cases just as it applies in cases under Chapter 11.

Pensioners' appeals from bankruptcy court order confirming the Chapter 9 plan of large city, which had effect of reducing pension benefits accorded to city employees and retirees, were equitably moot, where pensioners had failed to obtain stay pending appeal, where plan had been substantially consummated inasmuch as numerous significant, even colossal, actions had been undertaken or completed, many irreversible, in reliance on plan, and where the relief that pensioners requested on appeal would necessarily rescind bargain that was at heart of city's negotiated plan and adversely affect countless third parties, including the entire city population.

Equitable mootness is viable doctrine that determines whether it is prudential to allow bankruptcy appeal, and that applies in Chapter 9 cases just as it applies in cases under Chapter 11.

LIABILITY - NEW YORK

Cockburn v. Town of Mina, N.Y.

Supreme Court, Chautauqua County, New York - September 19, 2016 - N.Y.S.3d - 2016 WL 5106530 - 2016 N.Y. Slip Op. 26294

Passenger in three-wheeled motorcycle applied for leave to file a late notice of claim against a New York township, relating to motorcycle leaving the road and crashing while traveling on road straddling border between New York and Pennsylvania, and alleging a road defect from loose gravel on New York side of border.

The Supreme Court, Chautauqua County, held that leave to file late notice of claim would be granted.

Passenger in three-wheeled motorcycle would be granted leave to file late notice of claim against New York township, relating to motorcycle leaving road and crashing while traveling on road straddling border between New York and Pennsylvania, and alleging a road defect from loose gravel on New York side of border. Passenger's Pennsylvania attorneys, having filed timely notice under Pennsylvania law, promptly asked Pennsylvania State Police (PSP) to provide complete police report once attorneys were informed by Pennsylvania township's insurer that accident might have started in New York, PSP denied the request, complete report was not produced until PSP was compelled to produce it in lawsuit brought by motorcyclist's estate, and complete PSP report was based upon thoroughly documented and photographed investigation performed contemporaneous to accident.

It would be an improvident exercise of discretion for the court to deny a late notice of claim against a municipality when the claimant demonstrates: (1) she promptly commenced the proceeding after verifying the wrong entity had been served previously, and (2) the accident scene was contemporaneously memorialized by photographs of the alleged road defect and a thorough police investigation was performed.

SEWER EASEMENTS - PENNSYLVANIA

Berwick Township v. O'Brien

Commonwealth Court of Pennsylvania - October 12, 2016 - A.3d - 2016 WL 5936587

Township filed suit against landowners for declaratory judgment and injunctive relief relating to its rights under sewer-line easement agreement. Township moved for summary judgment.

The Court of Common Pleas granted the motion in part. Landowners appealed to the Superior Court, which transferred the appeal to the Commonwealth Court.

The Commonwealth Court held that:

- Declaration that sewer-line easement and right-of-way permitted township to remove brush and overgrowth was not an overly broad grant of declaratory relief;
- Removal of brush and overgrowth, including trees, in order to allow township access to its sewer lines for purposes of inspection and maintenance was reasonable and necessary to purpose of the easement grant;
- Permanent injunction prohibiting landowners from interfering with the township's rights under easement agreement and restraining landowners from taking any actions that prohibited township

from accessing easement in order to inspect and maintain its sewer lines was warranted; and
- Trial court did not reform easement agreement by clarifying that the area within the sewer-line easement could be clear cut to the extent necessary consistent with customary industry practices.

EMINENT DOMAIN - PENNSYLVANIA

Robinson Township v. Commonwealth

Supreme Court of Pennsylvania - September 28, 2016 - A.3d - 2016 WL 5597310

Municipalities and individuals brought petition for review challenging constitutionality of legislative act that set out statutory framework for regulation of oil and gas fracking operations, preempted local regulation of such operations, and gave power of eminent domain to natural gas corporations.

The Commonwealth Court found that the act was unconstitutional in part and enjoined application of certain provisions. On cross-appeals, the Supreme Court affirmed in part, reversed in part, and remanded. On remand, the Commonwealth Court ruled that certain sections of act were not severable and upheld constitutionality of other sections. Public Utilities Corporation (PUC) appealed and municipalities and individuals cross-appealed.

The Supreme Court of Pennsylvania held that:

- Sections of legislative act which created a mechanism for Public Utility Commission (PUC) to determine whether a local ordinance violated the Municipalities Planning Code (MPC) or chapters of legislative act at issue, were not severable from unconstitutional provisions of act which had preempted certain regulations of fracking by local municipalities;
- Statutes restricting health care professionals' access to information regarding chemicals used in fracking process were an unconstitutional special law;
- Provision requiring Department of Environmental Protection, in event of chemical spill associated with fracking, to notify only public, not private, drinking water facilities that could be affected was unconstitutional special law; and
- Provision which authorized the taking of real property for the storage of natural or manufactured gas, violated public use requirement and thus was an unconstitutional taking.

Sections of legislative act which created, as part of Oil and Gas Act, a mechanism for Public Utility Commission (PUC) to determine whether a local ordinance violated the Municipalities Planning Code (MPC) or chapters of legislative act at issue, were not severable from unconstitutional provisions of act which had preempted local municipalities from enacting or enforcing environmental legislation, mandated that certain drilling activities attendant to production of natural gas be allowed in every zoning district, and established mandatory setback waivers. Legislative history made clear that legislature's overarching objective was to have act provide a singular statewide zoning and permitting process for all oil and gas wells, and sections for which severability was at issue furthered the legislative goal of maintaining this statewide regulatory uniformity.

Sections of legislative act, restricting health professionals' access to information regarding the chemicals used in fracking process, were germane to act's overall purpose of regulating the oil and gas industry, and therefore act did not violate constitution's single subject requirement. Primary purpose of sections at issue was not the regulation of health care but rather the maintenance of trade secret protections for chemicals used in fracking process.

Provision of legislative act regarding the fracking process, requiring Department of Environmental Protection (DEP), in event of chemical spill associated with fracking, to notify only public, not

private, drinking water facilities that could be affected was an unconstitutional special law. It was not clear how exclusion of notice to the over three million Commonwealth residents who received their drinking water from wells bore any fair and substantial relationship to legislative act's objective of securing health, safety, and property rights for all Commonwealth residents during oil and gas extraction process, and there was no other mandate for DEP to provide notice to private well owners following a spill.

Provision of legislative act regarding the fracking process, which authorized the taking of real property for the storage of natural or manufactured gas, did not satisfy public use requirement and thus was an unconstitutional taking under state and federal constitutions, where statute did not restrict its application to only corporations that met conditions for classification as public utilities, and any projected benefit to public from purportedly advancing development of Commonwealth infrastructure was speculative and incidental.

More on Rev. Proc. 2016-44: What Light Is Shed on Net Profits Compensation?

As reported several times in this blog (here, here, and here), Rev. Proc. 2016-44 significantly expands the opportunities for management/service contracts that don't result in private business use. One such post was Joel Swearingen's very thoughtful piece on the future of the facts and circumstances test as applied to these contracts (here). Of course, Rev. Proc. 2016-44 retains the prohibition against any portion of the manager's compensation being based on net profits, as that rule is set forth in the Treasury Regulations (specifically Treas. Reg. 1.141-3(b)(4)(iv)), so the IRS cannot override that rule through a Revenue Procedure. Unfortunately, in restating this prohibition, the IRS has muddied the water as to its boundaries, creating potential need for application of the facts and circumstances test. Please read on for a discussion of the questions that have been created.

Rev. Proc. 97-13 states the net profits prohibition very simply: "The contract must provide for reasonable compensation for services rendered with no compensation based, in whole or in part, on a share of net profits from the operation of the facility." Section 5.02(1). It then states that the compensation arrangements specifically authorized in 97-13 – percentage of gross revenues or expenses, capitation fee and per-unit fee – are not based on net profits.

In contrast, Rev. Proc. 2016-44 expands the discussion of a net profits arrangement, including the following:

> The contract must not provide to the service provider a share of net profits from the operation of the managed property. Compensation to the service provider will not be treated as providing a share of net profits if no element of the compensation takes into account, or is contingent upon, either the managed property's net profits or both the managed property's revenues and expenses for any fiscal period. For this purpose, the elements of the compensation are ***the eligibility for, the amount of, and the timing of the payment of the compensation."***

Section 5.02(2) (emphasis added).

Prior to the issuance of 2016-44, the IRS issued several private letter rulings applying the facts and

circumstances test to conclude that the management fee described in the ruling did not violate the net profits prohibition. In one such ruling, the contract permitted the qualified user to defer paying a stated dollar amount of a fixed periodic management fee and the full amount of a productivity reward to the service provider if net cash flow was insufficient, after taking into account a payment to the qualified user, to pay those fees. Ltr. Rul. 200222006 (Feb. 19, 2002). Any deferred compensation was payable when cash flow was sufficient to make the payment or, at the latest, upon expiration or earlier termination of the contract. In ruling that the contract did not create private business use, based on the facts and circumstances test, the IRS reasoned as follows:

> The Owner's right to defer a stated dollar amount that represents a portion of the management fee and the full amount of the productivity reward (the 'deferred fees') under the circumstances presented raises the issue of whether the these fees are based on a share of Hotel net profits. Although the timing of payment of the deferred fees is based on Hotel net profits and, therefore, indicates private business use of the Hotel by Manager, we think that the circumstances support a conclusion otherwise. The full amount of all deferred fees will be payable regardless of the existence and amount of net profits when the Management Contract expires or is terminated. In addition, the deferrable portion of the management fee is a stated dollar amount and is not, itself, a percentage of Hotel net profits. The productivity reward is analogous to the productivity reward approved by Rev. Proc. 97-13, 5.02(3) because it is to be made only once and is based on an increase in gross revenues for a period specified in the Management Contract. Finally, the feasibility study projects that no deferrals will occur. Thus, although the deferred elements of the Manager's compensation do not satisfy the requirements of Rev. Proc. 97-13, 5.03(1), on balance, these deferred elements do not indicate private business use under 1.141-3(b)(4)."

In a later ruling, the IRS addressed a compensation arrangement that included an incentive fee that was payable only if three tests were met, one of which required that the manager "meet a stated net operating surplus/deficit level for the applicable fiscal year that is established in advance of each fiscal year of the term of the Management Contract in the approved budget for such fiscal year." Ltr. Rul. 201145005 (Aug. 4, 2011). Only if all three tests were met, the manager was entitled to a set incentive fee; the fee did not vary based on the level of the surplus/deficit. In its analysis, the IRS first stated that the contract did not meet the requirements of 97-13. However, it then applied a facts and circumstances analysis to conclude that the contract did not result in private business use. While its reasoning isn't entirely clear, the IRS appears to have concluded that the provision described above did not result in compensation based on net profits because the incentive payment did not vary based on the level of surplus or deficit.

While these rulings provide authoritative guidance only to the issuers receiving them, bond counsel regularly study these rulings and interpret the underlying law and regulations with these rulings in mind. As a practical matter, bond counsel have no choice but to place some importance on letter rulings given the dearth of authority in the tax-exempt bond area.

The question that bond counsel now face is whether Rev. Proc. 2016-44 backtracks from these favorable conclusions. As quoted above, 2016-44 states that a compensation arrangement does not violate the net profits prohibition if no "element" of the compensation takes into account, or is contingent upon, the managed property's net profits. And for this purpose, 2016-44 states that the elements of the compensation are the ***eligibility for*** (arguably violated in Ltr. Rul. 201145005), the amount of, and the ***timing of*** (almost certainly violated in Ltr. Rul. 200222006) the payment of the compensation.

Was it the IRS's intent in Rev. Proc. 2016-44 to signal a reversal of the above letter rulings? While this would be a plausible conclusion, I do not believe it is warranted. It appears that Treasury was reflecting its knowledge and experience gained in addressing various compensation arrangements in the ruling context, and that it sought in 2016-44 to make clear, if it was not clear already, that provisions of the sort addressed in the above rulings disqualify the contract from the safe harbor. Exclusion from the safe harbor of contracts where eligibility for, or timing of, compensation is contingent upon sufficient net cash flow is consistent with the position of the IRS expressed in these rulings, where the IRS applied a facts and circumstances test. Whether those contracts give rise to private business use depends now, as it did before, on the facts and circumstances test. So, just as the compensation provisions addressed in the above pre-2016-44 rulings, taken in the overall context of the respective contract, did not violate the net profits prohibition under a facts and circumstances analysis, the same conclusion should be reached under the facts and circumstances test of Rev. Proc. 2016-44.

Squire Patton Boggs

by Robert J. Eidnier

USA October 7 2016

TAX - CALIFORNIA

Covarrubias v. Cohen

Court of Appeal, Third District, California - October 7, 2016 - Cal.Rptr.3d - 2016 WL 5864578

City residents petitioned for writ of mandate to compel Director of the Department of Finance, the state Controller, city, and county auditor-controller to continue payments of set-asides from "tax increment" to city's subsidized housing fund.

The Superior Court denied petition. Residents appealed.

The Court of Appeal held that:

- City's set-asides for future affordable housing payments were not "deferred" payments that remained enforceable after the dissolution of the redevelopment agency, and
- City's set-asides for future affordable housing payments were not "obligations imposed by state law" that remained enforceable after the dissolution of the redevelopment agency.

TAX - CALIFORNIA

City of San Diego v. San Diegans for Open Government

Court of Appeal, Fourth District, Division 1, California - September 22, 2016 - Cal.Rptr.3d - 2016 WL 5231822

City filed validation action regarding the city's plan to levy a special tax. A suspended corporation filed a verified answer. After the corporation was revived, the Superior Court issued a ruling validating the special tax.

Corporation appealed, and the Court of Appeal reversed and remanded with directions to enter

judgment in favor of the corporation. The Superior Court denied validation and partially granted corporation's attorney fee motion. City appealed.

The Court of Appeal held that on issue of first impression, private attorney general fees could not be awarded to a suspended corporation that was not revived before the expiration of the deadline to appear in the validation action.

Private attorney general fees could not be awarded to a corporation that was suspended when it filed an answer in a validation action, where both the corporation and its attorney knew the corporation was suspended, the corporation was not revived before the expiration of the deadline to appear in the validation action, and the corporation did not explain what additional benefit it provided in the matter in light of the fact that another objector had already appeared and was protecting the public interest.

KBRA Rating Letters for Insured Bonds.

Kroll Bond Rating Agency (KBRA) issues a rating letter **at no cost** for all municipal bonds insured by a KBRA-Rated bond insurer.

Please see the links below for a sample KBRA rating letter as well an overview of our Public Finance/Financial Guaranty sector:

Sample Rating Letter
Public Finance/Financial Guaranty Overview

KBRA rates the following bond insurers:

Assured Guaranty Corp. (AGC)
(Rated AA, Stable Outlook)

Assured Guaranty Municipal Corp. (AGM)
(Rated AA+, Stable Outlook)

National Financial Guarantee Corporation (National)
(Rated AA+, Stable Outlook)

Municipal Assurance Corp. (MAC)
(Rated AA+, Stable Outlook)

IRS Requests Comments on Tax-Exempt Bond Forms.

The IRS has requested public comment on Forms 8038, 8038-G, and 8038-GC, information returns for tax-exempt bond issues; comments are due by December 12, 2016.

Read the RFC.

Program Available - Municipal Bank Loans and Direct Placements Seminar, Oct 25

Municipal Bank Loans and Direct Placements Seminar

October 25, 2016 | 12:30 PM – 6:00 PM | SIFMA Conference Center, NYC

Join SIFMA for a discussion on the legal, regulatory, accounting and compliance uncertainties arising from the increase in state and local governments turning to banks as a source of debt finance over traditional public market debt offerings.

This half day program includes views from the regulators and a deep dive into bank loan and direct placement transactions, covering:

- What is the effect of the convergence on the public and private debt markets?
- Should accounting treatment of a debt instrument determine how it is treated for regulatory purposes?
- What are the regulatory implications of treating a debt instrument as a loan or security?
- What can we expect from regulators on these questions in the future?

View the program.

Register.

Puerto Rico Court Rulings Favor Bondholders.

Puerto Rico bondholders have reason to be optimistic about overturning the island's debt payment moratorium in court, based on rulings by the judge handling most of the litigation.

"If you're reading tea leaves there seems to be an indication that the court may not agree with the moratorium," said James Spiotto, managing director at Chapman Strategic Advisors.

Nearly all the Puerto Rico debt cases are being heard in the United States District Court for the District of Puerto Rico. The court is assigning all the cases to Judge Francisco Besosa, who is currently handling at least 11 of them.

Besosa issued a ruling last week that opens the door to declaring Puerto Rico's moratorium unconstitutional, Puerto Rico attorney John Mudd said.

Gov. Alejandro García Padilla signed the law that he says gives Puerto Rico the right to declare a debt moratorium in April, and invoked it to justify nonpayment of debt in May. The governor introduced the law after taking steps to increase revenues and cut spending to deal with Puerto Rico's debt and deficit problems. Puerto Rico, its public corporations, and municipalities have about $69 billion in outstanding debt.

A directive from the Puerto Rico Department of the Treasury in December 2015 changed the government's payment priority and this "may still constitute a violation of the Equal Protection, Due Process, Takings, and Contracts Clauses as asserted by plaintiffs," Besosa wrote. He went on to

write about the governor's executive orders invoking the moratorium law on debt payments, implying that these also may have violated these constitutional provisions.

Besosa wrote this in a joint ruling on two cases, one filed by Assured Guaranty Corp. et al. and another filed by Financial Guaranty Insurance Co.

In these cases Puerto Rico argued that the 11th Amendment to the U.S. Constitution barred the litigants' claims. Besosa rejected this argument, saying there is an exception to it for injunctive relief. The decision "eliminated a defense that Puerto Rico has," Spiotto said.

The Puerto Rico Oversight, Management and Economic Stability Act allowed for a stay on litigation concerning the debt to continue until at least Feb. 15 and, depending on how one reads the law, possibly as late as June 15.

This has not prevented several parties from filing lawsuits and, in some cases, saying that the PROMESA stay doesn't apply to their claims.

"I believe the judge will lift the stay on at least one, but probably two of the cases and rule on the constitutionality of [Puerto Rico's] Moratorium Act, which is also an issue on the Assured/Ambac cases," Mudd wrote in a blog post on his site controlboardwatch.org.

In the Assured and FGIC decision Besosa wrote that in "cases of an unbalanced budget, the commonwealth constitution establishes a priority system detailing in what order appropriations will be paid." Under the Puerto Rico constitution, he wrote, "first priority is assigned to 'interest on the public debt and amortization thereof.'"

Mudd said this passage could be a "harbinger of Judge Besosa's position on these issues."

In 1976 in the Flushing National vs. Municipal Assistance Corp. a New York State court struck down a moratorium on debt payments by New York City because the court said it violated the state's constitution priority on debt payment. While Besosa is a federal judge and not a state one, Spiotto said it is quite possible that he will be influenced by this earlier ruling.

Mudd said that PROMESA currently allows the extension of the litigation stay until not later than May 1. It is unlikely that the Puerto Rico Oversight Board will have completed approval of a five year fiscal plan by then. And without this plan, the oversight board will to be able to petition a court for a bankruptcy process. So even if the courts don't overturn the litigation stay before May 2, at that point the commonwealth may have to deal with a court order to pay all or part of the due debt.

The Bond Buyer

By Robert Slavin

October 12, 2016

MSRB Requests Input From Market on Future Strategic Planning.

WASHINGTON – The Municipal Securities Rulemaking Board is seeking input from market participants on where to focus its long-term strategic plan and specifically how it can improve its EMMA system.

The MSRB is scheduled to begin its strategic planning cycle with a meeting in January and will focus on both its core activities as well as strategic goals designed to steer its long-term priorities, the board said in a regulatory notice Wednesday. The MSRB engages in a strategic planning process every two years. It is asking that market comments be filed by Nov. 11.

“The MSRB’s long-term strategic planning process informs the board’s discussion and prioritization of regulatory, educational, and transparency initiatives,” said MSRB executive director Lynnette Kelly. “Receiving comment from a wide range of market participants helps ensure that the MSRB thoroughly considers relevant market topics when setting and reevaluating organizational priorities.”

The strategic planning will fall to the MSRB’s 21-member, majority-public board and will involve a “comprehensive strategy review” with consideration of: its statutory authority; activities of dealers and municipal advisors; information needs and concerns of issuers; and market research practices, according to the regulatory notice.

Commenters are being asked for their opinions both on potential strategic goals for the board as well as the way the MSRB should prioritize its core activities. Its core activities include: regulating muni dealers and MAs; operating market transparency systems; and providing education, outreach and market leadership.

The regulatory notice includes a list of six questions to help guide commenters. A main focus is on suggestions for steps the MSRB can take to maximize the benefits EMMA can provide the market. EMMA is the official repository for information on almost all municipal bonds.

The board has said it is planning to organize focus groups of EMMA users, including investors and issuers, over the next year to help generate ideas for improving the system. It also announced improvements to EMMA to make it easier for issuers to disclose bank loans. The changes were spurred by issuer complaints that the system was confusing and misleading.

The MSRB’s Wednesday request for comment also asks participants to weigh in on what they see as the most important risks or issues in the market as well as whether any part of the board’s more recent regulation of MAs deserves additional consideration.

The Dodd-Frank Act of 2010 charged the MSRB with regulating municipal advisors and the board has since created new rules like its Rule G-42 on core duties of MAs while also expanding existing dealer rules on things like gifts and political contributions to include municipal advisors in response to the act.

The MSRB is also asking commenters to write in with ideas of specific topics that it should address in its overall education program. The board last month rolled out the first two of what it intends to be a number of courses as part of one aspect of its education activities, a new learning management system called MuniEdPro. The system is designed to keep participants up to date on the municipal market and in compliance with their continuing education requirements. The two classes address the roles and responsibilities of participants in fixed-rate, primary market offerings as well as understanding MSRB Rules as they relate to market risks.

The Bond Buyer

By Jack Casey

October 12, 2016

IRS PLR: Organization Is Instrumentality of State Political Subdivisons.

The IRS ruled that an organization that is a consolidated department of all incorporated cities in a state is a wholly owned instrumentality of political subdivisions of the state and, thus, contributions to the organization may be deductible under section 170(c)(1).

Read the Private Letter Ruling.

Electronic Muni Debt Platform Gains Traction with Ohio.

A new trading platform dedicated to a niche area of the $3.8tn US municipal debt market has managed to entice the state of Ohio to issue debt on the venue, highlighting efforts to electronify even the most old-fashioned, recondite corners of the bond market.

Ohio will later this month price a “variable rate demand obligation” — a municipal bond where the interest rate resets periodically and that can be sold back to the issuer — on Clarity Bidrate Alternative Trading System, an arm of Arbor Research & Trading founded by Robert Novembre, a former Citi trader.

In a statement, Seth Metcalf, the deputy treasurer of Ohio, said: “The Treasurer’s Office is excited about the opportunity to lower interest costs for Ohio taxpayers by leveraging Clarity’s innovative technology to increase market competition through better price transparency and democratised access to Ohio paper.”

Clarity is talking to several other potential issuers to follow Ohio later this year. The platform has so far signed up 19 subscribers, mostly investors and two banks, and four more are in the process of being brought on board.

“Getting a bond issuer to step up was the final step,” said Mr Novembre “Ohio will help ignite this new market. We want to be the NYSE for variable-rate securities.”

Clarity is one of a clutch of new alternative trading venues that are attempting to revolutionise how the bond market is traded. While stocks are overwhelmingly traded on equity exchanges at hyperfast speeds, and US Treasuries are now mostly traded electronically, much of fixed income is still largely transacted via phone.

When compared with the infrastructure of corporate debt, the US municipal bond market is considered archaic.

“It’s a good market, but it falls somewhere between inefficient and broken,” Mr Novembre said. “Some people are ready to embrace change, and some are not. Are [bond] markets in need of more technology to bring more efficiency? To my mind the answer is absolutely yes.”

The details of Ohio’s VRDO issue are due to be released this month, but it will be “midsized” according to Mr Novembre. Sizes in the market typically vary from $7m to $75m.

Most of the new bond trading platforms, such as George Soros-backed Trumid, are focused on the corporate bond market, but Clarity’s technology is oriented around variable-rate securities like VRDOs. The $180bn VRDO market gives municipalities access to long-term financing at shorter-

term, floating interest rates.

Short-term municipal borrowing rates have climbed sharply this year, as long-awaited regulatory changes have caused an investor exodus from money market funds that make up a big part of the investor base. The yield of the Sifma Municipal Swap Index — the market's biggest benchmark — climbed to an eight-year high of 0.87 per cent last week, which Clarity hopes will burnish its lustre to municipal borrowers that want to attract new investors to the market.

The Financial Times

OCTOBER 10, 2016 by: Robin Wigglesworth in New York

Mayors: Next President Must Keep Muni Exemption; Focus on Infrastructure.

WASHINGTON – The next president must maintain the tax exemption for municipal bonds — the "bread and butter" of infrastructure financing — or risk costing cities up to $500 billion, a group of mayors recently told Republican and Democrat campaign representatives.

The U.S. Conference of Mayors (USCM) stressed the importance of the muni exemption at its bipartisan fall leadership meeting last week in Oklahoma City, which focused on the actions that should be taken during the first 100 days of the next administration, including the development of a much-needed national infrastructure investment policy.

At the three-day conference that ran from Sept. 29-Oct. 1, the organization stressed that federal support is still needed to address infrastructure issues, such as the repair or construction of roads, bridges, power grids and water systems.

Stephen Benjamin, the mayor of Columbia, S.C. and the second vice president of USCM, said in a press conference that while Congress discusses the need for modernization of infrastructure, it continues to "play fast and loose" with the tools that will make that possible.

"The tax exemption on municipal bonds is the only thing we have left to meet the nation's infrastructure needs," said Benjamin, who also serves as chair of the advocacy group Municipal Bonds for America and formerly practiced public finance law at ParkerPoe. "This is not dessert – this is bread and butter, and it's important to us that we reaffirm our position that investment in our cities is non-negotiable."

In June 2015, USCM adopted a resolution against limiting tax-exempt bonds under proposals from Congress and the Obama administration. Obama has proposed capping the value of the muni exemption at 28% in his last few budget requests. The mayors group has warned such a cap would raise borrowing costs to issuers.

Should the incoming president adopt a measure capping the muni exemption at 28%, cities would see increased costs of almost $200 billion, Benjamin said at the press conference. If the exemption was to be removed entirely, those same costs would rise to nearly $500 billion, he added.

This would prohibit cities from making investments in infrastructure, which the U.S. has been "putting Band-Aids on" for too long, he warned.

He said USCM had unanimous support for the muni exemption, and cited the $1.65 trillion in debt

issued for infrastructure by state and local governments from 2003-2012.

“We want this nation to continue to flourish,” Benjamin said. “The only way we can continue to do that is if we invest in infrastructure and we need the tax exemption of municipal bonds to do that.”

Trump does not explicitly mention municipal bonds in his tax plan, but several experts have warned that his proposal and its across-the-board tax cuts could reduce incentives for purchasing munis while increasing the federal debt. He has proposing borrowing several hundred billion dollars to spend on infrastructure.

Clinton’s plan specifically talks about bonds and has generally been more positively received in regards to its potential impact on munis because of its goal to raise taxes for those at the top, which could make tax-exempt bonds more appealing.

Her plan would increase federal funding for infrastructure by $275 billion over five years, allocating $25 billion to direct public investment and $25 billion to a national infrastructure bank to be leveraged to support an additional $225 billion in direct loans, loan guarantees and other forms of credit enhancement. She would renew and expand Build America Bonds under a program to be administered in part by the infrastructure bank.

A total of $181 billion of BABs was issued before the bonds expired at the end of 2010. The GOP tax plan released by the House Ways and Means Committee in June suggested repealing unidentified exemptions, deductions and credits, but does not mention munis directly.

Based in Washington, USCM is the nonpartisan organization of the roughly 1,400 U.S. cities with populations of 30,000 or higher.

A total of 41 mayors attended its fall meeting, including New York City Mayor Bill de Blasio, Baltimore Mayor Stephanie Rawlings-Blake, and New Orleans Mayor Mitch Landrieu, the USCM vice president.

The Bond Buyer

By Evan Fallor

October 4, 2016

New California Law Requires Increased Private Fund Fee And Expense Disclosure.

Recent state legislative developments in California will require disclosure of certain information by private investment fund managers, primarily in the area of fees and expenses incurred by state and local pension and retirement plans.

On September 14, 2016, the Governor of California approved a bill adding Section 7514.7 to the California Government Code, which imposes significant new disclosure requirements for private funds with investments by California state and local public pension and/or retirement systems, including the University of California’s retirement plan (Public Plan Investors).

Section 7514.7 will apply to Public Plan Investors investing in private investment funds (defined to

include private equity funds, venture capital funds, hedge funds and absolute return funds) on and after January 1, 2017. The Public Plan Investor will be required to obtain assurances that the fund will make specified disclosures regarding fees, expenses, carried interest and portfolio company fees, in addition to other specified information. Section 7514.7 also will require the Public Plan Investor to disclose such information, as well as the gross and net rates of return of the fund since inception, at least once annually at a meeting open to the public.

Specifically, every Public Plan Investor will require each private investment fund in which it invests to make each of the following disclosures to the Public Plan Investor at least annually:

(i) The fees and expenses that the Public Plan Investor pays directly to the private investment fund, the fund manager (including the general partner) or related parties1.

(ii) The Public Plan Investor's pro rata share of fees and expenses not included above that are paid from the private investment fund to the fund manager or related parties. The Public Plan Investor may independently calculate this information based on information contractually required to be provided by the private investment fund to the Public Plan Investor. If the Public Plan Investor independently calculates this information, then the private investment fund will not be required to provide the information identified in this item (ii).

(iii) The Public Plan Investor's pro rata share of carried interest distributed by the private investment fund to the fund manager or related parties.

(iv) The Public Plan Investor's pro rata share of aggregate fees and expenses paid by all of the portfolio companies held by the private investment fund to the fund manager or related parties.

(v) The following information that under the California Public Records Act is required to be disclosed upon request:

- The name, address, and vintage year of the private investment fund;
- The dollar amount of the commitment made to the private investment fund by the Public Plan Investor;
- The dollar amount of cash contributions made by the Public Plan Investor to the private investment fund since inception;
- The dollar amount, on a fiscal year-end basis, of cash distributions received by the Public Plan Investor from the private investment fund;
- The dollar amount, on a fiscal year-end basis, of cash distributions received by the Public Plan Investor plus remaining value of assets attributable to the Public Plan Investor's investment in the private investment fund;
- The net internal rate of return of the private investment fund since inception;
- The investment multiple of the private investment fund since inception;
- The dollar amount of the total management fees and costs paid on an annual fiscal year-end basis by the Public Plan Investor to the private investment fund; and
- The dollar amount of cash profit received by the Public Plan Investor from the private investment fund on a fiscal year-end basis.

Additional disclosure requirements may also be required by specific Public Plan Investors themselves. Section 7514.7 will apply to new contracts entered into on and after January 1, 2017, and for existing contracts for which a new capital commitment is made on or after January 1, 2017. Section 7514.7 also will require Public Plan Investors to undertake reasonable efforts to obtain the above-mentioned information with respect to contracts in place prior to January 1, 2017.

Similar legislation may be introduced in other states, including legislation currently pending in Illinois, seeking to require increased transparency around public investments in private investment funds. These efforts may include a private investment fund being required to provide a report to a state or local pension or retirement plan investor using a template developed by the Institutional Limited Partners Association, which to date has been endorsed by a significant number of state and local pension and retirement systems.

While these requirements may only apply to contracts entered into (or investments made) after a certain future date, they also may require pension or retirement plan investors to use “best efforts” (or a similar standard) to obtain this information in connection with existing private fund investments. Accordingly, sponsors of private investment funds should be vigilant for potential disclosure requirements that could apply in connection with investments secured from state and local retirement and pension plans and consult with counsel versed in these areas to ensure that provisions in fund governance documents do comply with statutory requirements.

Footnote

1. The definition of a related party includes (i) any current or former employee, manager, or partner of any entity owned 10% or more by related persons (as defined in Section 7514.7) that is involved in the investment activities or accounting and valuation functions of the general partner, investment adviser or separate carried interest vehicle (each a “relevant entity”), and (ii) any operational partner, senior advisor, or other consultant or employee whose primary activity for a relevant entity is to provide operational or back office support to any portfolio company of any private investment fund or account managed by a related person.

Last Updated: September 29 2016

Article by David T. Jones, Michael F. Mavrides, Christopher M. Wells and Anthony M. Drenzek

Proskauer Rose LLP

Puerto Rico Commission Raises Red Flags on PREPA's 2013 Bond.

A Puerto Rico government commission report raised concerns over debt-service coverage, illegalities, disclosures and accounting issues regarding $673 million of bonds issued by the island’s power utility in 2013.

Puerto Rico Commission for the Comprehensive Audit of the Public Credit raised concerns over the 2013 Puerto Rico Electric Power Authority bonds in its second report under its mandate to look into the legality of the island’s $70 billion of public debt. The report focused on the Aug. 7, 2013 sale of 2013A power revenue bonds. It also looked at the role of Morgan Stanley, Ernst & Young, and URS Corp. in the sale and the period leading up to the sale.

The bonds have several maturities, with the longest, 2043, having sold with a 7.15% yield to maturity. The bonds were sold as callable at par in 2023.

Reports from the commission will “be the base for negotiating with the bondholders,” said David

Rodriguez Ortiz, president of the Puerto Rico Chamber of Commerce and a certified public accountant. The commission will find invalid debt, he said. The work of the commission may also let bond holders file claims against those that prepared official statements or others involved with the bond issues.

The commission released its first report in June, a review of documents connected with the commonwealth's $3.5 billion general obligation bond sale and $1.2 billion tax and revenue anticipation note in 2014. Through the earlier review it raised doubts on the legality of much of Puerto Rico's bond debt, now due to be restructured under the supervision of a federally appointed control board that had its first meeting last week.

In the commission's latest report, released at the end of September, the commission looked at the next-most-recent Puerto Rico municipal bonds. Since the commission didn't have funding to hire auditors, it couldn't determine if the sale met with U.S. General Accounting Standards, and dubbed the document a pre-audit survey report.

The pre-audit raises six groups of questions about PREPA and the others involved in the sale.

Puerto Rico covenanted in its trust agreement to adjust electrical rates so that net revenues would provide at least 120% of the aggregate principal and interest due in the following fiscal year. During some years PREPA included uncollected electricity charges in net revenues. This practice helped make the authority's debt service coverage appear higher than it was.

If one excluded uncollected revenues, the authority met or would meet the 120% requirement only once in the five years prior and five years following the 2013 bond sale.

The report says an auditor would be needed to determine with certainty if the uncollected revenues should have been included in PREPA's debt service calculations.

The pre-audit states that SEC Rule 15c2-12 bars underwriters from selling bonds unless they know that the issuer will provide the Municipal Securities Rulemaking Board with annual financial statements in a timely fashion. Yet PREPA repeatedly published financial statements after the due date. The commission asked if the underwriter, Morgan Stanley, should have known that the authority was unlikely to have met its disclosure obligations.

PREPA's performance auditor, URS Corp., was involved with the sale of the bonds. The report says that the Sarbanes-Oxley Act "provides that it is unlawful for auditors to provide services outside the scope of practice of auditors."

The report says that PREPA may have used unrealistically optimistic assumptions in the sale. For example, the authority projected sales increases for all the following five years, without describing the assumptions for this forecast. The projection may have been unrealistic given the island's prolonged economic contraction and population decline.

The bond's official statement also projected that PREPA could sell an additional $1.1 billion worth of bonds for its five year capital improvement program.

Finally, the report raises questions about the performance of PREPA's auditor, Ernst & Young. The authority's 2012 Audited Finance Statement prepared by Ernst & Young didn't adjust the authority's $6.5 billion plant property and equipment for the effects of environmental regulations. The report states that the Government Accounting Standards Board Pronouncement 42 appears to require the value to be offset by the roughly $1 billion regulatory impact.

Additionally, the Ernst & Young opinion failed to include a “going concern” warning “despite recurring severe liquidity stress that PREPA was encountering at the time the 2012 audit report was issued.”

“Less than six months after [Ernest & Young] issued its opinion on PREPA’s 2012 financial statements, PREPA was technically in default of its bond covenant,” the report states. Yet in Ernest & Young’s 2013 audit report on PREPA, released in January 2014, Ernst & Young continued to not include a “going concern” statement, the report notes.

PREPA, Ernst & Young, and URS, through its new parent company AECOM, didn’t respond to requests for comments. Morgan Stanley declined to comment.

The Bond Buyer

By Robert Slavin

October 3, 2016

Muni Volume Sets September Record.

Municipal bond issuance for September swelled 45% to $35.7 billion, the highest volume for the month in records going back to 1986, driven by an unexpected surge in new money deals.

The total par amount of the month’s 980 sales surpassed the previous September volume record set in 2010, when $35.6 billion of bonds were sold. Through three quarters, the market has produced $334 billion of issuance in 10,046 deals, according to data from Thomson Reuters, on pace to surpass the $400 billion mark. At this time last year volume totaled $319.4 billion in 10,359 deals.

The largest recorded issuance year was 2010, when the volume hit $433.27 billion.

“It certainly seems likely given that October should also be heavy, with more than $14 billion next week. We had [estimated] $400 billion with a possible upside surprise and it seems the surprise might actually be happening,” Mikhail Foux, director of research at Barclays Capital, said Friday.

Foux said new money deals have been the biggest surprise.

“Who would have thought that after such a slow first quarter, we are likely going to surpass last year’s number, which one of the largest ever years in terms of issuance,” he said. “A pickup in new money is the biggest story of 2016 and likely going forward. It seems that we are finally starting to address our infrastructure needs. There was a lot more issuance from the transportation sector and there is more than $200 billion of bond deals on ballots.”

For the third quarter alone, there were $109.7 billion of deals in 3,131 transactions, up from the $92.6 billion in 2,951 transactions during the third quarter of 2015.

“The sheer amount of issuance has been pretty impressive. I think the hope is that the amount of supply puts some pressure on the yields and creates a backup, which would be welcomed,” said Dawn Mangerson, managing director and senior portfolio manager at McDonnell Investment Management. “We said issuance wouldn’t wane, and we were right. We are looking good right now; we should see a decent calendar throughout the rest of the year.”

Though volume was up the past two months and third-quarter issuance increased year-over-year, volume for the three months was down from the second quarter.

“The volume hasn’t reached a point where it was too much for the market to absorb,” Mangerson said. “It has been surprising how much consistent high demand for munis we have seen all year long and also that we didn’t see any volatility this month.”

Mangerson said volume could slip toward the end of the year, when and if the Federal Open Market Committee decides to raise rates.

“The second quarter is typically the heaviest; we had a substantial slowdown in July – partially due to Brexit- but supply picked up in August and September,” Foux said, referring to the British vote to leave the European Union.

For the month, new money deals catapulted nearly 68% to $16.99 billion in 470 issues, from $22.21 billion in 799 issues during the same period last year.

Refundings, which have been strong for most of the year due to persistent low interest rates, were up 19% to $12.19 billion in 423 transactions from $10.23 billion in 353 transactions during September of last year.

Combined new-money and refunding issuance rose by 54.6% to $6.51 billion from $4.21 billion.

Negotiated deals were higher by 57.7 % to $27 billion, while competitive sales increased by 58.6% to $7.61 billion from $4.79 billion.

Issuance of revenue bonds increased 82.2% to $26.65 billion, while general obligation bond sales were down 9.1% to $9.05 billion.

Taxable bond volume increased 32.8% to $2.13 billion, while tax-exempt issuance increased by 45.2% to $32.25 billion.

Minimum tax bonds issuance gained to $1.32 million from $760 million.

Private placements sank to $1.09 billion from $2.66 billion.

Zero coupon bonds more than doubled to $360 million from $132 million.

Bond insurance increased 26% for the month, as the volume of deals wrapped with insurance rose to $1.84 billion in 140 deals from $1.46 billion in 117 deals.

Variable-rate short put bonds gained 7.7% to $1.06 billion from $986 million. Variable-rate long or no put bonds jumped to $734 million from $31 million.

“This is probably due to all the SIFMA related concerns, much higher SIFMA and libor rates are making issuing floating rate notes more costly,” said Foux.

Bank qualified bonds improved 6.4% to $1.59 billion from $1.49 billion.

Seven out of the 10 sectors saw year-over-year gains. Health care more than doubled to $5.69 billion from $1.67 billion, utilities also more than doubled to $3.32 billion from $1.36 billion, general purpose increased 34.6% to $8.44 billion from $6.27 billion, housing rose to $2.16 billion from $943 million, health care increased to $5.69 billion to $1.66 billion, environmental facilities climbed to $379 million from $76 million and electric power went up to $1.83 billion from $516 million.

On the other end of the spectrum, the education sector was barely down to $7.17 billion from $7.20 billion, development dropped 15.9% to $729 million and public facilities were down to $932 million from $1.04 billion.

As for the different types of entities that issue bonds, five were in the green: state governments, state agencies, counties and parishes, cities and towns and districts.

One other thing that Foux noted was that in general, issuers tried to bring deals before FOMC announcements, not just this month but in general.

“It seems that we see more pension obligation bonds, as issuers are trying to plug the pension funding gap.”

California is still the top state for issuance for the year to date, followed by Texas, New York, Pennsylvania and Florida. These numbers encompass all of the individual issuers within the state.

Golden State issuers this year have sold $47.53 billion, with the Lone Star State in second with $41.55 billion. The Empire State follows with $35.36 billion. The Keystone State is in fourth with $15.24 billion and The Sunshine State rounds out the top five with $15.08 billion.

“October could be solid as issuers could try to bring deals before the elections,” Foux said. “November and December should be lighter, though we have some uncertainty related to the December FOMC and issuers might try to pull deals from January to get in front of it.”

The Bond Buyer

By Aaron Weitzman

September 30, 2016

Woodell Hopes to Start New Initiatives During Tenure as MSRB Chair.

WASHINGTON – As the new chair of the Municipal Securities Rulemaking Board on Oct. 1, Colleen Woodell hopes the board will begin new initiatives on syndicate practices and pre-trade price transparency during her one-year term.

She plans to use the knowledge she has gained over her career to contribute to the market on a much broader basis.

“I really wanted to give back,” Woodell said of the impetus for her decision to take the position leading the board, which will also continue work on major rulemakings like markup disclosure.

Woodell discussed the issues pending before the MSRB and her career during an interview with The Bond Buyer.

The former chief credit officer of global corporate and government ratings at S&P Global Ratings, she is in her fourth year on the board. Her tenure is longer than usual after colleagues voted to give her a one-year extension as part of the MSRB’s plan to have members ultimately serve four-year terms.

She replaces Nat Singer, senior managing director at Swap Financial Group, as chair, whom she

served under as vice chair this past year.

Woodell said she views her role leading the 21-member, majority public board as a facilitator "making sure that everybody is heard and that we get the knowledge in the room that we need."

She added that although she sees 21 members as being "a lot," she thinks "it is a good number because it gives enough of a broad scope that it gets [the MSRB] where [it needs] to be."

As the MSRB continues to explore new rulemakings and necessary steps over the next year, Woodell said she will be cognizant of market feedback about pressures its participants have faced from recent regulations. However, she noted that "if we know that there's a need to do something, as a regulator, we need to do it."

"We know there's been a lot to absorb over the last couple of years and we're sympathetic to that," she said. "The costs are significant, the people impact is significant, but we still need to make sure that we are meeting our mission."

It is also important to her to make sure that new board members, who sometimes come on thinking their time will be spent solely on rulemaking, are aware that there is much more the MSRB does apart from crafting regulations.

Given the larger rulemaking initiatives that have either been finalized or appear closer to being finalized, like municipal advisor rules and markup disclosure, she thinks the market will have had a chance to get adjusted "before the next big things come."

The MSRB's markup disclosure rule, which is accompanied by guidance on how dealers would use a "waterfall" of factors to determine prevailing market price, has already been filed with the Securities and Exchange Commission. It would require a dealer, which buys or sells munis for or from its own account to a retail customer and engages in one or more offsetting transactions on the same trading day in the same security, to disclose its markup or markdown in the confirmation it sends the customer.

Comments on the proposed rule are supposed to be sent to the SEC by Oct. 4. Although dealers have been concerned about how to demonstrate compliance with the rule, Woodell said the board thinks "that what it filed is getting the market where it needs to be."

"Hopefully it will be done during my term, but you never know," Woodell said about the proposal. MSRB Rule G-42 on core duties of MAs went through three rounds of comments from the SEC. "Hopefully this won't go that many, but it's always possible," she added. The next step for the MSRB will be to respond to the comments.

The MSRB will also continue with several other initiatives, like a newly proposed rule on certain exceptions that would allow dealers to trade in amounts below a security's minimum denomination.

New Initiatives

Woodell said she also intends to set in motion several multi-year initiatives related to past comments and data the MSRB has received.

"We put a request for comment out on the entire [MSRB] rulebook a couple years ago and that raised a few questions, along with enforcement cases about syndicate practices," Woodell said. "We need to start the conversation on those."

The focus on syndicate practices relates to an August 2015 SEC case against Edward Jones, where the firm, which was part of a syndicate, settled charges that, instead of selling new bonds to customers at the initial offering price as required, it took bonds into its own inventory and then improperly sold them to customers at higher prices. In some cases, the firm failed entirely to underwrite and offer the new bonds to investors until secondary market trading began.

Woodell said the board may consider some rule changes that take into account the enforcement actions, developments in Internal Revenue Service price determination requirements, and other feedback or information it gets from the market.

“The first thing we need to look at is whether it is a bona-fide order,” Woodell said, referring to whether the orders that dealers submit are actual orders instead of a firm just saying it wants bonds to then either flip or do something else with them.

Woodell also intends to start the conversation on pre-trade price transparency this year, something that will be at least the same magnitude of an undertaking as markup disclosure or the initial municipal advisor rules from the board, she said.

The MSRB has already circulated a few concept releases on the topic and is currently analyzing the comments it received. Pre-trade is amorphous but refers to data that can help with pricing determinations before a muni is traded. It can include voluntarily submitted information from alternative trading systems and external yield curves.

According to Lynnette Kelly, the MSRB’s executive director, the goal for the board will be to figure out what types of pre-trade information would be the most valuable.

The board also plans to work with the Financial Industry Regulatory Authority on steps involving pre-trade price transparency information, adding an extra level of necessary coordination to the process.

Woodell said the board will separately circulate a request for comment before it holds a formal strategic planning session to look at the longer-term goals for the board. The MSRB holds such a planning session every two years and incorporates the market comments along with input from the board.

Over the next five to ten years, Woodell said she would expect that the market would continue to absorb larger MSRB rulemaking like rules on syndicates, while also seeing a rise in electronic platforms.

Tangentially related to the MSRB, she said the muni market will be affected by the country’s infrastructure needs and pension issues. Both presidential candidates have talked about the need for increased spending on infrastructure and the elections will also likely bring about larger changes to Congress and the SEC, she said.

“I think the infrastructure and … pensions are huge. They’re not going away,” Woodell said. “You’re not going to wake up tomorrow and say ‘that’s gone.'”

EMMA

As is normal with the MSRB, the next year is also expected to bring several changes and improvements to the board’s EMMA system, according to Woodell.

“EMMA is a big transparency platform,” she said. “We’ll continue to think about what needs to be

done with it and take feedback from everybody to see what could be better."

To that end, the board will be facilitating focus groups with different types of EMMA users, including investors and issuers. It will also consider adding things like third-party yield curves and a new issue calendar to the platform.

Kelly, who described the focus groups as "a year-long initiative," said they will help to answer questions like whether the interface should look different depending on what type of user is accessing it and how the platform could best be leveraged to empower different users.

The board recently announced improvements to EMMA to make it easier for issuers to disclose bank loans. The changes were spurred by issuer complaints that the system was confusing and misleading.

"Every time we do anything, almost every day here, someone talks about market transparency and fair and efficient markets," Woodell said. "Transparency is obviously key to fair and efficient markets."

In addition to EMMA, the board will follow developments related to the first MA qualification exam, which was released on Sept. 12 for a year. MAs that didn't pass the pilot exam will have to take and pass the qualification exam. The board also will give a $5.5 million proportional rebate to dealers and will continue to monitor its finances to be "very sensitive" to the fiscal responsibility that it has to the muni business to not charge too much, Woodell said.

Some market participants question whether the MA qualification exam will cause advisors to retire early or otherwise leave "It would be disconcerting to me if it did because a basic qualification exam feels like something someone who is practicing as an MA should be able to pass," Woodell said.

"I'm sure some of the market participants feel some level of angst surrounding the idea of a test," she added. "But if you're going to be in the market and if you're going to be advising people, you have a fiduciary duty [and] you better know what you are doing."

Background

Woodell says that her career in munis started with "a lucky break" after she graduated from Wells College in Aurora, N.Y. as an economics major. She went to the yellow pages and sent out "a bunch of resumes to places I found," one of which was Moody's.

She started there in 1977 in what was then the department that handled the handbook of common stocks Moody's published. Then, in 1979, Moody's developed an internal program to promote from within and asked Woodell if she was interested in public finance.

"I said 'what's that,' and that's really what started it," Woodell said.

She stayed with Moody's until 1990, at which point she moved to Fitch until 1993. From there, she went to First Albany Capital Inc., a regional firm at that point, for five years. Ultimately, she moved to S&P and was there until 2004.Woodell retired in 2012.

Woodell said that she loves the industry because it is always changing, something she finds "fascinating."

She also enjoys what she and her friends refer to as "the curse of the muni analyst."

“I fly into National [Airport in D.C.] and I say ‘oh, there’s the sewer plants for Washington’ or I go on vacation and I say ‘oh, they have desalinization here,'” she said. “It’s with you all the time. I find it endlessly fascinating.”

The Bond Buyer

By Jack Casey

September 30, 2016

U.S.-Based Municipal Funds Absorb Cash for 52nd Straight Week: ICI

Investors piled into U.S. municipal bond funds for the 52nd straight week, a milestone for debt funds seen as an acceptable compromise between risk and reward as trillions of dollars’ worth of bonds now yield less than zero.

Muni funds took in $1.1 billion in the week through Sept. 28, the Washington-based trade group said on Wednesday. Earlier data showed muni funds took in $63 billion in the 11 months through August.

“They look pretty robust relative to the rest of the world,” said Chad Rach, a portfolio manager at Capital Group in Los Angeles, which manages American Funds. There are $10.9 trillion of negative-yielding government bonds, according to Fitch Ratings data as of Sept. 12.

Overall, ICI said U.S.-based bond funds took in $7.8 billion for the week, continuing a rotation from stocks to bond funds that has lasted the better part of the year.

Rach said that while muni bonds have some risk of issuers not repaying their debts, they lack the exposure to energy markets that have haunted high-yield bonds and other areas of the market. He expects flows to remain strong but said rising rates are a major risk for the bonds.

“It’s a risk that we’re very focused on,” he said.

U.S.-based world stock funds posted $3.7 billion in outflows, their worst week since fears about China’s economy stoked a global selloff in the week through Aug. 26, 2015. But that week’s $8.3 billion outflow was far higher.

Strong demand for domestic stock funds pushed overall stock fund flows positive for the week as they took in $4.2 billion, according to ICI.

Reuters

By Trevor Hunnicutt

Wed Oct 5, 2016 | 2:50pm EDT

SEC Approves Fund Liquidity Rules, Sparking Concern for Munis.

WASHINGTON – The Securities and Exchange Commission voted unanimously on Thursday to

finalize new open-end fund liquidity requirements that market participants said would hurt the industry by damaging the funds' appetites for munis.

The rule requires funds to create liquidity risk management programs that are approved and monitored by their boards. It will apply to mutual funds and other open-end management investment companies, including exchange-traded funds, but will exclude money market funds. ETFs that honor redemptions using securities instead of cash are excluded from some of the new requirements.

The requirements respond to what the SEC sees as the recent growth of open-end funds investing in potentially less-liquid strategies and are meant to ensure that funds maintain enough liquidity that they are able to effectively deal with investor redemptions.

"It is imperative that open-end funds manage their liquidity carefully, both to ensure that redemptions can be fulfilled in a timely manner and to minimize the impact of redemptions on remaining investors and the broader marketplace," said SEC chair Mary Jo White.

Most funds will be required to comply with the liquidity risk management program requirements by Dec. 1, 2018, though funds with less than $1 billion in net assets will have until June 1, 2019. The finalized rule and amendments require funds' liquidity programs to be designed to assess liquidity based on the number of days in which the fund reasonably expects an investment could be converted to cash given current market conditions without significantly changing the market value of the investment, according to the rule.

The Government Finance Officers Association, which expressed concern about the SEC's original proposal for new requirements released in September 2015, is still worried about the finalized rule's requirement to categorize assets in a way that "overlooks some of the key features of muni securities," according to Emily Brock, director of GFOA's federal liaison center.

Munis made up about $688.9 billion of the assets mutual funds and ETFs held as of Sept. 30, according to Morningstar Inc. data.

"Trading volume is not in isolation a reliable indicator of future liquidity for municipal securities," Brock said. "Because highly rated municipal securities are considered core holdings of large institutional investors, they experience lower trading volumes during more stable financial periods than they do during periods of fiscal stress."

She also noted that during times of fiscal stress, munis are typically the first considered for sale because of their attractiveness to investors. Additionally, Brock said GFOA's concern is tied to the "critical" nature of infrastructure investment in the nation's economy.

"We expect as a result of this rule, funds will decrease their appetite for the securities of smaller, less frequent issuers," which constitute about three quarters of GFOA's membership, Brock said. "The potential loss of mutual funds as investors is alarming, given the level of investment from funds in short-and-long-term municipal bonds."

Matt Posner, a principal with the Court Street Group, said that mutual funds have played a key role in the current outperformance of munis compared with other fixed-income classes and that this rule, by making the funds' internal processes more expensive, will eventually make the cost of issuance more expensive and will hurt smaller issuers that are considered less liquid.

He added that the muni industry should have used the resources it dedicated to challenging a separate rule from banking regulators that did not classify munis as high quality liquid assets, to instead address this one, which has "a much more wide-ranging influence."

“There are lessons to be learned about how this rule got passed without much discussion,” Posner said. He added that the lessons could be helpful as the Basel III fundamental review of the trading book requirements loom. The requirements are a part of revisions from bank supervisors that are designed to reform regulatory standards for banks in response to the financial crisis.

The SEC’s finalized liquidity requirements build on its original proposal. Under the finalized rule, funds’ programs would have to classify portfolio assets into four categories: highly liquid investments; moderately liquid investment; less liquid investments; and illiquid investments. It also generally allows funds to classify their investments by asset class instead of making them determine the time it would take to convert each investment into cash.

Funds covered under the rule also must determine a minimum percentage of their net assets that must be invested in highly liquid investments. Highly liquid investments, according to the SEC, are defined as those that are reasonably expected to be converted into cash within three business days without significantly changing their value. Funds also have to have policies and procedures for responding to a shortfall in their highly liquid holdings.

Another component of the new requirements would mandate that no more than 15% of a fund’s investments are considered illiquid, defined as incapable of being sold within seven calendar days without significantly affecting the investment’s market value. The rule lays out a series of steps and considerations if a fund exceeds the percentage.

The SEC additionally approved by a two-to-one vote a separate but related set of changes on Thursday that would allow open-end funds, excluding MMFs and ETFs, to use swing pricing. Swing pricing refers to a fund’s adjusting of its net asset value per share to pass on to purchasing or redeeming shareholders certain costs associated with their activities.

The swing pricing amendments will become effective two years after they are published in the Federal Register.

The Securities Industry and Financial Markets Association’s Asset Management Group said in a statement that it supports the SEC’s “taking the initiative to enhance its ability to monitor and regulate asset management activities” with the new requirements.

“While we are still in the process of reviewing the final rules, it is clear that the commission maintained its commitment to the goals of the proposal, including strengthening the SEC’s regulatory effectiveness and protecting investors, while showing thoughtful consideration of comments by SIFMA AMG and others,” SIFMA AMG said.

Paul Schott Stevens, president and chief executive officer of Investment Company Institute, said ICI is still reviewing the final rules “will have a more comprehensive understanding of the rules’ impact once we have completed that work.”

“It is clear, however, that this is a tough set of new rules that will spur a number of operational changes across the registered fund industry,” Stevens said. “While some of these new rules will likely add complexity and cost, ICI commends chair White and the SEC for advancing this work, as the commission is the appropriate body to address areas of potential risk in activities and products related to asset management.”

The Bond Buyer

By Jack Casey

October 13, 2016

SEC Stepping Up Enforcement of Public Finance Market.

Over the last three years, the Securities and Exchange Commission's Enforcement Division has used sweeps to dramatically increase the number of enforcement measures brought against bad actors in the public finance market, Director Andrew Ceresney said.

Ceresney's division has brought enforcement actions against 76 state or local governments, 13 obligated individuals and 16 public officials since 2013. From 2002-2012, the division brought enforcement actions against six government entities, six obligated individuals and 12 public officials.

MCDC and other sweeps.

Enforcement sweeps have been critical to enhancing enforcement of the municipal securities market and the public pension market, which currently hold securities valued at $3.7 trillion and $3.8 trillion, respectively.

"A sweep is a group of enforcement actions brought simultaneously against different parties who have engaged in similar violations," Ceresney said in a speech at the Securities Enforcement Forum on Oct. 13.
The commission's most prominent sweep has been the Municipalities Continuing Disclosure Cooperation Initiative (MCDC) in 2014. The enforcement division implemented the self-reporting initiative to target municipal advisers failing to provide investors with important financial information.

After failing to disclose, bond issuers were falsely telling investors they were complying with disclosure obligations. Additionally, underwriters were suspected of selling bonds to customers using materials containing false statements, the director said.

"While not every self-report resulted in an enforcement action, the commission charged 72 broker-dealers, representing about 96 percent of the market for municipal underwriting," Ceresney said.

Beyond sweeps, the commission has implemented four other new measures in bringing enforcement actions in the public finance space — enjoining bond offerings, dispensing penalties against municipal issuers, issuing injunctions against public officials and raising standards for municipal advisers.

Restrain the bonds.

While the SEC has issued temporary restraining orders in other sectors, the commission never prohibited a municipal issuer from selling bonds until 2013. The SEC alleged the city of Harvey, Ill., had diverted bond proceeds for improper, undisclosed uses. Additionally, the commission alleged Harvey officials had been issuing bonds for the purported development of a hotel, but in reality had diverted $1.7 million of the proceeds toward the city's payroll and other operational costs.

Harvey was going to issue similarly structured bonds in the near future before the enforcement division stepped in to enjoin offerings until necessary safeguards were imposed.

Municipal issuers.

Historically, the commission hasn't brought penalties against municipal issuers, but that changed in recent years, Ceresney said.

The enforcement director presented three recent cases in which the commission charged issuers. In November 2013, the SEC charged a public facilities district in Washington with lying about the financial projections associated with an events center it was hoping to fund.

The SEC charged California's largest agricultural water district last March for lying to investors about its financial condition in connection with a 2012 bond offering worth $77 million. Currently, the commission is pursuing a civil penalty against the city of Miami for officials engaging in a "shell game" — using restricted funds to inflate its general fund.

"These cases demonstrate that municipal issuers should not expect a pass on civil penalties," Ceresney said.

Public official culpability.

The commission has started holding public officials responsible under Section 20(a) of the Exchange Act, "based on their control of the municipal entity that engaged in the fraud," Ceresney said.

Section 20(a) was used in the municipal securities context for the first time in a case against the former mayor and former administrator of Allen Park, Mich., in 2014. The commission alleged the administrator prepared and approved offering documents in association with the construction of a movie studio, despite knowing of negative, undisclosed information. The SEC alleged the mayor, based on his authority and control over the municipality, was also liable.

Municipal advisers.

This year, the commission brought enforcement actions against municipal advisers for the first time. The Dodd-Frank Act mandated municipal advisers register and comply with regulations issued by the Municipal Securities Rulemaking Board. The SEC charged Central States, LLC, and three of its employees, with violating their fiduciary duties and breaching MSRB rules.

"The new registration requirements and regulatory standards were intended to mitigate some of the problems observed with the conduct of some municipal advisers, including failure to place the duty of loyalty to their municipal entity client ahead of their own interest," Ceresney said.

By Timothy Weatherhead, The Hill Extra – 10/14/16 05:04 PM EDT

P3 Digest - Week of October 10, 2016

Read the Digest.

NCPPP

GFOA Webcast: Better Budgeting

Training Type: Web-Streaming

Course Status: Repeat Offering
Date and Time: Jan 12 2017 – 2:00pm to 4:00pm EDT
Level: Intermediate
Field of Study: Finance
CPE Credits: 2
Member Price: $70.00
Non-Member Price: $140.00
Prerequisite: None.

Speakers:

- John FishbeinSenior Program Manager GFOA
- Mike BaileyFinance DirectorCity of Redmond, WA

Program Description:

Budgeting is at the very core of local government finance, where it functions as a practical tool for setting policy, establishing priorities, promoting effectiveness and efficiency in operations, and ensuring both financial and programmatic accountability. Budgeting can only be as effective as the budget professionals who make it all happen. This webinar is designed to equip those on the front lines of local budgeting to do an even better job meeting the many practical challenges they must face from day to day and from year to year.

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- Setting up a long-term planning process.

This two-hour web-stream event combines lecture, panel discussion, and examples to communicate and reinforce the key policies and critical procedures presented.

Frequently Asked Questions

Agenda: Download
Other Documents: Technical FAQs
Registration Form: Brochure and Registration Form

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2016 Supreme Court Preview for Local Governments.

A number of cases currently on the Court's docket will directly impact local governments – and in two of those cases, a city is a named party.

Read the preview.

National League of Cities

by Lisa Soronen

From Hundreds to Thousands of Inspections: How Pittsburgh Is Winning the Permit Game.

It was once practically impossible to get a building inspected in the city. Now it's easier than ever.

Government agencies are always talking about ways to make their operations more efficient and less frustrating to deal with. But very few have managed a change in culture as dramatic and expansive as the one that's taken place in Pittsburgh's building inspection department.

When Bill Peduto was elected mayor in 2013, the department was known as a backwater. Inspectors didn't have cellphones. Or computers. Or even email addresses. Contractors and residents hoping to arrange an inspection would have to play telephone roulette, hoping to find someone at a desk who could pick up the phone. Given the nature of the department's work — going out and inspecting things — this was often an exercise in futility. Developers sometimes waited up to 12 weeks just to make an appointment.

Now Pittsburgh's inspectors are equipped with modern communication tools, and the department is moving toward online permits. Just being able to send text messages to inspectors makes an "amazing" difference, says contractor Chad Sipes. "Before, the system was terrible," he says. "They were so out of touch, it would hold up the project. I'm not saying the system has changed to the point where they'll be there the next day, on demand, but at least you have the chance to schedule something."

In addition to communicating with the outside world, the department has revamped its internal use of technology. Not that long ago, enforcement work was all done on paper. An inspector would take a form out into the field and then jot down some notes that might get typed up later. Now the entire system is mechanized, with complaints logged and tracked in a database. Where the department used to perform a couple of hundred inspections a month, referring about 30 cases to the courts, it now handles thousands per month, with 800 cases sent to the courts. "It's dramatically more efficient, while using the same amount of people," says Maura Kennedy, who directs the department.

Maybe it's the same number of people, but it's a different cast of characters. There's been 50 percent turnover since Kennedy took over three years ago. Every job description in the agency has been changed, with employees old and new undergoing extensive training. Employees have received more than 150 additional certifications over the past two years. That means that instead of having to send five different people out to check on various aspects of a project, the department can now send out one person who holds five certifications. Because the agency had been known in the past as a black hole for training, the Pennsylvania Department of Labor and Industry happily provided a $37,000 grant to help the process along.

All of these improvements make the department run more smoothly. More important, they aren't getting in the way of the city's building boom. Thanks to Pittsburgh's recent emergence as a tech center and a magnet for millennials, the number of building permit applications has been growing by 20 to 30 percent during each of the three years Peduto has been in office.

If applicants were still having to stalk inspectors, countless projects would have been delayed. “The old building inspection bureau never would have been able to handle this growth,” says City Councilman Dan Gilman. “It wasn’t set up to do it.”

GOVERNING.COM

BY ALAN GREENBLATT | OCTOBER 2016

A Better Way to Measure Pension Debt's Danger.

‘Overlapping’ is often ignored, resulting in misleading assumptions about government liabilities.

Last year, I wrote about an emerging theory among investors known as the “new neutral.” The theory holds that for the next several years we’ll see an unprecedented combination of slow economic growth, low interest rates and paltry returns on investments. So far, the new neutral has been spot on.

To see this theory in action, look no further than state and local pensions. Investment returns have lagged, and as a result, so too have pension fund balances. Pension critics have renewed their calls for reform, saying that pensions are an existential threat to many local governments’ financial health. This is true, but it’s also incomplete.

Consider this example. At the end of fiscal year 2015, Dallas had an unfunded pension obligation of $1,371 per capita. Denver’s was barely half that at $709 per capita. From that number alone we might conclude that Denver is in much better financial shape.

But now let’s add a few crucial layers of complexity. First count up each city’s “overlapping” pension obligations. Overlapping means two or more jurisdictions share some portion of their respective property tax bases. We can think of a region’s property tax base like money in a shared savings account: When one jurisdiction takes money out, there’s less for everyone else.

Dallas shares parts of its property tax base with 20 other governments, including counties, schools, hospitals and community colleges. These other entities’ unfunded pension obligations add up to $1,362 per capita. Denver shares its tax base with just one other entity — the Denver School District — but that district’s pension obligation is a comparatively high $4,876 per capita. So Dallas’ total direct and overlapping pension obligation is $2,733 per capita; Denver’s is $5,585. Maybe Dallas is in better shape after all?

These per capita figures are basically the norm for large cities. While Chicago’s overlapping pensions alone were almost $20,000 per capita at the end of fiscal 2015, the median for the 25 largest cities (based on 2014 data) was about $3,550, according to Morningstar, a credit research company.

OK, so now that we’ve counted up all the overlapping pension obligations, let’s add in long-term debt that’s supported by a shared property tax base. Dallas has a modest $1,700 per capita of tax-supported debt. At the same time, most of its 20 neighbors can also borrow against that shared tax base. That brings its total direct and overlapping debt up to $5,520 per capita. Add in its pension liabilities and Dallas’ total obligations are $8,235 per capita. Denver has just over $1,500 per capita of its own property tax-backed debt, and its neighboring school district has around $1,200. Add that

to its pensions, and Denver's total obligations are $8,285 per capita.

Which city is in better financial shape? It depends. And that's the point.

It's important to think about how cities will cover their unfunded pension liabilities. But when we talk about how pensions affect financial health, the far more important question is how does a region decide to manage its tax base and the overlaps that inevitably exist?

Here Dallas and Denver are instructive. Both cities grew tremendously over the past few decades. Dallas has dealt with that growth mostly by allowing new special local districts to crop up and expand as necessary. Now it must find a way to coordinate tax policy decisions across all those governments. To do so, it will have to find a way to deal with one of the laws of local political physics: Voters live in districts, not regions.

By contrast, Denver is a comprehensive, consolidated city/county government. It can manage liabilities in a coordinated way. As a result, all of those liabilities appear on its balance sheet, and that can make investors and elected officials a bit queasy.

There are lots of regional coordination mechanisms, usually in specific policy or infrastructure areas like transit, airports and homeland security. States like California and Texas even have agencies within state government that track and occasionally coordinate when and how local governments issue debt. If we want to understand what pensions mean for our financial future, we have to account for how well those mechanisms work. To address pensions and other long-term liabilities, we need to strengthen those mechanisms.

GOVERNING.COM

BY JUSTIN MARLOWE | OCTOBER 2016

D.C.'s Metro and the Power of a P3.

If the District of Columbia's transit system was a public-private partnership, some say it wouldn't be falling apart right now.

As I listened to S&P Global's Anne Selting at a Governing event earlier this year describe how public-private partnerships work, I had a sort of epiphany. "If Metro in Washington, D.C., were a P3," I asked her, "would it still be falling apart right now?" She replied that, while S&P's role is not to opine on public policy, her answer would be a qualified no. Under a P3 structure, she explained, the concession grantor, typically a government, is contractually committed to a funding regime that provides for adequate maintenance.

Maintenance — the lack of it, that is — is at the heart of the crisis facing the Washington region's transit system. In the past year it has had several serious maintenance-related smoke and fire incidents, including one that resulted in a passenger's death. Train delays and equipment failures, such as escalators and elevators not working, are an everyday reality for riders. With the subway system facing an $18 billion capital deficit over the next 10 years, fixing these problems will be extraordinarily difficult.

Metro is not alone, of course. The maintenance backlog for the Boston region's transit system, for example, is reported to be at least $7 billion. The Federal Transit Administration's most recent

estimate of the nationwide transit repair backlog is $85.9 billion.

The ramifications go far beyond transit, encompassing our entire nationwide infrastructure mess. As the Beeck Center at Georgetown University put it in a recent report, “There is a strong public-sector bias to invest in new capital projects rather than effectively maintaining and extending the life of public infrastructure assets meant to last 30-50 years.” In other words, these problems are not simply the result of some politicians or some governments behaving irresponsibly. They are built into the system.

This is the crux of one the most important arguments for P3s for major infrastructure. It forces policymakers to confront the true life-cycle cost of a project up front. The accepted rule of thumb for capital projects is that for every $1 of design costs, $10 will be spent for construction and $100 for maintenance over the life of the asset. But since most public discussion focuses only on the money for construction, the public is horribly misled about real long-term costs.

As I learned in my epiphany, the power of a P3 isn’t that it’s a source of money. The revenue that will support a project will always be public money, whether the capital is raised through private equity or through traditional municipal bond financing. The strongest argument for a P3 is that it forces a more honest appraisal of life-cycle costs, better aligning the incentives of the public and private partners. When we get that right, we are less likely to have Twitter feeds like @dcmetrosucks, which as of a few weeks ago had clocked more than 23,000 tweets.

GOVERNING.COM

BY MARK FUNKHOUSER | OCTOBER 2016

What Happens When Privatization Doesn't Work Out.

Whether it’s prisons in Idaho or pensions in Michigan, several states are moving their outsourced services back in-house.

Privatization is one of the hottest topics in state and local government. Google the word and you come up with around 12 million entries. But for all the articles and academic reports on the best approaches to outsourcing government services, there’s also a surprising amount of activity around insourcing.

These days, roughly the same percentage of services that are newly being contracted out are being brought back into the government fold, according to Mildred Warner, a professor of city and regional planning at Cornell University. Her examination of data accumulated by the International City/County Management Association (ICMA) for the period from 2007 to 2012 showed that new outsourcing accounted for 11.1 percent of all services and new insourcing accounted for 10.4 percent of all services.

Minneapolis, for example, has been involved in moving its IT technical support — specifically help desks and desktop support — in-house, and away from private-sector firms. Why? A misalliance of goals was part of the problem. The vendors wanted “to get a call off their docket as quickly as possible. So a lot of shortcuts were taken,” says Otto Doll, chief information officer for Minneapolis. “There was a lot of patching of things, rather than looking at systemic issues.”

Not only has quality improved with the shift, there have been significant dollar savings. Of

Minneapolis' IT outsourcing contracts, the single most profitable portion for the contractor had emanated from help desks and desktop support. With those functions now in-house, Doll estimates that the city will realize nearly $3 million annually.

Of course, the potential benefits of outsourcing are pretty widely known. A fundamental one is the notion that the private sector can deliver services more effectively and efficiently than can government. But insourcing has some advantages too.

According to Warner's analysis of ICMA data, the two main reasons governments reverse their privatized services are inferior service quality and a lack of anticipated cost savings. Additionally, improvements in the capacity of local governments to work with greater efficiency can make them the more appealing alternative.

In 2014, for instance, Idaho reversed a prison privatization decision when it became frustrated over less-than-acceptable service delivery. Back in the late 1990s, the state built the Idaho Correctional Center, a 2,000-bed mixed security facility just south of Boise, and then outsourced the operations. "The attitude was that the private sector could do it more efficiently," says Josh Tewalt, the Idaho Department of Correction's budget and policy administrator.

But by 2013, inmate violence, much of it driven by a failure by the private corporation to provide adequate staffing to deal directly with inmate gang activity and other inmate practices, had resulted in a series of high-profile lawsuits and media attention. The prison became known as the "Gladiator School" for the fighting that took place inside.

When state leaders decided in 2014 to insource prison management, several positive benefits emerged. In recent years it had been difficult for the state to shift inmates from that facility to others. "When the 2,000-bed facility was privatized," says Tewalt, "it couldn't say, 'This guy is a bad actor, let's get him out of this facility and try another one.' [It] had to manage him in that environment." Now that it's one system, the state has the flexibility to move inmates from one facility to another in order to best match an inmate's needs with his surroundings.

Tewalt stresses that he's not indicting privatized prison services as a rule. The corrections department has a number of other contracts with private contractors for such services as health, food, food service and similar functions.

One significant function of state governments that has seen a significant turn to insourcing is in the investment of funds in pension plans. The majority are still managed externally, but as Keith Brainard, research director of the National Association of State Retirement Administrators, explains, "larger funds are more likely to manage internally since they can generate the economies of scale that makes the cost of money management relatively small."

The key equation here is that states and localities typically have to pay investment fees between .25 and 1.5 percent to external managers. At a time when many money managers have not been outperforming the market as a whole, there's less appetite for spending on a service with minimal additional return.

The Municipal Employees' Retirement System of Michigan, for example, has made the switch and is saving $3.2 million a year on fees, according to Jeb Burns, chief investment officer there. In 2000, only 1.5 percent of funds were managed internally. Today it's 24 percent and growing.

Not all services lend themselves to a smooth transition from outsourcing to insourcing. With prisons, for instance, a corrections department may have outsourced a prison or two, but the state is still in

the business of running and managing correctional facilities. With other functions, however, the major obstacle to insourcing is that the government no longer has the personnel or physical infrastructure to provide the service again. “If you sold your assets and fired your workers, you’ve lost most of your internal capacity,” says ICMA’s Warner. Insourcing may be nearly impossible without restarting an entire line of business.

GOVERNING.COM

BY KATHERINE BARRETT & RICHARD GREENE | OCTOBER 2016

City Fiscal Conditions 2016

But cities are still dealing with slow revenue growth and rising costs, according to a new report.

City revenues have struggled to get back to pre-recession levels. But things may finally be looking up.

On Thursday, officials announced that they expect city incomes to fully recover by next year — a decade after the start of the Great Recession.

It’s by far the longest revenue recovery period in more than a generation as the bounce back period after the previous two recessions was done in half the amount of time. Currently, officials estimate that city revenues (accounting for inflation) have reached 96 percent of what they were in 2006, the year before the recession started.

The new prediction comes amid growing overall stability in city fiscal conditions as outlined in Thursday’s report by the National League of Cities (NLC). With the financial crisis now far in the rearview mirror, city finance officers say they’re highly optimistic about their fiscal stability — 81 percent feel they’re better able to meet their needs than they were last year.

It’s one of the most optimistic responses in the 30-year history of the NLC’s annual fiscal survey of more than 19,000 cities, towns and villages.

“This is exciting news because this is the first time we are able to report sustained growth in city fiscal conditions,” said Christiana McFarland, a co-author of the report, at a press conference.

As a whole, she said, cities seemed to have embraced more conservative budgeting practices. At the same time, stronger-than-expected economic growth has been seen in many places in recent years.

Last year, for example, the cities on average had budgeted for revenues to increase by one-third of a percent. The actual increase ended up being 3.7 percent. The average budgeted revenue increase for the current year is a half-percent.

Meanwhile, spending and the pressures that fixed costs are placing on city budgets are a big concern. A number of governments have delayed increasing spending on things like infrastructure and pension payments — line items that tend to grow exponentially the longer they’re put off.

“Those things are now coming home to roost,” said Michael Pagano, a dean at the University of Illinois at Chicago and the NLC report co-author.

Pagano added that cities with more taxing flexibility — such as those that rely on property, income and sales tax — are best positioned to adjust their revenue to match their spending needs.

But most cities don't have all three of those levers from which to pull. In addition, many cities have restrictive tax limits.

Houston, for example, has maxed out on a state-imposed cap on its local sales tax rate and has also reached its self-imposed general fund revenue limit. Because of that, it has lowered its property tax rate for the past two years, even as it faces increased needs from a growing population and mounting pressure to fix its underfunded pension system. Mayor Sylvester Turner wants to ask voters to lift the city's revenue cap but faces resistance from members of city council who want the city to identify and eliminate areas of wasteful spending first.

The political difficulty of raising taxes is the main reason cities are turning to fees as a means of raising revenue. Over the past 20 years, fees have grown to account for 40 percent of city revenue, surpassing property taxes. The NLC survey reported that two out of every five cities raised fees in the past year — twice the number that reported raising property tax rates.

Fees, however, are by no means a cure-all.

For one, increasing fees doesn't raise as much revenue as hiking taxes. In addition, McFarland noted fees have "equity concerns" for cities because lower-income residents end up paying a greater share of their incomes toward the charges than others.

Looking ahead, as wage growth nationally continues to be slow — particularly for the lower and middle classes — the report warned that income inequality "will weigh heavily on future city income tax revenues and sales tax receipts."

GOVERNING.COM

BY LIZ FARMER | OCTOBER 14, 2016

P3 Digest - Week of October 3, 2016

Read the Digest.

NCPPP

SIFMA Submits Comments to SEC on Proposed Rule Change to MSRB Rules G-15 and G-30 to Require Disclosure of Mark-Ups and Mark-Downs to Retail Customers.

SIFMA provides comments to the Securities and Exchange Commission (SEC) in response to Municipal Securities Rulemaking Board (MSRB) Filing with SEC on Proposed Rule Change to MSRB Rules G-15 and G-30 to Require Disclosure of Mark-Ups and Mark-Downs to Retail Customers on Certain Principal Transactions and to Provide Guidance on Prevailing Market Price.

Read the comment letter.

October 3, 2016

Fitch: Moderate Growth to Continue for U.S. Transportation.

Fitch Ratings-New York-03 October 2016: Growth for the remainder of 2016 will remain healthy for all three U.S. major transportation sectors (airports, ports and toll roads) albeit at a slightly lower rate than the first half of the year, according to Fitch Ratings in a new report.

Fitch expects passenger traffic growth to increase around 3% for the second half of 2016 (2H16), with the bulk of air passenger growth coming from international hub airports. All but one major U.S. carrier has seen positive traffic growth through the first part of 2016, though a wide range of performance continued. JetBlue (12.1%) and Southwest Airlines (7.8%) led the way with strong increases in revenue passenger miles while increases among American Airlines (1.9%) and United Airlines (-0.1%) were more marginal.

Ports nationwide will continue to benefit from a stronger dollar driving imports, with 20-foot equivalent units (TEUs) growing at a level above GDP for the 1H16. A primary focus for ports remains “big ship readiness”. That said, shippers, logistics providers and ports will be keeping close watch over the expanded Panama Canal, which opened for commercial traffic this year. While large-scale shifts in cargo are not expected, some adjustments are possible.

As for toll roads, low fuel prices have boosted growth in traffic (6.3%) and revenue (7.0%) for the 1H16. The Southeast and Southwest U.S. have and will continue to lead in traffic performance. The higher rate of growth in revenues is reflective of typical inflationary toll rate increases, which Fitch expects to average roughly 2% over time.

A degree of uncertainty always remains for the long-term direction of the broader economy.

The Transportation Trends report includes an expanded data set in its appendices, including six-month year-to-date 2016 volume and revenues, six-month percentage change year-over-year for volume and revenue, 2015 full year volume and revenues, 2010-2015 five-year compounded annual growth rates, and recessionary peak-to-trough data. ‘U.S. Transportation Trends’ is available at ‘www.fitchratings.com’.

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BDA Submits Comment Letter to the SEC: MSRB Retail Confirmation Disclosure Rule Proposal.

BDA has submitted a comment letter to the SEC in response to the MSRB's filing of its proposed retail confirmation disclosure rule along with proposed guidance amendments to MSRB Rule G-30 related to 'prevailing market price'.

On Friday, September 9th BDA submitted a comment letter to SEC in response to FINRA's filing of its proposed retail confirmation rule with the SEC. The letter and FINRA's rule filing can be viewed here.

The BDA's letter related to MSRB's proposal is focused on the following key issues:

- The urgent need for FINRA and MSRB to harmonize their rules from a policy, testing date, and effective date standpoint
- BDA urges regulators to appreciate the operational burdens associated with automating the process for making a 'prevailing market price' judgement especially related to the 'similar' security analysis that will frequently be required for municipal securities
- Due to the operational and technology burdens of the rule and the other major rules that will be effective in the next 24 months
- BDA urges the SEC to institute proceedings on both the FINRA and MSRB filings to extend the time period for assessing the rules prior to approval or disapproval

Proposal Overview

Scope of Transactions: The proposal will apply to retail trades when a dealer has entered into an offsetting principal trade in the same security in a total quantity greater than the retail trade during the same trading day

Timing of Trades: MSRB proposes to have the rule apply to offsetting principal and retail trades that are executed on the same trading day as opposed to over a certain amount of hours during a given trading day

Disclosure Computation: MSRB has proposed to base the confirmation disclosure computation on the difference between the prevailing market price that exists at the time of the retail trade and the retail trade price

- MSRB Rule G-30 Amendments: "Dealers must establish market value as accurately as possible using reasonable diligence under the facts and circumstances" based on the FINRA 2121 "waterfall" concept. MSRB notes that it has filed the G-30 amendments with only minor amendments in comparison to the proposed amendments BDA commented on in March 2016.

Time of Trade Disclosure and Link to EMMA on Confirms: Unlike FINRA, MSRB included a requirement to include a time of trade of disclosure on all retail and institutional customer confirmations in addition to a link to EMMA on retail confirms regardless of whether the mark-up disclosure is required on the transaction.

Proposed Effective Date: No later than 365 days after the SEC approves the rule

Additional Information:

A recap of BDA's April 2016 Member Fly-in Meeting with FINRA and MSRB can be viewed here.

BDA's December 2015 comment letters to FINRA and MSRB can be reviewed here.

10-04-2016

Pennsylvania State Senate Passes Municipal Debt Reform Bills Born of Harrisburg Incinerator Fiasco.

The state Senate Wednesday passed a series of municipal debt reform bills designed to prevent a repeat of the problems created by former Harrisburg Mayor Stephen R. Reed's aggressive use of bond financing for pet projects and budgetary needs.

Reed's actions, executed by municipal authorities that effectively served as rubber stamps for most of his 28 years in office, ultimately left Harrisburg facing a $300 million-plus debt load that forced the capitol city into state oversight.

Harrisburg's home senator, Rob Teplitz, D-Dauphin County, called the bills the logical conclusion of a forensic audit kicked off in 2010 by a post-Reed Harrisburg Authority.

That audit, and a follow-up investigation by the state Attorney General's office, has resulted in a pending criminal case against Reed.

Teplitz applauded prosecutors for those efforts at accountability, and Gov. Tom Wolf and lawmakers for ongoing fiscal assistance to the Capitol city's recovery through the Act 47 process.

But he said it's just as vital to pass these bills as a preventive measure for other municipalities.

Sen. John Eichelberger, R-Blair County, who helped steer the current package of bills to the Senate floor in his role as former chair of the Senate's Local Government Committee, agreed.

"It was bad practice (in Harrisburg), it was done by people who are still operating in Pennsylvania, and we've got to make sure that something like this doesn't happen anywhere else again."

Each piece of the three bill package passed on a 50-0 vote. The bills, which still require action in the state House, would:

* Clarify that a performance bond or equivalent security must cover 100 percent of the construction cost for any major public works project entered into by local government entities.

Lack of a performance bond caused major issues for Harrisburg's incinerator project when the contractor hired for a major upgrade in 2003 couldn't complete the project, forcing the Harrisburg

Authority into subsequent borrowings both to finish the original project, and to make additional fixes when it failed to work.

* Prohibit one government body from charging a fee to another to provide a guarantee of bonds, something both the City of Harrisburg and Dauphin County did in exchange for backing Harrisburg Authority loans on its incinerator upgrades.

Cross-government guarantees could still be extended to solidify a borrowing; but the guarantor would no longer be able to use its backing as a money-maker, thereby driving up the overall costs of the borrowing.

* Seek to build more transparency throughout the bond process, including clarifications that any proceeds from bond issues or similar borrowings can only be used for the original, specified purposes.

This was also a problem in Harrisburg, state prosecutors allege, when vague administrative fees charged by the Harrisburg authority were used to support Reed's agenda of economic development projects.

* Clarify that no borrowing can include more than one year of "working capital," or funds intended to keep certain revenue-generating enterprises afloat through its start-up period.

This change is intended to prevent repeat refinancings on bad projects that show little chance of becoming self-sufficient.

* Create new enforcement provisions for willful violations of the state's debt act, and adds members of municipal authorities to the list of public officials covered by the state's Ethics Act.

* Beef up state review of local government borrowings by requiring filings with the state Department of Community and Economic Development prior to, instead of after, final votes by local officials.

It was not immediately clear if the municipal debt reform package will be considered in the House before the end of the current legislative session. Only a handful of session days are scheduled between now and the Nov. 8 election.

Steve Miskin, spokesman for the majority House Republicans, could only say that "we will look at the Senate bills and give them due consideration."

Eichelberger, however, said after Wednesday's votes he will try to help close the sale in the House by explaining the package to anyone with questions, highlighting its unanimous passage, and noting that the Wolf Administration and numerous other stakeholders have thoroughly vetted it.

Penn Live

By Charles Thompson | cthompson@pennlive.com

on September 28, 2016 at 4:25 PM, updated September 29, 2016 at 7:09 AM

Dealers to SEC: Markup Proposal Overly Complex, Would Hurt Liquidity.

WASHINGTON – Dealer groups are warning that a Municipal Securities Rulemaking Board proposal

to require dealers to disclose their markups and markdowns in certain transactions would be overly complex and hurt liquidity.

They urged revisions and new guidance allowing for compliance through dealers' automated systems.

The groups made their comments to the Securities and Exchange Commission regarding the MSRB's proposed changes to its Rules G15 on confirmation and G30 on prices.

The changes would require a dealer, which buys or sells munis for or from its own account to a retail customer and engages in one or more offsetting transactions on the same trading day in the same security, to disclose its markups and markdowns in the confirmation it sends the customer.

The Financial Industry Regulatory Authority has proposed a similar requirement and has been coordinating its changes with the MSRB.

The MSRB proposal, filed with the SEC on Sept. 2, also establishes a waterfall of factors for determining prevailing market price (PMP), which dealers would then use to calculate their compensation. Dealers would initially look at their contemporaneous trades of the same muni with other dealers or customers to establish a presumption of prevailing market price. They would then make a series of other successive considerations if that data is not available. They can look at contemporaneous trades of the muni in interdealer trades, then trades of the muni between other dealers and institutional investors, then trades on alternative trading systems or other electronic platforms.

Further down the waterfall, firms could look at contemporaneous trades of similar securities.The MSRB included a list of "non-exclusive factors" like credit quality, size of the issue, and comparable yield that could be used to show securities are similar.

The bottom of the waterfall allows dealers to use prices or yields derived from economic models.

Both Bond Dealers of America and the Securities Industry and Financial Markets Association criticized the proposed waterfall of considerations given, among other things, the level of subjectivity many of the determinations would require.

BDA chief executive officer Mike Nicholas said the proposal "vastly underestimates the complexity of operationalizing the waterfall concept in an automated fashion."

"In light of the fact that there is currently no commercially available solution for automating the waterfall process … dealers will have to devote significant resources to finding a solution that works with their existing legacy systems and processes," he wrote.

Leslie Norwood, managing director and co-head of municipal securities for SIFMA, and Sean Davy, managing director for SIFMA's capital markets division, warned that under the proposal dealers that carry inventory would be required to "grapple with the cost and complexity" of such programming. They said that the burden could cause those firms to move to a riskless principal model "rather than assume the costs, complexities, and risks of implementing the proposal as currently formulated."

"Unfortunately, there is no suggestion that the MSRB has measured or fully considered the risk that its proposal will impair liquidity in the municipal market," SIFMA wrote. "A more thorough analysis of the proposal's effect on liquidity is entirely within the MSRB's capabilities."

SIFMA, which also made clear that working with the MSRB's EMMA system and FINRA's TRACE

system would be a more effective way to ensure investors are informed, asked that the MSRB adopt explicit guidance recognizing that it is not technologically feasible to automate a strict waterfall analysis. The prevailing market price analysis should also only apply to the confirmation disclosure proposal instead of transactions in general, SIFMA said.

Quoting a section of the SEC's 2012 Report on the Municipal Securities Market that explained determining the prevailing market price for munis can be a complex task, Norwood and Davy said the complexity would be "further amplified in the context of the proposal."

"The MSRB should expressly recognize this operational reality and provide further guidance regarding what it views as 'reasonable policies and procedures' to calculate PMP on an automated basis," SIFMA said. The group suggested that the self-regulator allow firms to adopt an alternative to contemporaneous costs or proceeds, such as pulling prices from third-party pricing vendors.

Additionally, SIFMA is asking that the MSRB and FINRA acknowledge that firms would be acting reasonably and appropriately by labeling their markups and markdowns as an "estimate" or as "approximate" on the confirmations given the difficulty of being exact when using the waterfall. Nicholas also said that it would be appropriate to deem the disclosed markup or markdown as a dealer's estimated compensation.

Regulators should acknowledge that firms may diverge when determining what securities are "similar," given the likely subjectivity of the determination and its basis on facts and circumstances, SIFMA wrote. The group wants an assurance that regulators would not find that a dealer's calculation is incorrect as long as it is based on a reasonable and good faith automated measure of PMP based on the information available at the time of the transaction.

Both dealer groups asked for clarifications on certain aspects of the MSRB filing.

BDA expressed "serious concern" that the proposal says isolated transactions in munis "may" be given little or no weight in establishing prevailing market price. Nicholas notes that munis do not trade as frequently as corporates and that given the specificity of the required similar security analysis, isolated securities or those with a limited number of trades may be the only ones a dealer could deem similar.

He added that there is a discrepancy between the MSRB's filing and the actual rule text as to how much weight an isolated transaction can be given. He requested the board clarify the language as well as the intent of the section.

SIFMA asked that the MSRB revise its guidance to more accurately describe what it means by a spread, which is included in its non-exclusive list of relevant factors, to determine whether a security is similar. The example the board gives of a spread compares munis to Treasuries, but only taxable munis trade at a spread to Treasuries, SIFMA said.

Both BDA and SIFMA also emphasized the need for the MSRB to coordinate their rulemaking with FINRA as much as possible to limit the compliance burden. The MSRB has proposed dealers send customers security-specific hyperlinks along with confirmations. The groups said it would be better for the board to require dealers to include more general links on confirmations that would direct customers and investors to pages on which they can search for their specific securities. The two dealer groups also asked the MSRB and FINRA to set a more reasonable implementation period than the proposed one year after SEC approval. They cited the complexity of complying with the changes as well as the numerous other large regulatory developments that are expected soon, such as movement to a T+2 settlement cycle and implementation of the Department of Labor's fiduciary

standard.

BDA asked the period be at least two years after SEC approval while SIFMA said that, if the MSRB and FINRA work to provide more clarity and guidance on the proposal, it could be implemented in no less than three years.

“Neither the MSRB nor FINRA have provided justification for such an aggressive timeframe,” SIFMA said. “We urge [the regulators] to propose a reasonable implementation period consistent with the commission’s expectations.”

The Bond Buyer

By Jack Casey

October 5, 2016

Bills Would Raise Limits on IDBs, Freight Facility Bonds.

WASHINGTON – Democrats in the Senate and House have introduced separate bills to raise limits for both tax-exempt small issue manufacturing bonds and highway or surface freight facility bonds.

The Modernizing American Manufacturing Bonds Act (S. 3416), introduced by Sen. Sherrod Brown, DConn. on Sept. 28, would increase the maximum size of an issue of tax-exempt small issue manufacturing bonds to $30 million from $10 million.

The $10 million limit for these private activity bonds hasn’t been increased since 1979 and has never been indexed to inflation, according to the Council of Development Finance Agencies, a supporter of the measure.

The bill, which is identical to House bill H.R. 2890 that was introduced in the House on June 25, 2015 by Rep. Randy Hultgren, RIll., would also expand the types of projects that could be financed by these bonds.

It would broaden the definition of manufacturing facility so that small issues of industrial development bonds could be used to finance facilities that produce intangible property, such as software, in addition to tangible property.

The bill also would allow IDBs to be used to finance facilities that are functionally related and subordinate to the production of tangible or intangible property, such as warehouses that temporarily store materials and laboratories that test raw materials.

Facilities could also be financed with IDBs if the directly related and ancillary to a manufacturing plant as long as they were on the same site as the plant and not more than 25% of the bond proceeds were used for them.

Meanwhile, Rep. Eddie Bernice Johnson, DTexas, introduced H.R. 6085 on Sept. 20 to raise to $20.8 billion from $15 billion the national limit for tax-exempt highway or surface freight transfer facility bonds.

The $15 billion national limit was set by the Safe, Accountable, Flexible, Efficient Transportation

Equity Act: A Legacy for Users, popularly known as SAFETEALU, which was signed into law in 2009.

The Bond Buyer

By Lynn Hume

October 6, 2016

Municipal Advisors Put Focus on Staying Clear of Dealer Activity.

NEW ORLEANS – Municipal advisors face growing concern that some activities they could pursue to help clients make private placements might land them in hot water with the Securities and Exchange Commission.

A panel discussion at National Association of Municipal Advisors' annual conference here focused on how MA firms' activities in private placements could lead the regulator so see them as unregistered broker-dealers, subject to a different set of regulations, and what they can do to avoid that trap.

The issue has received increased attention in past years as the popularity of bank loans and other private placements have increased in the municipal market, panelists and audience members said.

"We're all grappling with an approach we can go forward with to best serve our clients that still keeps us out of trouble with the SEC," said Alex Handlers, of Bartle Wells Associates, who moderated the panel. He said MA firms have changed their practices in recent years in various ways to address the concerns.

Private placements can be attractive for issuers because they are cheaper and less regulated than traditional issuances. They can also give issuers the ability to negotiate specific aspects of the deal like legal covenants.

MA involvement in such deals has raised legal issues over whether they are acting as unregistered brokerdealers. Advisors, who owe fiduciary duties to their clients, and broker-dealers, who act as intermediaries, operate in different regulatory regimes.

The legal question boils down into two areas of consideration: whether the private placement should be considered a security; and whether an advisor dealing with the private placement is acting only in the capacity of their advisory relationship with their client or whether the advisor is acting as a broker by entering into the business of effecting a transaction in the securities of others.

While SEC representatives have said in the past that there is no bright line test for determining whether something is a loan or a security, they point to the 1990 case *Reves v. Ernst & Young*, in which the Supreme Court found that notes were presumably securities, but allowed for that presumption to be overcome if the notes bore a strong resemblance to another note that is not a security.

If a private placement is not deemed a security, then the need to distinguish between MA and broker-dealer business is moot because the SEC and MSRB rules for broker-dealers only apply to municipal securities.

If a private placement is a security, though, MAs have to be more careful and can look to generally accepted key parts of a security transaction, including: solicitation; execution of the transaction, conversations about the size of the transaction; and whether the MA handles the securities of others in connection with the transaction, as factors in determining whether they are acting as unlicensed dealers.

Handlers added that MAs seem to have found that some of the activities that they historically had taken on could be included in the definition of broker-dealer activity, such as identifying potential investors and doing the solicitation for the deal.

Handlers advised that when MAs are evaluating their activities, they take into account "the whole totality of things" the SEC could look for related to dealer activity, like whether the duty of soliciting for the deal falls to the MA or, as it should, a dealer acting as a placement agent.

"[An MA] could go over to the dark side on one of these things, [which does] not necessarily mean [it] is going to be deemed guilty, but it doesn't help" the MA's case with the SEC, Handlers said.

"The more we can keep ourselves on the right side of the line, the less chance there will be of any violation from the SEC's perspective," he said. "If we haven't changed our practices yet, it's time to do it now."

One MA in the audience who works for a larger firm shared with the panelists and attendees what steps his firm had taken to shield itself from possible violations. The main concern he addressed related to MAs having a list of possible lenders that they then reach out to asking about potential interest in a deal. The panelists and audience members agreed that such an action automatically limits the number of potential lenders and thus would move an MA into one part of the broker-dealer territory.

The MA's firm tries to combat that problem by making sure that its client supplies the list of potential lenders instead of the MA itself. That way, it's the issuer determining where the request for proposal (RFP) is going to go, the advisor said. The firm also sends out RFPs on the issuer's stationary instead of its own and will rely on its issuer client to take the lead on negotiating the terms of the private placement.

"We're trying to be pretty clear up front with everything we do because we don't know where we're going to … get trapped and be in the underwriter world," the advisor said.

SEC representatives have said that they are looking at the issues MAs can face when navigating the difference between allowable conduct with private placements and actions that can lead to violations. One solution could be providing for certain exemptions from broker-dealer rules for MAs conducting business. The SEC already provides other regulated entities like investment advisors and broker-dealers exemptions from its MA rule, but there are no parallel exemptions for MAs from broker-dealer or investment advisor rules.

Jeff Sharp, senior vice president and director of business development for Capital One Public Funding, which has a portfolio of muni private placements, encouraged the municipal advisors in the room to not shy away from having their issuer clients pursue private placements despite the regulatory concerns.

"I want to make a bit of an impassioned plea that you not just throw the baby out with the bathwater," he said. "These are a valuable tool for your clients at times. We really want to be an arrow in your quiver."

Sharp said the potential risk for MAs can be removed through the use of dealer placement agents as intermediaries.

“Placement agents are there to help you,” Sharp said. “It will cost your clients some money, but that’s just part of our new regulatory environment. They can keep you out of trouble and get your clients a good deal.”

The Bond Buyer

By Jack Casey

October 11, 2016

Election Will Test California Voters’ Attitude on New Bonded Debt.

No one knows exactly how much Californians owe to holders of state and local government bonds – but it’s a lot, at least several hundred billion dollars.

The state alone is on the hook for $75 billion in “general obligation” bonds of various types, with another $27.6 billion authorized but unissued, according to the State Treasurer’s Office.

That doesn’t count billions more in “revenue bonds” for public works projects, including squirrelly “lease revenue bonds” meant to evade voter approval.

The state stopped monitoring local government debt many years ago, but it’s generally believed that cities, school districts, counties and other local governments have at least $250 billion more in outstanding bond debt.

Whatever the total, it doesn’t count interest, and as a rule of the thumb, repaying long-term government bonds doubles their face values. Nor does it include non-bond debt, such as hundreds of billions of dollars in “unfunded liabilities” for retiree pensions and health care.

But back to bonds.

Among other things, the Nov. 8 election will tell us whether Californians’ long-standing willingness to increase public debt remains strong, even though more bond issues translate into either higher local property taxes or a bigger share of the state budget for bond service.

There is one big statewide bond issue (Proposition 51) on the ballot, a $9 billion measure for school and college construction that education groups and developers are pushing over the objections of Gov. Jerry Brown, who contends the system for allocating school bond money is fatally flawed and needs reform.

And there is another measure, Proposition 53, that would subject state revenue bond issues of $2 billion or more to voter approval, curbing the power of officials to incur certain kinds of huge bond debts on their own.

Meanwhile, according to CaliforniaCityFinance.com, a website devoted to California government finance, local Nov. 8 ballots will carry $25.3 billion in local school bond proposals and another $7.3 billion in other local government bonds.

Californians have been willing to incur hundreds of billions of dollars in debt because they believe it will pay off in better schools and other public facilities and because they don't fully grasp the effects, such as higher taxes or shifts of money from other needs.

The advocates of local bond issues often are self-serving – firms that hope to get construction contracts, for example – and their campaigns downplay, or even misstate, the financial consequences.

We know now that many school districts issued "capital appreciation bonds" that have only light repayment obligations initially, but require immense balloon payments decades later.

In recent months, we've also had revelations of pay-to-play schemes in local bond issues, in which those who put up campaign money are secretly promised no-bid contracts. An FBI investigation is underway on one such scheme in Fresno, and the Legislature this year was compelled to partially crack down on the smarmy practice.

In brief, we Californians have placed ourselves on the hook for hundreds of billions of dollars in debt without really understanding how the money is being spent or what its ultimate cost will be.

Given that, Proposition 53, while widely opposed by the political establishment, might be a wake-up call. Requiring bond promoters to justify their big plans to voters – Brown's twin water tunnel and bullet train projects, for example – isn't such a bad idea.

THE SACRAMENTO BEE

BY DAN WALTERS

Dan Walters: 916-321-1195, dwalters@sacbee.com, @WaltersBee

OCTOBER 9, 2016 1:00 AM

City Says 'Strong Demand' for First-Ever Green Bonds.

The City and County of Honolulu has sold its first-ever green bonds, with the money raised to be used to refinance debt that was originally sold to pay for the Honolulu Program of Waste Energy Recovery, or H-POWER, in Kapolei.

The city said this week the green bonds were well received by the market with more than $475 million in orders from individual and institutional investors including dedicated green investment funds that had never before purchased city bonds.

The green bonds sale was part of a larger effort by the city that sold about $379 million of tax-exempt and taxable general obligation bonds.

The majority of the funding will be used to refinance existing debt and save more than $22.5 million with the rest going to finance new capital improvement projects and equipment, according to the city.

The average interest rate on the tax-exempt bonds for new projects was 2.89 percent, the lowest rate in modern history, and 1.38 percent for new equipment.

The city said it was able to sell its bonds despite facing a large number of competing bond issues nationally.

“Strong demand for the city’s bonds resulted from a comprehensive marketing plan instituted well in advance of the bond sale,” the city said. “This included an internet-based credit presentation directed at major institutional investors and a print and digital advertising campaign targeting individual investors. City officials also conducted a series of meetings and conference calls with potential investors in Hawaii and on the Mainland.”

Bank of America Merrill Lynch served as the lead underwriter for the offering with Piper Jaffray & Co. as the co-manager.

A one-day retail order period generated more than $70 million of orders from Hawaii and Mainland investors. Local financial institutions were active participants in the bond issue, the city said.

Duane Shimogawa covers energy, commercial real estate and development for Pacific Business News.

Oct 7, 2016, 2:39pm

New Paper Examines State Economic Development Indicators.

How do we know if state economic development incentive programs are working?

A recent report from the Center for Regional Economic Competitiveness with contributions from Smart Incentives strives to help states answer this question. In this article we highlight a few key points from The State Economic Development Performance Indicators White Paper.

Findings on Indicators in Use

- Investment and jobs are the dominant indicators states use to assess incentive program performance. These indicators are used for a whole range of incentive programs serving a variety of business needs, including capital access, site/facility development, tax reduction, workforce, infrastructure, marketing/sales support, technology & product development and tourism.
- Economic development leaders tend to be dissatisfied with reliance on jobs and investment metrics because they may not be appropriate performance indicators for each of these different types of incentive program given the various business needs they are intended to address.
- Jobs and investment metrics are often not clearly defined or consistently applied across programs, hindering evaluations.

For example, while every state counts jobs, each does it differently. Even within states, some programs emphasize job creation or new jobs, while other might (1) include retained or existing jobs, (2) tally jobs for specified segments of the population, or (3) count jobs meeting criteria such as above average wages. Programs may also have different ways of determining what is a new job or defining full-time employment.

The white paper offers suggestions and examples of how to make job counts a more robust metric for state incentive programs as well as insight into how states measure “investment” across programs.

Improving Indicators

States are also seeking alternative indicators. The white paper highlights metrics beyond jobs counts and investments that states use to assess programs designed to support sustainability, worker earnings (to signify job quality) and entrepreneurship and innovation. Future research will delve further into these indicators.

The paper concludes with the following guidelines for selecting appropriate indicators to evaluate program performance.

1. Start with the big picture. A clear goal or performance statement is the foundation of good program evaluation.
2. Align indicators with stated program goals.
3. Assess data quality, cost and availability when selecting indicators.

Posted by Ellen Harpel

Incentives | October 12, 2016 | No Comments

SEC Examiners Find MA Violations, Expect More Reviews Next Year.

NEW ORLEANS – Securities and Exchange Commission examinations of municipal advisors over the past two years found fiduciary duty and fair dealing violations, said SEC officials who cautioned the number of MA exams will increase in 2017.

The officials from the SEC's Office of Compliance Inspections, and Examinations discussed the findings from the examination initiative during a panel at the National Association of Municipal Advisors annual conference here.

The initiative was announced in August 2014 and was designed to assess non-dealer MAs' compliance with registration, disclosure, fair dealing, supervision, books and records, as well as training and qualifications requirements. The SEC is responsible for examining all non-dealer MAs while the Financial Industry Regulatory Authority is responsible for dealer MAs.

After a firm examination is completed, OCIE sends either a deficiency letter spelling out the violations it found or a no further action letter. While the deficiency letter is not public and does not necessarily imply there will be enforcement, the representatives said they may pass certain findings on to their enforcement colleagues in the SEC.

Robert Miller, an OCIE supervisory attorney and examining manager, emphasized that when a firm receives a no further action letter, it should be aware that it is not the same thing as "a gold star."

Suzanne McGovern, an OCIE assistant director, said that as of Sept. 13, approximately 670 firms have registered with the SEC, 518 of which are non-dealer municipal advisors. Additionally, 4,900 individuals have each filed a Form MA-I to provide advisor information.

OCIE examined 50 non-dealer municipal advisors and two broker-dealers in 2015 and closed 67 examinations of non-dealer municipal advisors in 2016, according to McGovern.

She added that OCIE's focus on examinations will continue into next year as the office and the MA

community both become adjusted to newly effective conduct rules for municipal advisors, such as the Municipal Securities Rulemaking Board's Rules G-20 on gifts and G-37 on political contributions. OCIE recently outlined its resource allocation for the next year and determined that one of the office's priorities for 2017 will be independent MAs, she said.

"That means probably the number of examinations this year will go up," she said. The office uses risk assessments it does of the firms to determine which ones to examine and when to begin the processes.

While examinations in 2015 mainly uncovered what Miller called "technical violations," such as those related to registration and books and records, examinations in 2016 found instances of fiduciary duty violations. The Dodd-Frank Act gave MAs a fiduciary duty to put their clients' interests first. The more recently enacted MSRB Rule G-42 detailed MA duties of care and loyalty.

As an example of the commission's fiduciary duty findings, Miller described a series of discoveries the office made about three individuals who were employed with an MA and were also working at a related broker-dealer. The individuals pursued several deals while working with a municipality in an advisory capacity and the OCIE examiners found that when it came time to choose an underwriter for the municipality's deals, they picked their own dealer without notifying the municipality of their ties.

"In that case, clearly there's a conflict of interest," Miller said about the concerns with the individual's breach of their fiduciary duty. "If they're double-dipping, what is the likelihood that they are going to look out for the best interest of the municipality as opposed to themselves?"

While Miller did not explicitly identify the parties in the case, the facts he described are very similar to an SEC enforcement action released in March where the commission settled with Kansas-based municipal advisor Central States Capital Markets, its chief executive officer John Stepp, former vice president Mark Detter, and current vice president David Malone. The firm and employees were financial advisor for an issuer in a muni transaction and then selected a broker-dealer where the three men also worked to underwrite the bonds, according to the SEC.

Miller said OCIE examiners have also uncovered examples of fair dealing violations related to excessive fees.

He gave an example of a deal involving a small community in the Southeast that needed to buy new equipment for its school district. The community reached out to a municipal advisor and the MA recommended it issue bonds. However, given the small nature of the deal, the MA initially had trouble finding other deal participants and decided it had to do more due diligence. It eventually found participants with which the firm had worked with before, but, when the bonds were issued and the deal was completed, OCIE found that the MA ended up getting a fee of 22% of the bond proceeds.

"I think that is the definition of excessive," Miller said.

OCIE's excessive fee determinations deal more with facts and circumstances he added, saying examiners will continue to look at things like the MA's expertise, the time it has spent in the industry, the level of qualifications, and the complexity of the issuance when drawing such conclusions.

Miller and McGovern said OCIE also found registration as well as books and records violations during the two-year examination period.

Common violations included registering with the Municipal Securities Rulemaking Board as an MA but not the SEC, listing an incorrect name on the registration form, and not properly keeping a general ledger for the firm.

Miller recommended that firms trying to keep a good general ledger think about the practice from a "follow the money" standpoint. He said the idea is to allow examiners, when they visit, to see how money came in, who got paid, and what the money was getting paid to.

"The key thing for us … is more documentation is better," he said. "It allows us to ask intelligent questions."

Other violations related to documentation included failures to have written supervisory procedures (WSPs) or not having WSPs that were tailored to the firm's operations. They gave an example of firms that, when asked about their WSPs, would provide copies of MSRB and SEC rules and simply say that they follow each of the rules' components.

"Things like that will definitely get attention from the SEC," Miller said.

He added that examiners also saw some firms that had comingled email addresses or credit cards for both individuals and the firms. They also found a number of individuals, each of which had a Form MA-I that had not been updated and thus had them registered with two different firms. McGovern said that OCIE has found "probably about 50% of municipal advisors are not filing their amendments" to keep the regulators as well as their information updated.

OCIE is planning to put out a risk alert describing its findings as a "last piece" of the initiative, according to McGovern. She said the risk alert may take longer to be released because it has to get SEC approval, but that once it is made public it can help MAs strengthen their compliance programs.

The Bond Buyer

By Jack Casey

October 7, 2016

Municipal Advisor and Issuer Needs Post MCDC.

The SEC's Municipalities Continuing Disclosure Cooperation initiative is causing many municipal issuers and underwriters to change the way they do things. Underwriters are scrutinizing issuer disclosures, and the representations made about those disclosures, for accuracy and clarity. To date 71 issuers have entered into cease and desist orders with the SEC and must update past delinquent disclosure filings and improve their processes to ensure timely and complete disclosure going forward. These realities, and the introduction of the Municipal Securities Rulemaking Board Rule G-42, provide municipal advisors with an opportunity to support their Issuer clients in meeting these requirements and the demands of the market.

Issuer Needs Post MCDC

The cease and desist orders issued by the SEC are likely to serve as a roadmap for all issuers. These orders require issuers to (amongst other things):

- Comply with existing continuing disclosure undertakings, including updating past delinquent filings within 180 days.
- Establish continuing disclosure obligation policies and procedures, and periodic training, within 180 days.
- Provide the SEC with a compliance certification.
- Disclose the terms of the settlement in any official statement for five years.

New Issues

Issuers coming to market need to ensure that their past filings conform to what they represented they would make publicly available and provide underwriters comfort that the issuer has a sound process in place to make timely and complete disclosure prospectively. It is best to begin this analysis when a deal is in its formative stages as underwriters will want to know:

- Are the issuer representations in the preliminary official statement and OS accurate?
- Does the underwriter have confidence the issuer will comply with their disclosure requirements going forward?

Check, Correct and Monitor

Outlined below is an approach that will help your Issuer clients address these obligations and support your G42 obligations:

- **Update Past Delinquent Filings:**
  – Conduct a 15c212 Five-Year Lookback Analysis.
  – Utilize data provided from the analysis to fix late and/or missed filings.
  – Once filed, re-run the analysis to demonstrate/confirm compliance at the Issue and CUSIP level.
- **Prospective Compliance — Notification/Monitoring and Periodic Lookback Analyses:**
  – Use a notification service to alert the Issuer and/or their Municipal Advisor in advance of ongoing filing obligations such as the Audit and Financial and Operating data. The notification service should clearly identify the timing and due date of the filing, operating and financial data tables required to be filed, and which issues and CUSIPs must be tagged to identify filings.
  – Use a monitoring and notification service to identify Rating Changes to support timely filing.
  – Once the filing date has passed, perform a 15c212 Lookback/Confirmation report to demonstrate/confirm proper filing.
- **Official Statement Notice:**
  – Include a statement regarding use of a notification/monitoring service for prospective filing obligations and post-filing reporting to support the issuer’s timely filing prospectively.

The regulatory environment has placed new and different burdens on virtually all members of the municipal market. These changes require market participants to address this heightened regulatory and market scrutiny in an efficient and cost-effective manner. As a Municipal Advisor, there is an opportunity to support and serve Issuer clients as they grapple with these new demands. The simple approach outlined above is recommended for those needing to comply with a MCDC Order and for all issuers to ensure their filings are timely and representations on new issues are accurate.

The Bond Buyer

By Gregg Bienstock

October 12, 2016

Gregg Bienstock is chief executive officer and co-founder of Lumesis Inc.

U.S. Municipal Debt Sales to Surge to $15.9 bln Next Week.

The U.S. municipal bond market will be hit with a huge burst of issuance next week when states, cities, schools and other issuers will sell $15.9 billion of bonds and notes, according to Thomson Reuters estimates on Friday.

Bonds make up the lion's share of the upcoming issuance at $15.4 billion, which would mark the biggest weekly bond supply since June 2008.

Some issuers are scurrying to refund outstanding bonds and lock in currently lower rates before the Federal Reserve acts.

"Refunding will be a major theme in the final quarter, with issuers pushing to lock in low rates ahead of a likely Fed rate hike in December," Janney Managing Director Alan Schankel wrote in a report on Friday.

Underwriters on Tuesday will be bidding on a slew of California general obligation bonds — nearly $1.4 billion of tax-exempt refunding bonds and $255 million of taxable bonds.

Georgia will offer $881 million of GO refunding bonds for competitive bidding on Wednesday.

The Philadelphia School District will refund $561 million of lease revenue bonds through Pennsylvania's State Public School Building Authority in a deal pricing on Wednesday.

The district also plans to sell $817 million of mostly GO refunding bonds on Wednesday. Another large refunding will come from New York's Metropolitan Transportation Authority, which has a $627 million issue pricing on Tuesday through Jefferies.

Amid the supply surge, net flows into U.S. municipal bond funds were just $147.3 million in the week ended Oct. 12, according to Lipper, a unit of Thomson Reuters. While fund flows have been unrelentingly positive for more than a year, the latest week had the lowest inflows since the week ended Nov. 4, 2015.

High-yield muni funds reported a second-straight week of net outflows, which totaled $247.5 million.

Reuters

Fri Oct 14, 2016 | 12:53pm EDT

(Reporting By Karen Pierog)

Illinois' $1.3 Billion Bonds Fetch Hefty Yields.

With Illinois' political and fiscal problems showing no sign of abating, investors on Thursday demanded fat yields for the low-rated state's $1.3 billion of general obligation refunding bonds.

The state's so-called credit spread over Municipal Market Data's benchmark triple-A yield scale widened from 162 basis points before the sale to 200 basis points for bonds due in 10 years, according to MMD, a unit of Thomson Reuters.

The wider spread indicates growing investor unease over Illinois' ability to pass a balanced budget and address its huge unfunded pension liability.

Dan Heckman, national investment consultant at US Bank, which did not purchase any of the bonds, said the municipal market is telling Illinois, "You need to get your act together."

"This is a very large deal and the market to a degree is running out of patience," he said, adding that the pricing signals it is time for Illinois "to get past the stand-still on the budget."

Illinois, the lowest-rated U.S. state, is limping through its second straight year without a complete budget. A political impasse, along with a $111 billion unfunded pension liability and a growing pile of unpaid bills, have pounded Illinois' credit ratings into the low investment-grade level of triple-B.

Republican Governor Bruce Rauner told reporters in Springfield, Illinois, on Thursday that he was "cautiously optimistic" the Democrat-controlled legislature would take up key issues such as pensions after the Nov. 8 election.

The refunding of outstanding bonds to take advantage of lower market rates resulted in a present value savings of $106 million, according to Rauner's office.

"Today's bond sale shows public finance investors continue to see long-term potential in Illinois," said Rauner spokeswoman Catherine Kelly in a statement.

Despite a repricing by underwriters led by Bank of America Merrill Lynch, yields in most maturities of the bond issue did not budge from preliminary pricing levels. Bonds due in 2026 were priced to yield 3.63 percent with a 5 percent coupon.

The deal's longest maturities – 2030 through 2032 – were insured by municipal bond insurer AGM, which is rated A2 by Moody's Investors Service and AA by S&P.

Ahead of the sale, Illinois warned potential bond buyers that the state's ongoing cash crunch could delay pension payments. It also reported progress in reducing risks related to $600 million of variable-rate bonds.

REUTERS

Thu Oct 13, 2016 | 5:29pm EDT

(Reporting by Karen Pierog; Editing by Matthew Lewis)

MSRB Files Amendment to Rule A-4 on Meetings of the Board.

The Municipal Securities Rulemaking Board (MSRB) today filed, for immediate effectiveness, an amendment to MSRB Rule A-4, Meetings of the Board, to add that to constitute a quorum of the Board, at least one member of the Board who is a municipal advisor representative must be present. Under Rule A-4 as amended, a quorum of the Board consists of two-thirds of the whole Board, and at least one public representative, one broker-dealer representative, one bank representative and one

municipal advisor representative must be present.

Read the rule filing.

S&P: Public Policy Helps Water Industry Ride the Tide, Conference Panelists Say.

Public policy and the water industry work like a two-way street. Yes, the former helps improve quality, funding, and infrastructure. But often distressed conditions in the industry are needed to affect policy change, which was proven at a "Financing In The U.S. Water Industry" conference panel on Sept. 8, 2016, in New York.

Continue reading.

Chicago Ends Business With Wells Fargo as Fallout Grows.

Chicago is severing business ties with Wells Fargo & Co. for a year after the bank paid penalties to settle claims that employees opened accounts without customers' consent to meet sales goals.

A measure, approved by the city council Wednesday with support from Mayor Rahm Emanuel, will freeze the bank out of any work with Chicago, including underwriting its bonds. Chicago Chief Financial Officer Carole Brown said she would move quickly to terminate any deals the city has with Wells Fargo that it can without paying large penalties, including trustee agreements.

"We do need to send the message that the city does business with those people who perform with integrity, transparency, and who hold themselves accountable for best practices because as a city we have to do that," Brown said in an interview at City Hall.

Chicago is part of a widening political furor that's emerged since Wells Fargo last month agreed to pay $185 million to resolve claims that employees opened accounts consumers didn't know about to boost sales tallies.

The settlement prompted hearings in Congress and led both Illinois and California to suspend work with the bank.

Wells Fargo is "disappointed" that Chicago moved to end its "relationship with one of the nation's safest and strongest financial institutions at a time when the city needs access to dependable financial partners,'' Gabriel Boehmer, a spokesman for the San Francisco-based bank, said in an e-mailed statement.

Emanuel responded during a press conference at City Hall after the vote. "The city's disappointed in Wells Fargo,'' Emanuel said.

Brown noted that while other financial institutions worked with Chicago after Moody's Investors Service downgraded the city to junk in May 2015, Wells Fargo was the only bank that demanded payment to cancel derivative trades and wouldn't negotiate a forbearance agreement, according to Brown. While the bank hasn't been an underwriter since 2014, the city has chosen not to use them

since the Moody's cut, Brown said.

"Wells Fargo doesn't believe in the city right now,'' Brown said. "So we're going to work with those firms that do.''

Chicago has a interest-rate swap agreement with Wells Fargo for Midway International Airport that officials will monitor, according to Brown, who noted the city won't do anything to disrupt that or risk a large termination payment.

Banking Fees

City Treasurer Kurt Summers is working to divest $25 million from Wells Fargo. For his office, which manages Chicago's $7 billion investment portfolio, this move is "probably the most punitive action that we can legally take," Summer told the finance committee on Wednesday as he testified in support of the city's ban.

Wells Fargo has collected about $19 million in fees from Chicago over the last decade, according to Alderman Edward Burke, chair of the city's finance committee.

"This kind of conduct by a huge financial institution in America simply can't take place without some negative implications with municipalities that have done business with it in the past,'' Burke told the council. "I'm further quite certain that municipalities around the nation will follow suit after they learn about what we have done.''

Bloomberg Business

by Elizabeth Campbell

October 5, 2016 — 9:21 AM PDT Updated on October 5, 2016 — 12:05 PM PDT

Hedge Funds Holding Puerto Rico GOs Sue Over Sales-Tax Bonds.

Hedge funds holding Puerto Rico's general-obligation bonds are asking a court to stop the commonwealth from directing sales-tax revenue to repay other debt backed by that money because it violates the island's constitution.

It is the first legal action for the U.S. territory that pits general-obligation bondholders against investors of sales-tax debt. Puerto Rico's constitution states its general obligations must be repaid before other expenses. A portion of the island's sales-tax revenue is dedicated to repaying bonds, called Cofinas by their Spanish acronym.

Entities managed by Aurelius Capital Management, Autonomy Capital, Covalent Partners, FCO Advisors, Monarch Alternative Capital and Stone Lion Capital Partners in July sued Governor Alejandro Garcia Padilla in U.S. District Court in San Juan to stop the administration from transferring funds away from bondholders. The hedge funds say it violates a federal law, called Promesa, which prohibits the island from enacting new legislation to divert revenue or assets that would go against its constitution.

The hedge funds filed an amended complaint Friday. It adds the Puerto Rico Sales Tax Financing Corp., issuer of the Cofina bonds, as a defendant.

The commonwealth defaulted on almost $1 billion of principal and interest on July 1, including $780 million for general obligations. It's the largest such payment failure in the $3.8 trillion municipal-bond market.

Puerto Rico continues to repay Cofina bondholders on time and in full and allocates sales-tax revenue to the bond's trustee every month.

General Obligations

Puerto Rico needs to follow its constitution and repay its general obligations, especially since Cofina bonds were sold as a way to avoid the commonwealth's debt ceiling, the hedge funds said. Puerto Rico owes almost $13 billion of general obligations and about $15.2 billion of Cofinas.

"Cofina's primary purpose is to serve as a vehicle for the commonwealth to borrow large sums of money in a way that circumvents the carefully prescribed debt limitations and priorities contained in the Puerto Rico constitution," according to the amended complaint.

In a separate legal case, a federal board charged with overseeing Puerto Rico's finances is seeking more time to weigh in on whether certain lawsuits against the commonwealth should be postponed, according to a court filing Friday.

The seven-member control board, which met for the first time last week in New York, is asking U.S. District Judge Francisco Besosa to allow the panel until Oct. 21 to file its position on a legal stay, which halts creditor lawsuits against Puerto Rico seeking repayment. The provision is part of the Promesa law, which created the control board to restructure the island's $70 billion debt load and help end a decade-long trend of borrowing to fill budget gaps. It's the first instance of the panel seeking to intervene in a court case.

Besosa last month heard testimony from bondholder advisers and bond-insurance companies on why the court should lift the stay, which lasts through mid-February. Outside consultants for the commonwealth argued that Puerto Rico needs a temporary suspension from such legal battles while it restructures its debt.

Bloomberg Business

by Michelle Kaske

October 7, 2016 — 3:48 PM PDT

Japanese Investors So Desperate for Yield They'll Buy U.S. Munis.

Tetsuo Ishihara, a strategist for Mizuho Securities in New York, started fielding phone calls a couple months ago from Japanese clients interested in U.S. municipal bonds, which usually have little allure overseas because federal tax breaks depress the yields.

But with negative interest rates on Japanese bonds due in as many as 10 years and near record-low payouts on Treasuries, he discovered that state and local debt demanded attention. Even highly rated municipals are delivering bigger returns than U.S. government bonds, without the risk that comes with corporate securities.

“The risk return looks pretty good,” said Ishihara, U.S. macro strategist for the Tokyo-based brokerage, who sent clients a report in September showing how municipals stacked up favorably against other fixed-income investments. “The default rate for munis is much lower than for corporates. All that fits with what they need.”

Increasingly, investors outside the U.S. are contributing to the cash that’s flowed for a year into the $3.8 trillion municipal market, which caters largely to Americans willing to accept low yields because the income is exempt from U.S. taxes. By the end of June, foreign buyers had increased their holdings of the securities to $89.7 billion, about triple what they held a decade earlier, even though they don’t get any of the tax benefits.

Investment firms have courted the business. Shinsei Bank Ltd. and Western Asset Management, a unit of Baltimore-based Legg Mason Inc., last year started a private fund that invests in municipals for Japanese financial institutions. In March, Eaton Vance Management’s co-director of U.S. tax-exempt bonds was among those who spoke at an investment forum the firm co-sponsored in Tokyo.

Columbia Threadneedle Investments got its first account from Japan about a year ago and within six months anticipates that it will have at least $200 million from insurers, diversified financial companies and other clients in Asia, said James Dearborn, head of tax-exempt securities at the Boston-based firm. The funds are primarily invested in taxable municipals, which carry higher yields.

“They’ve come to like the idea that munis represent a relatively stable asset class and that the default incidence is very, very low for a long period of time,” said Dearborn, whose firm manages $24 billion in state and local debt. “They’re creating demand we didn’t have before, and that’s a good thing.”

U.S. municipal bond funds have pulled in money for 52 weeks straight, the longest stretch since 2010, according to Lipper US Fund Flows. Such demand pushed municipal yields to the lowest on record by early July, before they edged back up amid speculation that the Federal Reserve will resume raising interest rates as soon as December.

Even with the influx of funds, 10-year municipal revenue bonds with an AA rating yielded about 1.94 percent by the end of trading Wednesday, or 0.23 percentage point more than Treasuries, according to data compiled by Bloomberg.

Dearborn and Ishihara expect the interest to remain strong, regardless, as investors look for havens from equity-market swings and central banks around the world hold yields near zero. After Ishihara published his report, Japanese clients peppered him with questions, showing they had already been looking closely at the market.

Considering the environment of low rates and inflation, “the credit cycle could last maybe more than two years,” he said. “It could continue for a while.”

Bloomberg Business

by Romy Varghese

October 5, 2016 — 9:01 PM PDT Updated on October 6, 2016 — 6:17 AM PDT

Bloomberg Brief Weekly Video - 10/06

Taylor Riggs, a contributor to Bloomberg Briefs, talks with reporter Amanda Albright about this week's municipal market news.

Watch the video.

Bloomberg Briefs

October 6, 2016

Alaska Risks Another Downgrade With Record Bond Sale.

Alaska, whose finances have been roiled by the oil-price crash, is issuing the biggest bond in its history and letting the proceeds ride in financial markets.

Governor Bill Walker is using money from next week's $2.4 billion sale — the equivalent of $3,186 for every resident — to pay down the state's debt to public-employee retirement funds, wagering it can earn more on stocks, bonds and other investments than it will cost to borrow. The scale of the offering may trigger another downgrade to Alaska, with S&P Global Ratings saying last week that it anticipates cutting its general obligations by one step to AA, the third-highest investment grade, after the deal closes.

The state's move comes as government pension funds deal with setbacks brought on by turmoil in equity markets and low interest rates that have cut returns on fixed-income investments. U.S. retirement systems in the year through June posted the smallest gains since the 2008 credit crisis, according to the Wilshire Trust Universe Comparison Service, putting pressure on governments to pour more cash into the funds to make up for lost ground.

Fitch Ratings said Alaska's plan will curb its pension-fund bills, though it also exposes the state to risks if investment returns falter. S&P said the state may raise as much as $3.3 billion for its retirement plan by issuing securities.

"If I like to borrow money and take it to Vegas, it can be a problem if I'm living pay check to paycheck," Elizabeth Kellar, president of the Center for State and Local Government Excellence, said of bond deals like Alaska's. "If your finances are fragile and you go in at the wrong time it can create major difficulties."

Alaska's $6 billion pension-fund shortfall is adding to the financial strain on the state, whose revenue was cut by more than half in 2015 as oil prices fell. Moody's Investors Service, S&P and Fitch all had their top ratings on the state until this year, when they downgraded it because of the energy-industry rout.

With interest rates in the municipal-bond market holding not far from more than half-century lows, Alaska officials anticipate that they can profit by reinvesting the borrowed money. The bonds will carry a higher yield than typical state and local debt because the interest is subject to the federal income tax. Even so, Honolulu sold taxable securities this month for a top yield of 3.2 percent on debt due in 2034.

"At rates of 4 percent or below it becomes compelling," said Deven Mitchell, Alaska's debt manager.

“The state faces increasing payments and that’s what we want to equalize over time.”

While Alaska’s retirement plans lost 0.4 percent in the year through June, Mitchell said the state’s rolling 5-year return has been 6.5 percent. The pension borrowing, which won’t be paid off until 2039, will save the government about $2.5 billion if “historical returns are met,” Revenue Commissioner Randall Hoffback said in a Sept. 15 memo to lawmakers.

The strategy has been used by other state and local governments. Kansas sold $1 billion of pension bonds in August 2015, and officials in Houston and Oregon have proposed considering similar steps.

Whether it pays off depends on timing, according to a July 2014 study by the Center for Retirement Research at Boston College. While the tactic proved profitable after the recession because of low interest rates and a rebound in the stock market, governments who employed it before the 2000 and 2008 market crashes lost money.

Detroit’s pension-fund borrowing in 2005 and 2006 contributed to the biggest municipal bankruptcy in U.S. history, while New Jersey, Illinois and Puerto Rico borrowed only to see their retirement systems continue to struggle. Former New Jersey Governor Jon Corzine, a one-time Goldman Sachs Group Inc. co-chairman, in 2008 called such bond deals the “the dumbest idea I ever heard.”

“The question is whether this is the best alternative when your hands are tied and you behind the eight-ball,” said Jean-Pierre Aubry, associate director state and local research at the Center for Retirement Research. “The big thing is that it still doesn’t absolve the government of the debt.”

Bloomberg Markets

by Darrell Preston

October 11, 2016 — 2:00 AM PDT

Wells Fargo’s Sloan Expects to Regain Lost Business With States Within a Few Years.

Wells Fargo & Co. Chief Operating Officer Tim Sloan expects to make up lost business with state and local government agencies within a few years after some suspended dealings with the firm when it was caught opening legions of unauthorized accounts for customers.

“Our goal is to win back all of that business and more,” Sloan said in a telephone interview on Monday. “Maybe it’s a year, maybe it’s two years, maybe it’s longer than that. But we’re going to win it back. There is no question in my mind.”

California, Illinois and cities including Chicago and Seattle halted some dealings with Wells Fargo, such as using the bank to sell municipal bonds, after it agreed Sept. 8 to pay $185 million to resolve claims that employees sought to meet sales targets by opening accounts without customers’ permission. Federal prosecutors in New York and San Francisco have initiated their own inquiries. The bank faces a raft of lawsuits by fired or demoted workers, customers and investors.

Sloan said he was disappointed by some municipalities’ decisions to suspend business or put the bank “on probation,” but that it was also understandable. The firm’s business with government entities “is the best in the industry,” had been growing, “and we’re going to work hard to win that

business back," he said.

California's Push

California, the nation's largest issuer of municipal bonds, barred Wells Fargo last month from underwriting state debt and handling its banking transactions for a year. State Treasurer John Chiang, a Democrat who's running for governor in 2018, called on Chief Executive Officer John Stumpf to quit and threatened a "complete and permanent severance" of dealings if the firm doesn't change practices. He urged other states to follow suit.

Illinois's treasurer and Chicago's city council soon announced their own bans. And last week, Seattle said it's removing Wells Fargo from a $100 million bond sale for its public utility, Seattle City Light, that was due to close this month.

Wells Fargo's government and institutional banking business accounted for about 3 percent of the almost $26 billion of revenue generated by the firm's wholesale banking division last year, according to a May presentation. Governments make up a little less than half of the business, the presentation shows.
The company's stock has slid about 8 percent since last month's penalties were announced. It traded in New York at $45.65 at 4 p.m. on Monday.

House Testimony

Last month, House Financial Services Committee Chairman Jeb Hensarling asked Wells Fargo executives including Sloan to sit for transcribed interviews as the panel examines the bank's sales practices. While the lawmaker requested that talks happen in September, Sloan said on Monday that intermediaries are still working on the schedule and that he assumes a meeting may occur "in the next month or so."

"I'm happy to sit down with them whenever they want to, for certain," he said.

Bloomberg Markets

by Laura J Keller

October 10, 2016 — 12:02 PM PDT Updated on October 10, 2016 — 2:15 PM PDT

California Cities Seek Record Tax Hikes as Boom Passes By.

California's booming, yet many of its cities aren't feeling it.

From Yreka, near the Oregon border, to El Centro, just north of Mexico, more than 80 local governments are asking voters next month to approve sales-tax increases, the most on record. While some aim to boost spending on roads or other projects, most measures would just provide extra cash. In Ridgecrest, Fairfax, and Fountain Valley, officials say the revenue would eliminate budget deficits or prevent cuts to police and fire departments.

The governments' revenues aren't keeping up with rising expenses, including for employee pensions, despite the thriving technology industry, home-price gains and rapid economic growth in much of the state. That's due in part to the landmark property-tax limits California voters approved almost

four decades ago that have prevented municipalities from reaping windfalls as the housing market rebounded from last decade's crash.

"Like a lot of mid-sized communities in California, we are struggling with staffing our essential services," said Brent Weaver, vice mayor of Redding, which is seeking an increase in the sales tax so it can hire more police. "We have been really struggling the last several years trying to grow our economy."

The proposals are timed to coincide with the presidential election, which will increase voter turnout in a state divided between the Democrat-heavy coast and the less-populous Republican interior. On Nov. 8, Californians will decide 427 local measures authorizing taxes and bond issues, almost twice the 240 on ballots four years ago, according to a report by Michael Coleman, the fiscal policy adviser for the League of California Cities.

California's local governments have turned increasingly to sales taxes since the passage of Proposition 13 in 1978 capped how much they can raise from homeowners. At the same time, services — which have helped drive the economy — generally aren't taxed. Another impediment: the state in 2012 dissolved redevelopment agencies that cities had previously used to finance infrastructure projects.

The lingering financial pressure stands in contrast to the overall state, whose government has seen once chronic deficits disappear as the economy revived. California's gross domestic product grew by 4.1 percent in 2015, more than any other state but Oregon, which expanded at the same pace, according to the U.S. Bureau of Economic Analysis.

Welcoming the fiscal turnaround, investors have pushed the yield on California's 10-year bonds to just 0.22 percentage point more than top-rated debt, down from as much as 0.67 percentage point in 2013, according to data compiled by Bloomberg.

Localities "can't fully enjoy the benefits of economic growth because they're limited in one of their major sources of revenue," said Howard Cure, head of municipal research in New York at Evercore Wealth Management, which oversees $6.3 billion of investments. "They're feeling a certain pinch."

Los Angeles County, Orange County, San Francisco and 60 other cities are among the local governments pushing for higher sales taxes, according to a report by the California Taxpayers Association. Nine cities are seeking the cash for a specific function, which require the approval of two-thirds of the electorate. The rest need support of a majority because the money isn't being tied to a particular goal. Some campaigns say the effect on taxpayers will be softened because the state's sales tax will decline by 0.25 percentage points in January, when a temporary increase is set to expire.

Retirement costs are a major reason for rising expenses. Among the cities with tax-increase measures, almost four dozen are expected to see double-digit percentage jumps in their annual pension bills by 2020, according to data compiled by Marc Joffe, research director at the California Policy Center, a nonprofit that has criticized public pensions. That's assuming the state's investments return 7.5 percent annually, a target it hasn't hit in the past two years.

In Redding, pension bills are just one of the burdens facing the community with 92,000 residents more than 200 miles north of San Francisco. Its retirement contributions are slated to rise by almost 55 percent to $25.5 million by fiscal 2019-2020.

The city has reduced its police force to about 98 officers from more than 120 before the recession,

said Weaver, the vice mayor. That has led to an increase in emergency call response times, he said. If voters sign off, the additional proceeds would be used to hire 33 officers and 10 firefighters, he said.

For Colusa, a farming community of about 6,000 residents 100 miles to the south, a sales-tax increase could help stave off insolvency. The city has drawn down its savings, said Randy Dunn, fire chief and interim city manager, and employment costs are rising. Federal grants are disappearing, as well as revenue tied to Indian casinos. Its projected 2020 pension contribution will rise 62 percent to $636,000.

“At this rate, we’re going to deplete reserves,” he said. “In about four years, we’re looking at a serious possibility of a bankruptcy.”

Bloomberg Markets

by Romy Varghese

October 13, 2016 — 2:00 AM PDT Updated on October 13, 2016 — 11:03 AM PDT

BlackRock Says Election, Fed Uncertainty to Benefit Muni Buyers.

While the $3.8 trillion municipal-bond market may have just posted its first negative quarterly returns since last summer, BlackRock Inc. says a buying opportunity is presenting itself.

Tax-exempt bonds lost 0.38 percent in September, the first quarterly drop since the three months ended in June 2015, and trailed Treasury bonds after another month of record-setting issuance and slowing demand.

$35.7 billion of municipal bonds were issued in September, 35 percent above the five-year average and up 51 percent from September 2015, according to BlackRock, which oversees $124 billion of municipal bonds.

Strong issuance in August and September has continued into October, said Sean Carney, director of municipal strategy in New York at BlackRock and one of the authors of a report released Monday. With uncertain political and economic events on the horizon, the issuers are “pulling deals forward.”

“Issuers are going to bring deals today rather than in uncertain times,” said Carney. “The amount of uncertainty the U.S. presidential race and the Fed rate hike are bringing to the market is causing increased issuance.”

Though recent weeks have seen weaker flows, demand for municipal bonds has remained “largely positive.” September saw nearly $4 billion enter municipal funds, bringing year-to-date inflows to $51 billion.
“This pocket of supply-induced weakness has not been followed by a pocket of demand weakness,” said Carney.

Bloomberg Markets

by Katherine Greifeld

October 10, 2016 — 1:14 PM PDT

Puerto Rico Gubernatorial Candidate Seeking to Pay Bond Interest.

Puerto Rico gubernatorial candidate Ricardo Rossello wants to pay investors interest on their bonds if they're willing to suspend principal payments.

The pro-statehood candidate has been meeting with bondholders and believes there is an opportunity to renegotiate a portion of the commonwealth's $70 billion of debt. That would give the island some breathing room as it seeks to repair its finances and turn around an economy that's shrunk in the past decade.

"We feel that there is an environment for us to have principal payment deferred with paying interest going forward," Rossello on Thursday told bondholders and creditors via teleconference at an Association of Financial Guaranty Insurers conference in Manhattan.

Puerto Rico agencies began skipping debt service payments in August 2015 and the island defaulted on nearly $1 billion of principal and interest on July 1, including on its general-obligation bonds. It's the largest payment failure in the $3.8 trillion municipal-bond market.

Rossello has asked a seven-member federal control board to review the island's current budget because it doesn't include debt-service payments, which means that spending plan is unconstitutional, he said during the conference. Governor Alejandro Garcia Padilla in April enacted a debt moratorium to preserve cash for essential services.

The panel was created out of a federal law, called Promesa, and is tasked with addressing the island's obligations and ending the use of borrowing to fill budget deficits. Garcia Padilla is expected to present to the control board Friday his updated fiscal and economic plan.

If he wins on Nov. 8, Rossello said he would begin negotiations with creditors immediately before taking office on Jan. 2. In an El Nuevo Dia poll released this week, 43 percent of participants said they plan to vote for Rossello, compared with 28 percent who said they support opponent David Bernier.

Bloomberg Markets

by Michelle Kaske

October 13, 2016 — 2:12 PM PDT

Bloomberg Brief Weekly Video - 10/13

Taylor Riggs, a contributor to Bloomberg Briefs, talks with reporter Amanda Albright about this week's municipal market news.

Watch the video.

Bloomberg Briefs

October 13, 2016

Miami to Pay $1 Million to Settle SEC Municipal Bond Fraud Case.

The city of Miami agreed to pay $1 million to settle a Securities and Exchange Commission lawsuit in which a federal jury ruled that the municipality defrauded bond investors by hiding the deteriorating condition of its finances.

The city and the SEC notified the court that a tentative settlement had been reached last month, and city commissioners approved it this week, according to information posted on Miami's website. City officials have denied wrongdoing, blaming a prior administration.

Bloomberg Markets

by Susannah Nesmith

October 14, 2016 — 12:06 PM PDT

Detroit Defeats Pensioners' Appeal Over Bankruptcy Cuts.

(Reuters) – A divided federal appeals court on Monday rejected claims by Detroit retirees that their pensions were unfairly cut to help the city end the largest U.S. municipal bankruptcy.

The 6th U.S. Circuit Court of Appeals in Cincinnati said restoring the pension cuts would "unavoidably" unravel Detroit's reorganization plan, which helped the city shed $7 billion of debt and end its 17-month bankruptcy in December 2014.

"This is not a close call," Circuit Judge Alice Batchelder wrote for a 2-1 majority.

"The harm to the city and its dependents – employees and stakeholders, agencies and businesses, and 685,000 residents – so outweighs the harm to these appellants that granting their requested relief and unraveling the plan would be impractical, imprudent, and therefore inequitable," she added.

Thousands of retired Detroit city workers were subjected to 4.5 percent pension cuts, the end of cost-of-living increases, and reduced insurance coverage to help the city close a $1.88 billion pension plan funding gap.

Cuts could have been deeper had Detroit not set up a $816 million fund financed by taxpayers, charities and private donors, in what became known as the "Grand Bargain."

Monday's decision upheld a September 2015 ruling by U.S. District Judge Bernard Friedman in Detroit.

The appeals court, like Friedman, said the retirees' claims were subject to "equitable mootness," a legal doctrine intended to prevent some bankruptcy reorganizations from being undone, which could harm those who agreed to them in good faith.

Circuit Judge Karen Nelson Moore dissented. She said the retirees deserve their day in court, and questioned the wisdom of applying equitable mootness to municipal bankruptcies.

“I fear that using such a justification to brush aside the retirees’ legal claims will leave them with the impression that their rights do not matter,” Moore wrote.

Jamie Fields, a lawyer for many retirees who challenged the pension cuts, said his clients may ask the full appeals court to reconsider the decision.

“Being a split decision, I feel somewhat vindicated,” he said in a phone interview. “I think we were on good legal footing.”

Lawyers for Detroit did not immediately respond to requests for comment.

By REUTERS

OCT. 3, 2016, 2:42 P.M. E.D.T.

(Reporting by Jonathan Stempel in New York; Editing by David Gregorio and Tom Brown)

$1.6 Million Bill Tests Tiny Town and ‘Bulletproof’ Public Pensions.

Until the certified letters from Sacramento started coming last month, Loyalton, Calif., was just another hole in the wall — a fading town of just over 700 that had not made much news since the gold rush of 1849. Its lifeblood, a sawmill, closed in 2001, wiping out jobs, paychecks and just about any reason an outsider might have had for giving Loyalton a second glance.

“It’s a walking ghost town,” said Don Russell, editor of the 163-year-old Mountain Messenger, a local newspaper that refuses, fittingly, to publish on the web.

But then came those letters, thrusting Loyalton onto center stage of America’s public pension drama. The California Public Employees’ Retirement System, or Calpers, said Loyalton had 30 days to hand over $1.6 million, more than its entire annual budget, to fund the pensions of its four retirees. Otherwise, Loyalton stood to become the first place in California — perhaps in the nation — where a powerful state retirement system cut retirees’ pensions because their town was a deadbeat.

“I worked all those years, and they did this to me,” said Patsy Jardin, 71, who kept the town’s books for 29 years, then retired in 2004 on an annual pension of about $48,000. Now, because of Loyalton’s troubles, Calpers could cut it to about $19,000.

“I couldn’t live on it — no way,” she said. “I can’t go back to work. I’m 71 years old. Who’s going to hire me?”

Public pensions are supposed to be bulletproof, because cities — unlike companies — seldom go bankrupt, and states never do. Of all the states, experts say, California has the most protective pension laws and legal precedents. Once public workers join Calpers, state courts have ruled, their employers must fund their pensions for the rest of their careers, even if the cost was severely underestimated at the outset — something that has happened in California and elsewhere.

Across the country, many benefits were granted at the height of the 1990s bull market on the faulty assumption that investments would keep climbing and cover most of the cost. And that flawed

premise is now hitting home in places like Loyalton.

There and elsewhere, local taxpayers are paying more and more, and some elected officials say they want to get off the escalator. But Calpers is strict, telling its 3,007 participating governments and agencies how much they must contribute each year and going after them if they fail to do so. Even municipal bankruptcy is not an excuse.

The showdown in Loyalton is raising the possibility that California's pension promise is not absolute. There may be government backstops for bank failures, insurance collapses and pensions owed to workers by bankrupt airlines and steel mills — but not, apparently, for the retirees of a shrinking town.

"The State of California is not responsible for a public agency's unfunded liabilities," said Wayne Davis, Calpers's chief of public affairs. Nor is Calpers willing to play Robin Hood, taking a little more from wealthy communities like Palo Alto or Malibu to help luckless Loyalton. And if it gave a break to one, other struggling communities would surely ask for the same thing, setting up a domino effect.

Some see a test case taking shape for Loyalton and for other cities with dwindling means. "Nobody has forced this issue yet," said Josh McGee, vice president for public accountability for the Laura and John Arnold Foundation, which focuses in part on sustainable public finance, and a senior fellow of the Manhattan Institute.

When Stockton, Calif., was in bankruptcy, for instance, the presiding judge, Christopher M. Klein, said the city had the right to break with Calpers — but it could not switch to a cheaper pension plan without first abrogating its labor contracts, which would not be easy. Stockton chose to stay with Calpers and keep its existing pension plans, cutting other obligations and pushing through the biggest sales tax increase allowed by law.

Loyalton — which sits in a rural area of Northern California near the Nevada border, less than an hour's drive from Reno — severed ties with Calpers three years ago. It has no labor contracts to break. Though the town is not bankrupt, its finances are in disarray: It recovered more than $400,000 after a municipal employee caught embezzling was fired. But a recent audit found yet another shortfall of more than $80,000.

"If a city doesn't have the funds to pay, it's just completely unclear how the legal plumbing would work," Mr. McGee said. "I don't know what would happen if the retirees sued."

The retirees say they are open to filing a suit but cannot afford to hire lawyers for a titanic legal clash with Calpers.

"Nobody does squat for you with Calpers," said John Cussins, Loyalton's retired maintenance foreman, who now serves on the City Council. "I contacted every agency possible. To me, it's just unbelievable that there isn't some kind of help out there with the legal side of things. It leaves us at the mercy of the city and Calpers."

Mr. Cussins said he had a severe stroke last year and was recently told he had Parkinson's disease. He needs continuing care and said he might not be able to afford his health insurance if his pension were cut. Every time the pension issue comes up at City Council meetings, he is told to leave because, as a retiree, he is deemed to have a conflict of interest.

"I'd like to see somebody go to jail for this," he said.

Calpers has total assets of $290 billion, so an unpaid bill of $1.6 million would hardly be a deathblow. But if Calpers gave one struggling city a free ride, others might try the same thing, causing political problems. Palo Alto may have lots of money, but its taxpayers still do not want to pay retirees who once plowed the snow or picked up the trash in far-off Loyalton.

“I think this is all about precedent setting,” Mr. McGee said.

In September, Calpers sent “final demand” letters to Loyalton and two other entities, the Niland Sanitary District and the California Fairs Financing Authority. The Niland Sanitary District has struggled with bill collections, and the fairs financing authority was disbanded several years ago when the state cut its funding. Both entities stopped sending their required contributions to Calpers in 2013 but have continued to allow Calpers to administer their pension plans.

In Loyalton, the City Council voted in 2012 to drop out of Calpers, hoping to save the $30,000 a year or more that the town had previously sent in, said Pat Whitley, a former mayor and a City Council member. (She is not one of the four Loyalton retirees but earned a Calpers pension through previous work on the Sierra County Board of Supervisors.)

“All our audits said that our benefits were going to break the city,” Ms. Whitley said. “That’s exactly why we decided to withdraw. We decided it would be a perfect time to get out, because everybody was retired.”

Loyalton did not plan to offer pensions to new workers, she said. And it had been paying its required yearly contributions to Calpers, so officials thought its pension plan must be close to fully funded.

But Calpers calculates the cost of pensions differently when a local government wants to leave the system — a practice that has caught many by surprise. If a city stays, Calpers assumes that the pensions won’t cost very much, which keeps annual contributions low — but also passes hidden costs into the future, critics say. If a city wants to leave, Calpers calculates a cost that doesn’t rely on any new money and requires the city to pay the whole amount on its way out the door.

That is why Calpers sent Loyalton the bill for $1.6 million.

“I never dreamed it was going to be that, ever. Ever!” Ms. Whitley said. “It defies logic, really.”

Loyalton’s expenditures for all of 2012 were only $1.2 million, and much of that money came from outside sources, like the federal and county governments. Local tax collections yielded just $163,000 that year, according to a public finance website maintained by the Stanford Institute for Economic Policy Research.

Ms. Whitley said Calpers had snared Loyalton in a Catch-22. The agency would not tell the town the cost of terminating its contract until the contract was ended, she said. But once that was done, it was too late to go back.

“We were very confused about why we owe $1.6 million, and why didn’t they tell us that before we signed all the papers,” she said.

Mr. Davis, the Calpers spokesman, said that since 2011, Calpers had been giving its member municipalities a “hypothetical termination liability” in their annual actuarial reports, so there was little excuse for not knowing.

Ms. Whitley disagreed. “It’s just too confusing,” she said. “I looked at what’s been happening with all the other entities, and I saw that eventually it’s got to collapse. It’s almost like a Ponzi scheme.”

The bill was due immediately, but Loyalton did not pay it. It has been accruing 7.5 percent annual interest ever since.

Meanwhile, Calpers has continued to pay Loyalton's four retirees their pensions. But at a Calpers board meeting in September, some trustees said it was time to find Loyalton in default and cut the pensions. The board is expected to make a final decision at its next meeting, in November.

In Loyalton, Mr. Cussins, the retiree and City Council member, said he was so frustrated about being barred from the council's pension discussions that he and another former town worker drove to Sacramento to attend Calpers's last board meeting.

The trustees were cordial, he said, but they held out little hope.

"We had a bunch of them come and shake our hands," he said. "I said, 'We need some guidance.' They told us the city could apply to get back into Calpers next spring. But they made it very clear that they will not allow the city to get back into Calpers until that $1.6 million is paid."

THE NEW YORK TIMES

By MARY WILLIAMS WALSH

OCT. 9, 2016

With Soaring Demand Come Weaker Assurances for U.S. Municipal Investors.

NEW YORK — In July, investors gobbled up $1 billion of bonds from a financially-strapped Catholic hospital system in Illinois called Presence Health Network, even though it offered few contractual guarantees debt buyers typically require.

The deal, rated just above junk status, is emblematic of a fever that has swept the $3.7 trillion U.S. municipal bond market: yield-chasing investors not only piling into riskier debt, but also increasingly willing to accept less protection in the event of a default.

Some portfolio managers say it has been a decade since they have seen such a strong seller's market.

"It's reminiscent of right before the Great Recession, where there was a long period where high-yield rates were low and demand was high," said William Black, senior portfolio manager for the City National Rochdale Municipal High Income Fund.

Low and negative sovereign interest rates have contributed to a scramble for relatively higher yielding U.S. municipal debt. Foreign buyers now hold more muni bonds than ever, U.S. Federal Reserve data show.

Overall, investors have poured nearly $10 billion into high-yield municipal bond funds so far this year, according to data from Lipper, a Thomson Reuters unit. That is more than any other full year in nearly the last quarter century except 2006, which had $10.1 billion of inflows. (Graphic: http://tmsnrt.rs/2dylqFl)

Taking advantage of the seemingly insatiable demand, some borrowers are offering weaker or fewer guarantees, so-called covenants, such as debt reserve funds and debt service coverage ratios.

Because they are based on many factors, credit ratings alone may not reflect the quality of covenants, so some investors may be taking on greater risks than they realize.

Such “covenant light” bonds were harder to offload after the market tumbled in late 2008, while investors who held them saw valuations swing wildly because of infrequent trading and huge price gaps, analysts said.

“Some funds got just clubbed. That was frankly very traumatic for a lot of investors, and fund managers too,” said Joseph Krist, partner at the Brooklyn-based public finance consulting firm Court Street Group.

In a default, workouts are harder. Covenant light bondholders have fewer tools to intervene, for example by requiring issuers to hire turnaround professionals or take other corrective action earlier. They also risk deeper losses in bankruptcy than those with greater protection.

HEALTHCARE AND CHARTER SCHOOLS

Sectors such as healthcare, charter schools, and senior living facilities tend to be more prevalent covenant light issuers, in part because they may struggle more to generate consistent operating margins.

Hospitals and charter schools issued 44 percent and 76 percent more debt by par amount so far this year, respectively, compared with 2015, Thomson Reuters data show. Senior living facility issuance rose 6 percent.

They come in other sectors too. The city of San Antonio, Texas, sold AA-rated junior lien water system bonds on Thursday without a reserve fund – a fact disclosed in the title of the bond documents.

But many covenant light deals are unrated or speculative grade. Issuers have sold more than 400 percent more bonds rated junk at BB and BB- by S&P Global Ratings so far this year than last year, Thomson Reuters data show.

One such example is Summit Academy North, a junk-rated Michigan charter school that missed deadlines for annual financial data in four of the last five fiscal years, according to bond disclosures.

Summit sold $22.5 million of refunding bonds on Aug. 31 with a cash on hand liquidity threshold of just 30 days, a very low level for the sector.

Even so, the top yield was just 4.75 percent on 2035 bonds – a rate that an investment-grade borrower would have likely offered only a couple of years ago.

“I cannot believe some of the deals that are getting done in the muni market right now – without a mortgage, low debt service reserve fund,” Mark Paris, head of municipal portfolio management at fund manager Invesco, said at a recent event.

Some funds say they have little choice but accept fewer safeguards in order to put clients’ cash to work.

“Money is coming in to the point where people have to buy something,” said one market professional who declined to be named.

Institutional investors have pushed back by demanding greater liquidity covenants, said Mark

Taylor, a portfolio manager and head of high-yield research at Alpine Woods Capital Investors.

By September, he had a stack of rejected deals in his office that was four-feet tall, Taylor said. Nonetheless, the deals he has turned down are getting picked up by others.

“There is a plethora of deals coming to market that people probably would have rejected nine months ago.”

By REUTERS

OCT. 11, 2016, 1:03 A.M. E.D.T.

(Reporting by Hilary Russ; Editing by Daniel Bases and Tomasz Janowski)

Has the Municipal-Bond Bull Left the Ring?

NEW YORK — The great bull run for the municipal-bond market may be running out of juice.

For the past year, bonds issued by state and local governments have been red-hot investments. Muni-bond mutual funds have had 53 straight weeks of inflows, according to the Investment Company Institute. That’s one of the longest streaks on record, and they attracted cash at the same time that investors were leaving stock mutual funds. Even Puerto Rico’s default on its debt and Britain’s vote to exit the European Union, which roiled bond markets worldwide earlier this year, didn’t interrupt the muni market’s trajectory.

“Munis have been the darling asset class of the past two or three years,” says Chris Alwine, head of the municipal group at Vanguard.

Now there are signs that this long bull run may be coming to an end. After 10 straight months of positive monthly returns, the iShares National Muni Bond exchange-traded fund, the largest muni ETF by assets, posted a very narrow loss in July. While returns were positive in August, the fund lost about 0.6 percent in September and is on track for another loss in October.

Munis have always appealed to U.S. investors, who are attracted to their reputation for safety and the fact that their income is free of federal income taxes. It’s an incentive offered to get investors to lend to local government so they can build schools, highways and sewer systems. In some cases, income from muni bonds is also free from state or local income taxes.

Over the past 12 months, the iShares ETF has returned 4.3 percent. That beats the returns for the largest bond mutual fund, Vanguard’s Total Bond Market Index fund, which returned a nearly identical amount, after taking into account the tax savings.

In the past couple of years, low interest rates around the world and a volatile stock market have also driven investors from outside the United States into the municipal-bond market, even though non-U.S. residents don’t get the tax advantages.

Given how high prices for muni bonds have moved, some fund managers say that a pullback is inevitable. The 10-year yield on the AP Municipal Bond index, which moves inversely to bond prices, hit a low of 1.69 percent in July and has been climbing ever since. It ended last week at 1.878 percent. Even the relatively small increase in yields has put downward pressure on prices of

municipal bonds, says James Kochan, chief fixed-income strategist at Wells Fargo Funds Management.

If many of the recent muni buyers have been coming with the intent of avoiding turmoil elsewhere in the bond world, a few months of negative returns for munis could spark a sell-off.

It wouldn't be the first time that investors in munis, a historically sleepy market, have been spooked in recent years. The most recent case was in the 2013 "taper tantrum," when investors became anxious about the possibility of an upcoming interest-rate increase. When investors dumped muni bonds during that episode, prices quickly dropped. The iShares ETF lost 8 percent in just four months.

"I think some investors are taking more risk than they are aware of," says Chris Ryon, portfolio manager at Thornburg, who co-manages one of the largest muni bond funds.

Given the uncertainty, investors who hold munis should be looking to pare back on risk, says Ryon, who suggests sticking with higher-quality muni offerings, especially because lower-rated muni bonds aren't offering that much more income than higher-quality muni bonds. In the parlance of bond investors, the "spread" is not that wide.

With that said, there's no need to ditch high-yield munis entirely, says Peter Hayes, head of the municipal bonds group at BlackRock. "For the rest of the year, we think returns will be largely generated by income," he says. "That means you need to own some amount of high-yield."

Investors should also shorten the duration, or maturity, of their holdings, says Wells Fargo's Kochan, because prices of longer-term bonds tend to fall more when interest rates rise.

Hayes says he favors 15-year maturities, which he calls the "sweet spot." The good news for investors: With global interest rates still extremely low and the credit quality of munis generally stable, most experts view the recent dip as a pullback, not the start of a bear market.

Says Hayes: "The past month has created a little bit of better buying opportunity."

By THE ASSOCIATED PRESS

OCT. 13, 2016, 12:39 P.M. E.D.T.

Vermont Wind Project Needs Support, So Company Offers to Pay Voters.

WINDHAM, Vt. — To many residents in this tiny town in southern Vermont, the last-minute offer of cash was a blatant attempt to buy their votes.

To the developer that offered the money, it was simply a sign of how attentively the company had been listening to voters' concerns.

The company, Iberdrola Renewables, a Spanish energy developer, wants to build Vermont's largest wind project on a private forest tract that spans Windham and the adjacent town of Grafton. The project would consist of 24 turbines, each nearly 500 feet tall, and generate 82.8 megawatts of power, enough to light 42,000 homes for a year if the wind kept blowing, though the houses could be in Connecticut or Massachusetts.

Residents of the two towns will vote Nov. 8 on whether to approve the project, which has pitted neighbor against neighbor. No one knows which way the vote will go.

That same day, residents statewide will be voting for governor. Wind development has become an issue in that race, which The Cook Political Report rates a tossup, and sentiment here could be decisive in the outcome.

Facing the possibility that voters here may reject the proposal, putting a damper on large-scale wind development in Vermont, Iberdrola last week put cash on the table for individual voters.

Many residents called the offer an attempt at undue influence, if not an outright bribe. But after a review, the state attorney general's office said that the offer did not appear to violate state law.

Still, the individual payments — a total of $565,000 a year to 815 registered voters in both towns, or $14.1 million over 25 years — on top of millions more to the towns, suggest how much is at stake for the company. Iberdrola has been trying to persuade voters here for more than four years to approve the project, in a state that is actively seeking clean-energy development.

Vermont's energy goals are among the most ambitious in the country: to derive 90 percent of its power from renewable sources by 2050.

Gov. Peter Shumlin, a Democrat who is not seeking re-election after nearly six years in office, has been the state's chief proponent of clean energy.

"There's nothing I'm more proud of than my legacy of having helped to get Vermont off of oil and coal and moved us more aggressively than any other state in the nation to renewables," he said.

The state has 20 times as much wind power as it had when he took office and 11 times the number of solar panels. Electricity rates in Vermont have dropped while soaring in the rest of New England.

Yet the push toward renewables has been a tough sell in some quarters despite Vermont's reputation as a progressive, environmentally conscious state — or perhaps because of it.

Critics of commercial wind power consider themselves every bit as environmentally conscious as the governor. They say he is doing more harm than good by promoting developments on the state's ridgelines, among Vermont's most important assets, where turbines, roadways and infrastructure are destroying habitats, increasing flood risks and scarring the landscape much the way mountaintop mining has scarred West Virginia. They also complain about noise, lower property values and blighted views.

Critics are appalled that Mr. Shumlin is backing another Iberdrola project, a 15-turbine development under construction on two ridgelines in the Green Mountain National Forest that would be the first commercial wind project in a national forest.

All of this development, they say, is doing little to stave off climate change.

"These handful of turbines won't do anything to offset the documented scampering increase in the mining and use of coal in India and China," said Frank Seawright, the chairman of the Windham Selectboard and an opponent of the project.

Mr. Shumlin counters by saying that climate change is easily the most important issue facing the planet and that everyone has a responsibility to curb it. While he says he would never favor turbines on Vermont's most iconic mountains, naming Mansfield and Camel's Hump, he adds that they have

to go on ridgelines because that is where the wind is.

The state's environmental groups are with him. Paul Burns, the executive director of the Vermont Public Interest Research Group, said that a vote against the wind project here "would demonstrate an unwillingness to be part of a solution to what is recognized as an incredibly serious problem."

Vermont's battle over wind has been brewing for years, and is playing a role in the race to succeed Mr. Shumlin. Phil Scott, the Republican nominee, who opposes further industrial wind development, faces Sue Minter, the Democratic nominee, who is backed by the wind industry and favors it. The issue was a factor in her winning the Democratic nomination.

Statewide support for wind turbines has been relatively high, but appears to have ebbed in recent years, according to polling by Castleton University, dropping to 56 percent this year from 69 percent in 2013.

Windham and Grafton generally vote Democratic, but most lawn signs here proclaim support for Mr. Scott and are paired with signs against the wind turbines.

"A lot of Democrats in this room will be voting for a Republican governor for the first time," Sally Hoover, 72, a retired accountant in Windham, said last week as Iberdrola hosted a meeting, where residents first learned of the cash offer.

At the meeting, which drew more than 100 residents, the developer shared its new plan. It reduced the number of turbines to 24 from 28 and increased the money paid to Windham to $1 million from $715,000 a year for the 25 years. The payments would cut property taxes in half and provide $150,000 a year for charities, fire departments and educational scholarships.

The company said it would also set aside $350,000 each year for direct payments to Windham's 311 registered voters — $1,125 apiece annually, or $28,135 over 25 years, which a voter could accept or not.

In Grafton, the company set aside $215,000 for voter payments. The town's 504 registered voters would each receive $427 a year, or $10,665 over 25 years. (Windham would have 16 turbines and Grafton eight.)

Asked if the company was trying to buy votes, a spokesman, Paul Copleman, said that Iberdrola was merely responding to what residents had said they would need to win approval, and that the developer would abide by the result.

In an email later, he added, "Our current proposal is based on feedback from community members who are frustrated that the tax relief from the project would give a larger break to those with more expensive properties."

Kathy Scott, 74, a retired bookkeeper and one of the Windham residents who negotiated the package, said residents, not the company, came up with the idea of payments.

She said her group saw them as a way to "level the playing field" with second-home owners, many of whose homes have high assessments and who would benefit more from the tax cuts. (Although second-home owners pay 60 percent of the town's taxes, they cannot vote here, a sore point for them.)

Opponents were outraged at the payments, perceiving them as an attempt to buy votes, and complained to state officials.

But Michael O. Duane, senior assistant attorney general, said the payments did not violate state law. The proposal “doesn’t say that the funds go only to those people who signed a sworn statement that they had voted for it,” he said.

Still, the payment proposal has left a sour taste. As The Rutland Herald put it in an editorial on Sunday, “The naked offer of money to individual citizens may be even more corrosive to the civic life of the town than the potential environmental effects of the wind turbines.”

THE NEW YORK TIMES

By KATHARINE Q. SEELYEO

CT. 12, 2016

MSRB Seeks Input on Strategic Priorities.

Washington, DC — The Municipal Securities Rulemaking Board (MSRB), which oversees the $3.8 trillion municipal securities market, is seeking public input on its core activities and strategic goals to help guide the organization’s long-term priorities. Feedback from market stakeholders supports the MSRB’s ability to fulfill its mission to protect investors, state and local government issuers, other municipal entities and the public interest by promoting a fair and efficient municipal market.

In an effort to promote market transparency, the MSRB is seeking specific input on future development of its Electronic Municipal Market Access (EMMA®) website, the official repository for information on virtually all municipal bonds. In addition, the MSRB is also seeking feedback from municipal market participants on prioritizing its ongoing efforts and what, if any, additional issues should be considered.

“The MSRB’s long-term strategic planning process informs the Board’s discussion and prioritization of regulatory, educational and transparency initiatives,” said MSRB Executive Director Lynnette Kelly. “Receiving comment from a wide range of market participants helps ensure that the MSRB thoroughly considers relevant market topics when setting and reevaluating organizational priorities.”

Date: October 12, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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MSRB Webinar: Proposed Municipal Advisor Continuing Education Requirements.

Thursday, October 20, 2016

3:00 p.m. – 4:00 p.m. ET

During this free webinar, MSRB staff will provide an overview of the Request for Comment on Draft

Rule Amendments to MSRB Rule G-3 on professional qualifications to establish continuing education requirements for certain associated persons of a municipal advisor. To support market participants' submission of comment letters, this webinar will review the key provisions of the draft rule amendments.

Click here to register.

- **Ed. Note:** We'll be off next week, but will return with the proverbial vengeance on 10/18.
- GASB Proposes Omnibus Statement Addressing a Broad Range of Practice Issues.
- MSRB Proposes Standalone Minimum Denomination Rule.
- MSRB Improves Bank Loan Disclosure on EMMA Website.
- MSRB Improves Bank Loan Disclosure on EMMA After Issuer Complaints.
- GASB Webinar on Fiduciary Activities Project.
- DC Water Closes Historic Deal.
- Following Revenue Procedure 2016-44, Is There Still a 'Facts and Circumstances' Test for Private Business Use?
- Just in Case You Didn't Notice – Rev. Proc. 2016-44 Treats as Compensation under a Management Contract the Reimbursement of Amounts Paid by the Manager to its Employees.
- *Department of Transportation v. Amerco Real Estate Company* – Supreme Court of Colorado holds that general authorization by transportation commission, to the extent it purported to delegate to transportation department the choice of particular properties to be taken for a project to alter a state highway and the manner of their taking, constituted an unlawful delegation of the commission's statutorily imposed obligation.
- And finally, Goes Without Saying is brought to you this week by *730 Equity Corp. v. New York State Urban Development Corp.*, in which the court determined that the highest and best use of condemnee's property was a "12-story budget hotel." That strike anyone else as oddly specific? No mention of the waffle bar? Or perhaps the court simply believes that to be highest/best use for any and all properties. And who are we to argue? We also ran across *Corbett v. County of Lake* this week, in which the court noted that the "determinative" factor in deciding whether or not a public path was dangerously overgrown was the fact that the plaintiff and her friends had dubbed it the "bunny trail" due to the abundance of wildlife. We recommend that you preemptively begin referring to every route you may utilize as the "[path, highway, boulevard, etc.] of Immediate and Horrible Death." Just in case.

DEVELOPMENT FEES - CALIFORNIA

616 Croft Ave., LLC v. City of West Hollywood

Court of Appeal, Second District, Division 1, California - September 23, 2016 - Cal.Rptr.3d - 2016 WL 5335511

Developers petitioned for writ of administrative mandate to compel city to return fees the city collected when developer applied for building permits.

The Superior Court denied petition. Developers appealed.

The Court of Appeal held that:

- Developer could not challenge fee ordinance's facial constitutionality more than 90 days after establishment of fee schedule;
- In-lieu housing fees were not an "exaction" under the Mitigation Fee Act;
- In-lieu housing fees were not governed by the Right to Vote on Taxes Act;
- Developer could not argue an "absence of a reasonable relationship" between the development project and the demand for affordable housing more than 90 days after establishment of the fee schedule.

Under the statute providing that an action to "attack, review, set aside, void, or annul the decision of a legislative body to adopt or amend a zoning ordinance" must be brought within 90 days of the legislative body's decision, a developer was barred from arguing in an administrative mandamus action that the ordinance authorizing in-lieu housing fees the city collected from the developer violated Fifth Amendment takings principles on its face, where the developer filed its protest letter challenging the ordinance more than 90 days after the city council resolution establishing the schedule of in-lieu housing fees, and the developer paid the in-lieu fee voluntarily as an alternative to setting aside affordable housing units.

In-lieu housing fees paid by developer voluntarily as an alternative to setting aside affordable housing units under city ordinance were not an "exaction" under the Mitigation Fee Act, and thus were not governed by the provision of the Act authorizing parties to protest the imposition of exactions, even if the city would have had a "right of first refusal" to buy any set-aside units.

In-lieu housing fees paid by developer voluntarily as an alternative to setting aside affordable housing units under city ordinance were not governed by the Right to Vote on Taxes Act, and thus the city did not have the burden to prove the reasonableness of the fees to establish the fees were not "special taxes" under the Act.

Under city ordinance providing that any person subject to an in-lieu housing fee may apply to the city council for an adjustment, reduction, postponement, or waiver of that fee "based upon the absence of a reasonable relationship between the impact of that person's commercial or residential development project on the demand for affordable housing," the reasonableness inquiry relates to the creation of the city council resolution establishing the schedule of in-lieu housing fees, and does not relate to the reasonableness of the individual calculation of fees related to a development's impact on affordable housing, and thus a challenge under the "reasonable relationship" standard is barred by the Mitigation Fee Act if it is brought more than 90 days after the creation of the fee schedule.

LIABILITY - CALIFORNIA

Esparza v. Kaweah Delta District Hospital

Court of Appeal, Fifth District, California - September 21, 2016 - Cal.Rptr.3d - 2016 WL 5121829

Patient brought action against health care district's hospital for medical malpractice.

The Superior Court sustained demurrer without leave to amend. Patient appealed.

The Court of Appeal held that:

- Patient's general allegation was sufficient to plead compliance with the claims presentation requirement of Government Claims Act, and

- Patient's allegation that she served a claim on health care district's hospital under the Act "on or at" a particular date was not so ambiguous as to be inconsistent.

Patient's general allegation, on a Judicial Council form, that had she complied with applicable claims statutes was sufficient to plead compliance with the claims presentation requirement of the Government Claims Act, for patient's medical malpractice claim against a health care district's hospital, even though patient's allegation did not include the word "timely."

Patient's allegation that she served a claim on health care district's hospital under the Government Claims Act "on or at" a particular date was not so ambiguous as to be inconsistent with patient's general allegation of compliance with the claims presentation requirements of the Act, since patient's general allegation of compliance could be true even if she served a claim "on or at" the date she alleged.

EMINENT DOMAIN - COLORADO

Department of Transportation v. Amerco Real Estate Company

Supreme Court of Colorado - September 26, 2016 - P.3d - 2016 WL 5375508 - 2016 CO 62

State department of transportation brought petition in condemnation in connection with highway expansion project.

The District Court denied motion by owner and occupant of subject property to dismiss petition and granted department's motion for immediate possession of property. Owner and occupant petitioned for relief. The Supreme Court issued rule to show cause.

The Supreme Court of Colorado held that general authorization by transportation commission, to the extent it purported to delegate to transportation department the choice of particular properties to be taken for a project to alter a state highway and the manner of their taking, constituted an unlawful delegation of the commission's statutorily imposed obligation.

Commission's enabling legislation contemplated that it alone must decide whether the public interest or convenience would be served by a proposed alteration of a state highway, and that decision must be made in consideration of, among other things, the portions of land of each landowner to be taken for that purpose and an estimate of the damages and benefits accruing to each landowner whose land may be affected thereby.

MUNICIPAL ORDINANCE - FLORIDA

Classy Cycles, Inc. v. Bay County

District Court of Appeal of Florida, First District - September 28, 2016 - So.3d - 2016 WL 5404205

Operator of motor vehicle rental businesses brought action against county and city, seeking declaratory judgment that county and city ordinances relating to rental of certain motor vehicles exceeded the scope of authority of local governments and damages for lost revenue because businesses could not fully operate due to inability to obtain required insurance.

The Circuit Court granted summary judgment in favor of county and city. Operator appealed.

The District Court of Appeal held that:

- Ordinances requiring safety vest while operating rental motor scooter were expressly preempted;
- Ordinances requiring insurance for businesses renting motor scooters were expressly preempted;
- Ordinances requiring insurance were an attempt to regulate in an area well-covered by existing statutes and, thus, were impliedly preempted; and
- Ordinances did not constitute "temporary or experimental regulations" to address "special conditions," and thus did not fall within statutory exception to preemption.

IMMUNITY - ILLINOIS

Corbett v. County of Lake

Appellate Court of Illinois, Second District - September 23, 2016 - N.E.3d - 2016 IL App (2d) 160035 - 2016 WL 5358017

Bicyclist injured while riding bicycle on bike path brought action against county and city, alleging that they were liable for defects in bike path.

The Circuit Court granted summary judgment in favor of defendants on grounds of immunity under Local Governmental and Governmental Employees Tort Immunity Act. Bicyclist appealed.

The Appellate Court held that paved bicycle path in developed city park was not a riding "trail" within meaning of Act.

Paved bicycle path in developed city park was not located within a forest or mountainous region, and thus was not a riding "trail" within meaning of statute providing local governments immunity in connection with injuries caused by the condition of such trails. Bike path was bordered merely by narrow bands of greenway containing shrubs and a few trees, and was surrounded by industrial development, residential neighborhoods, parking lots, railroad tracks, and major vehicular thoroughfares.

PENSIONS - ILLINOIS

Underwood v. City of Chicago

Appellate Court of Illinois, First District, First Division - September 21, 2016 - N.E.3d - 2016 IL App (1st) 153613 - 2016 WL 5239868

City retirees filed state court action alleging that reduction in their health care benefits violated state constitution and Contracts Clause.

After removal, the United States District Court dismissed complaint, and retirees appealed. The United States Court of Appeals vacated and remanded. On remand, the Circuit Court denied retirees' motion for a preliminary injunction, and granted city's motion to dismiss with regard to retirees' contract and estoppel counts. Retirees appealed.

The Appellate Court held that:

- City retirees had no ascertainable claims to lifetime health care benefits under time-limited Pension Code amendments;
- Evidence was sufficient to support finding that retirees could not demonstrate a likelihood of

success on the merits of their claim that the city's plan was a diminishment of anything they were entitled to, as required for the issuance of a preliminary injunction against city;
- City annuitant's handbook did not create a right to lifetime medical benefits for city retirees; and
- Retirees failed to demonstrate that they could overcome the statute of frauds, or any express act by the city or any of its authorized representatives to bind city to a commitment to provide retirees with lifetime medical benefits, as required to allow for the extraordinary relief of enjoining the city from phasing out plan on retirees' health care coverage.

LIABILITY - ILLINOIS

Perez v. Chicago Park Dist.

Appellate Court of Illinois, First District, Second Division - September 13, 2016 - N.E.3d - 2016 IL App (1st) 153101 - 2016 WL 4772481

Park visitor, who was injured by fireworks illegally set off by other visitors, brought action against city park district.

The Circuit Court granted park district's motion to dismiss, and visitor appealed.

The Appellate Court held that:

- Fireworks were an activity on the property, not a condition;
- Park district had no duty to supervise park visitors who set off fireworks;
- Fireworks were not "conducted" by park district; and
- Park visitor forfeited her right to have review denial of motion to file a fourth amended complaint.

Fireworks set off illegally by people in park were an activity on the property, not a condition of the property, in determining whether city park district was liable for injuries sustained by park visitor injured by the fireworks under statute allowing an individual to bring action against public entities for willful and wanton conduct that creates a condition that causes an injury on property used for recreational purposes.

Fireworks that were illegally set off by park visitors and that injured park guest were not "conducted" by city park district, precluding liability of park district under the statute making a public entity liable for wanton and willful conduct in conducting a hazardous recreational activity on public property.

Park visitor, who was injured by fireworks set off illegally in park, forfeited her right to have Appellate Court review denial of her motion to file fourth amended complaint in her action against city park district. Visitor failed to include the amended complaint in the record on appeal, and the record contained no transcript of the proceedings on park visitor's oral motion to amend.

EMPLOYMENT - NEW YORK

Pilla v. Karnsomtob

Supreme Court, Appellate Division, Second Department, New York - September 26, 2016 - N.Y.S.3d - 2016 WL 5348237 - 2016 N.Y. Slip Op. 06142

Village board of trustees sought judgment declaring that its determination regarding elimination of

firefighter positions was not subject to a permissive referendum, or, in the alternative, sought to invalidate referendum petitions.

The Supreme Court, Westchester County, declared that board's determination was subject to permissive referendum and invalidated referendum petitions. Board appealed and respondents cross-appealed.

The Supreme Court, Appellate Division, held that:

- Board's decision to eliminate firefighter positions was subject to permissive referendum, and
- Respondents' failure to include each signer's election district in referendum petitions rendered petitions invalid.

Village board of trustee's decision to eliminate all eight paid firefighter positions in village fire department was subject to permissive referendum, pursuant to Village Law regarding abolition of fire departments, despite reference in Village Law to such "voluntary fire department," and despite fact that board eliminated only paid firefighter positions. First sentence of relevant Village Law indicated that legislature contemplated that village fire departments could consist of both volunteer and paid firefighters.

Respondents' failure to include in referendum petitions, which sought to challenge village board of trustee's decision to eliminate all paid firefighter positions, each signer's election district, rendered referendum petitions invalid under Village Law regarding referendum petitions. Although legislature had evidenced an intent to remove technicalities that deprived citizens of ballot access by removing election district requirement from Election Law, legislature did not make similar change to Village Law regarding referendum petitions.

Respondents' failure to include in referendum petitions, which sought to challenge village board of trustee's decision to eliminate all paid firefighter positions, each signer's election district, rendered petitions invalid under Village Law regarding referendum petitions, which permitted substantial rather than strict compliance with details of form but required strict compliance with matters of prescribed content of petitions. Failure to include signer's election districts was a defect in the prescribed content of the petitions, not in the form of the petitions.

EMINENT DOMAIN - NEW YORK

730 Equity Corp. v. New York State Urban Development Corp.

Supreme Court, Appellate Division, Second Department, New York - September 21, 2016 - N.Y.S.3d - 2016 WL 5107963 - 2016 N.Y. Slip Op. 06086

Condemnee brought action against condemnor seeking compensation arising from the taking of condemnee's real property.

Following bench trial, the Supreme Court, Kings County, awarded just compensation. Condemnor appealed.

The Supreme Court, Appellate Division, held that:

- Reasonable probability existed that condemnee's real property, which was located in manufacturing district, would have been rezoned to permit commercial uses along with residential and community facility uses, and
- Highest and best use of condemnee's real property following rezoning was 12-story budget hotel.

Reasonable probability existed that condemnee's real property, which was located in manufacturing district, would have been rezoned to permit commercial uses along with residential and community facility uses, and thus, potential uses of the property were not limited to uses permitted by zoning regulations at the time of the taking when determining just compensation award to condemnee. Although rezoning immediate area would result in certain nonconforming uses, the property and its surrounding blocks comprised section of outdated manufacturing zoning with large area of residential and commercial rezonings, and city policy was to rezone underutilized industrial sites to allow for commercial or residential development.

Highest and best use of condemnee's real property following rezoning to permit commercial, residential, and community facility uses was 12–story budget hotel, as used to determine just compensation award to condemnee. Lease on the property did not prohibit finding different highest and best use than contemplated in the lease, and condemnee's expert provided alternate designs for hotel that would meet zoning requirements and evidence of increased demand for and development of hotels in the area around vesting date.

UTILITIES - SOUTH DAKOTA

Brant Lake Sanitary Dist. v. Thornberry

Supreme Court of South Dakota - September 28, 2016 - N.W.2d - 2016 WL 5637019

Sanitary district brought action against landowners seeking to enjoin them from using their property until they connected their dwelling to a sewer line.

The Circuit Court entered summary judgment in favor of landowners. Sanitary district appealed.

The Supreme Court of South Dakota held that ordinance requiring connection to a sewer line did not apply to landowners, who were subject to "grandfather" clause providing that ordinance did not apply to existing houses "not currently required" to be connected.

Language "not currently required" referred to the time at which the ordinance was enacted, rather than to those property owners who had not yet received notice to connect to sewer line.

SPECIAL ASSESSMENT LIENS - VIRGINIA

Cygnus Newport-Phase 1B, LLC v. City of Portsmouth

Supreme Court of Virginia - September 22, 2016 - S.E.2d - 2016 WL 5239588

Property owner brought action against city and community development authority, alleging that a special assessment lien, recorded after a deed of trust, was extinguished by the foreclosure sale and that the special assessments were void.

The Circuit Court granted the pleas in bar and dismissed the complaint. Owner appealed.

The Supreme Court of Virginia held that:

- Special assessment liens have priority over previously recorded deeds of trust;
- Special assessment lien was enforceable against property owner; and
- Owner's belated challenge to special assessments was foreclosed.

Special assessment lien was enforceable against property owner after foreclosure sale on deed of trust, even though deed of trust was recorded before lien, where city filed in deed book of circuit court clerk's office an abstract of ordinance authorizing improvements, which made lien enforceable against any person deemed to have had notice of assessment, and owner had notice of assessment and lien when it acquired deed of trust and property at foreclosure.

State constitution and code foreclosed property owner's belated challenge to special assessments on property that owner acquired following foreclosure sale on deed of trust. Owner acquired its interest long after assessment agreement with former owner had been finalized and recorded, assessments approved and recorded, and bonds issued, owner filed suit approximately nine years after special assessments were imposed and bonds issued, and state constitution and code did not contemplate endless challenges from subsequent purchasers who bought property with notice of existence of assessment, notice of agreement with former owner, and notice of what infrastructure had been constructed.

TAX - WASHINGTON

City of Spokane v. Horton

Court of Appeals of Washington, Division 3 - September 22, 2016 - P.3d - 2016 WL 5342591

City brought mandamus action against county assessor, county treasurer, and Department of Revenue (DOR), seeking to compel county to implement ordinance which would provide certain disabled or low-income citizens with real property tax exemption.

The Spokane Superior Court granted mandamus relief. Assessor, treasurer, and DOR appealed.

The Court of Appeals held that:

- Section of state constitution allowing legislature to grant property tax exemption to retired property owners does not grant authority to legislature to confer authority on municipal corporations to grant same exception, and
- City's statutory power to assess and collect taxes did not provide authority for ordinance.

City's statutory power to assess and collect taxes did not provide authority for city ordinance granting real property tax exemption to low-income seniors, persons with permanent disabilities, and disabled veterans. State constitution prohibited municipalities from assessing and collecting nonuniform taxes, and legislature explicitly qualified statutory taxing power with the caveat that such power was subject to constitutional limitations.

TAX - NORTH CAROLINA

Henkel v. Triangle Homes, Inc.

Court of Appeals of North Carolina - September 20, 2016 - S.E.2d - 2016 WL 5076152

Purchaser at federal tax lien foreclosure sale brought action to quiet title to the property after upset bidder at village's prior tax foreclosure sale recorded commissioner's deed to the property.

The Superior Court quiet title in purchaser, and upset bidder appealed.

The Court of Appeals held that federal tax lien foreclosure sale purchaser had title to property.

Claim to parcel by holder of quitclaim deed issued following upset bid at village's tax sale was subordinate to federal tax sale purchaser's claim to the property based on superior federal tax lien such that recordation statute did not apply and federal tax sale purchaser had title to property. As village's foreclosure action and sale violated federal law by failing to provide notice to United States or join it as a party and occurred prior to the federal tax lien foreclosure sale, quitclaim deed was conveyed subject to the federal tax lien, and quitclaim deed holder was put on notice of the federal tax lien foreclosure sale but failed to redeem the parcel from the federal tax foreclosure sale within 180 days.

NABL: TEB Releases Work Plan for FY 2017.

The Internal Revenue Service (IRS) Tax Exempt and Government Entities (TE/GE) Division, including the Office of Tax-Exempt Bonds (TEB), has released its work plan for fiscal year (FY) 2017. TEB's highest priority examination cases are claims and returns that have been identified because of evidence of noncompliance, such as referrals. TEB receives two types of claims: claims for a return of an overpayment of rebate and claims for direct pay bonds. In FY 2016, TEB revised its direct pay bond refund process, and as a result, in FY 2017, TEB expects to receive fewer direct pay bond referrals, but these referrals will be returns that likely have a higher risk of noncompliance than found generally in returns referred under the prior process. The next priority is returns having issues for which past information, including past examinations and VCAPs, indicate a higher risk of noncompliance. This initiative began in FY 2016 and includes examinations of returns for prison financings and small issue bonds. TEB will also devote resources to identifying new issues and fact patterns with a higher risk of noncompliance, and developing methods to find these new issues. TEB will use methods, including market scans and data analytics, to identify new areas of noncompliance for examination.

The IRS TE/GE work plan is available here (note that the TEB section begins on page 21).

NABL: Ohio Senators Oppose Political Subdivision Regs.

Senators Rob Portman (R-OH) and Sherrod Brown (D-OH) sent a letter to Internal Revenue Service (IRS) Commissioner Koskinen, opposing the current form of the IRS proposed political subdivision regulations (REG-129067-15). The senators expressed concern that the definition is overly broad and risks denying tax exempt financing to "valid and vital political subdivisions" such as sewer districts, port authorities and airport authorities. The senators specifically point to the government control test's application to multi-jurisdictional entities and to the replacement of the private activity tests in section 141 with a "vague and malleable public purpose standard."

The letter is available here.

Woodell Hopes to Start New Initiatives During Tenure as MSRB Chair.

WASHINGTON – As the new chair of the Municipal Securities Rulemaking Board on Oct. 1, Colleen Woodell hopes the board will begin new initiatives on syndicate practices and pre-trade price transparency during her one-year term.

She plans to use the knowledge she has gained over her career to contribute to the market on a much broader basis.

“I really wanted to give back,” Woodell said of the impetus for her decision to take the position leading the board, which will also continue work on major rulemakings like markup disclosure.

Woodell discussed the issues pending before the MSRB and her career during an interview with The Bond Buyer.

The former chief credit officer of global corporate and government ratings at S&P Global Ratings, she is in her fourth year on the board. Her tenure is longer than usual after colleagues voted to give her a one-year extension as part of the MSRB’s plan to have members ultimately serve four-year terms.

She replaces Nat Singer, senior managing director at Swap Financial Group, as chair, whom she served under as vice chair this past year.

Woodell said she views her role leading the 21-member, majority public board as a facilitator “making sure that everybody is heard and that we get the knowledge in the room that we need.”

She added that although she sees 21 members as being “a lot,” she thinks “it is a good number because it gives enough of a broad scope that it gets [the MSRB] where [it needs] to be.”

As the MSRB continues to explore new rulemakings and necessary steps over the next year, Woodell said she will be cognizant of market feedback about pressures its participants have faced from recent regulations. However, she noted that “if we know that there’s a need to do something, as a regulator, we need to do it.”

“We know there’s been a lot to absorb over the last couple of years and we’re sympathetic to that,” she said. “The costs are significant, the people impact is significant, but we still need to make sure that we are meeting our mission.”

It is also important to her to make sure that new board members, who sometimes come on thinking their time will be spent solely on rulemaking, are aware that there is much more the MSRB does apart from crafting regulations.

Given the larger rulemaking initiatives that have either been finalized or appear closer to being finalized, like municipal advisor rules and markup disclosure, she thinks the market will have had a chance to get adjusted “before the next big things come.”

The MSRB’s markup disclosure rule, which is accompanied by guidance on how dealers would use a “waterfall” of factors to determine prevailing market price, has already been filed with the Securities and Exchange Commission. It would require a dealer, which buys or sells munis for or from its own account to a retail customer and engages in one or more offsetting transactions on the same trading day in the same security, to disclose its markup or markdown in the confirmation it

sends the customer.

Comments on the proposed rule are supposed to be sent to the SEC by Oct. 4. Although dealers have been concerned about how to demonstrate compliance with the rule, Woodell said the board thinks "that what it filed is getting the market where it needs to be."

"Hopefully it will be done during my term, but you never know," Woodell said about the proposal. MSRB Rule G-42 on core duties of MAs went through three rounds of comments from the SEC. "Hopefully this won't go that many, but it's always possible," she added. The next step for the MSRB will be to respond to the comments.

The MSRB will also continue with several other initiatives, like a newly proposed rule on certain exceptions that would allow dealers to trade in amounts below a security's minimum denomination.

New Initiatives

Woodell said she also intends to set in motion several multi-year initiatives related to past comments and data the MSRB has received.

"We put a request for comment out on the entire [MSRB] rulebook a couple years ago and that raised a few questions, along with enforcement cases about syndicate practices," Woodell said. "We need to start the conversation on those."

The focus on syndicate practices relates to an August 2015 SEC case against Edward Jones, where the firm, which was part of a syndicate, settled charges that, instead of selling new bonds to customers at the initial offering price as required, it took bonds into its own inventory and then improperly sold them to customers at higher prices. In some cases, the firm failed entirely to underwrite and offer the new bonds to investors until secondary market trading began.

Woodell said the board may consider some rule changes that take into account the enforcement actions, developments in Internal Revenue Service price determination requirements, and other feedback or information it gets from the market.

"The first thing we need to look at is whether it is a bona-fide order," Woodell said, referring to whether the orders that dealers submit are actual orders instead of a firm just saying it wants bonds to then either flip or do something else with them.

Woodell also intends to start the conversation on pre-trade price transparency this year, something that will be at least the same magnitude of an undertaking as markup disclosure or the initial municipal advisor rules from the board, she said.

The MSRB has already circulated a few concept releases on the topic and is currently analyzing the comments it received. Pre-trade is amorphous but refers to data that can help with pricing determinations before a muni is traded. It can include voluntarily submitted information from alternative trading systems and external yield curves.

According to Lynnette Kelly, the MSRB's executive director, the goal for the board will be to figure out what types of pre-trade information would be the most valuable.

The board also plans to work with the Financial Industry Regulatory Authority on steps involving pre-trade price transparency information, adding an extra level of necessary coordination to the process.

Woodell said the board will separately circulate a request for comment before it holds a formal strategic planning session to look at the longer-term goals for the board. The MSRB holds such a planning session every two years and incorporates the market comments along with input from the board.

Over the next five to ten years, Woodell said she would expect that the market would continue to absorb larger MSRB rulemaking like rules on syndicates, while also seeing a rise in electronic platforms.

Tangentially related to the MSRB, she said the muni market will be affected by the country's infrastructure needs and pension issues. Both presidential candidates have talked about the need for increased spending on infrastructure and the elections will also likely bring about larger changes to Congress and the SEC, she said.

"I think the infrastructure and … pensions are huge. They're not going away," Woodell said. "You're not going to wake up tomorrow and say 'that's gone.'"

EMMA

As is normal with the MSRB, the next year is also expected to bring several changes and improvements to the board's EMMA system, according to Woodell.

"EMMA is a big transparency platform," she said. "We'll continue to think about what needs to be done with it and take feedback from everybody to see what could be better."

To that end, the board will be facilitating focus groups with different types of EMMA users, including investors and issuers. It will also consider adding things like third-party yield curves and a new issue calendar to the platform.

Kelly, who described the focus groups as "a year-long initiative," said they will help to answer questions like whether the interface should look different depending on what type of user is accessing it and how the platform could best be leveraged to empower different users.

The board recently announced improvements to EMMA to make it easier for issuers to disclose bank loans. The changes were spurred by issuer complaints that the system was confusing and misleading.

"Every time we do anything, almost every day here, someone talks about market transparency and fair and efficient markets," Woodell said. "Transparency is obviously key to fair and efficient markets."

In addition to EMMA, the board will follow developments related to the first MA qualification exam, which was released on Sept. 12 for a year. MAs that didn't pass the pilot exam will have to take and pass the qualification exam. The board also will give a $5.5 million proportional rebate to dealers and will continue to monitor its finances to be "very sensitive" to the fiscal responsibility that it has to the muni business to not charge too much, Woodell said.

Some market participants question whether the MA qualification exam will cause advisors to retire early or otherwise leave "It would be disconcerting to me if it did because a basic qualification exam feels like something someone who is practicing as an MA should be able to pass," Woodell said.

"I'm sure some of the market participants feel some level of angst surrounding the idea of a test," she added. "But if you're going to be in the market and if you're going to be advising people, you

have a fiduciary duty [and] you better know what you are doing."

Background

Woodell says that her career in munis started with "a lucky break" after she graduated from Wells College in Aurora, N.Y. as an economics major. She went to the yellow pages and sent out "a bunch of resumes to places I found," one of which was Moody's.

She started there in 1977 in what was then the department that handled the handbook of common stocks Moody's published. Then, in 1979, Moody's developed an internal program to promote from within and asked Woodell if she was interested in public finance.

"I said 'what's that,' and that's really what started it," Woodell said.

She stayed with Moody's until 1990, at which point she moved to Fitch until 1993. From there, she went to First Albany Capital Inc., a regional firm at that point, for five years. Ultimately, she moved to S&P and was there until 2004. Woodell retired in 2012.

Woodell said that she loves the industry because it is always changing, something she finds "fascinating."

She also enjoys what she and her friends refer to as "the curse of the muni analyst."

"I fly into National [Airport in D.C.] and I say 'oh, there's the sewer plants for Washington' or I go on vacation and I say 'oh, they have desalinization here,'" she said. "It's with you all the time. I find it endlessly fascinating."

The Bond Buyer

By Jack Casey

September 30, 2016

Muni Volume Sets September Record.

Municipal bond issuance for September swelled 45% to $35.7 billion, the highest volume for the month in records going back to 1986, driven by an unexpected surge in new money deals.

Monthly Volume

The total par amount of the month's 980 sales surpassed the previous September volume record set in 2010, when $35.6 billion of bonds were sold. Through three quarters, the market has produced $334 billion of issuance in 10,046 deals, according to data from Thomson Reuters, on pace to surpass the $400 billion mark. At this time last year volume totaled $319.4 billion in 10,359 deals.

The largest recorded issuance year was 2010, when the volume hit $433.27 billion.

"It certainly seems likely given that October should also be heavy, with more than $14 billion next week. We had [estimated] $400 billion with a possible upside surprise and it seems the surprise might actually be happening," Mikhail Foux, director of research at Barclays Capital, said Friday.

Foux said new money deals have been the biggest surprise.

“Who would have thought that after such a slow first quarter, we are likely going to surpass last year’s number, which one of the largest ever years in terms of issuance,” he said. “A pickup in new money is the biggest story of 2016 and likely going forward. It seems that we are finally starting to address our infrastructure needs. There was a lot more issuance from the transportation sector and there is more than $200 billion of bond deals on ballots.”

For the third quarter alone, there were $109.7 billion of deals in 3,131 transactions, up from the $92.6 billion in 2,951 transactions during the third quarter of 2015.

“The sheer amount of issuance has been pretty impressive. I think the hope is that the amount of supply puts some pressure on the yields and creates a backup, which would be welcomed,” said Dawn Mangerson, managing director and senior portfolio manager at McDonnell Investment Management. “We said issuance wouldn’t wane, and we were right. We are looking good right now; we should see a decent calendar throughout the rest of the year.”

Though volume was up the past two months and third-quarter issuance increased year-over-year, volume for the three months was down from the second quarter.

“The volume hasn’t reached a point where it was too much for the market to absorb,” Mangerson said. “It has been surprising how much consistent high demand for munis we have seen all year long and also that we didn’t see any volatility this month.”

Mangerson said volume could slip toward the end of the year, when and if the Federal Open Market Committee decides to raise rates.

“The second quarter is typically the heaviest; we had a substantial slowdown in July – partially due to Brexit- but supply picked up in August and September,” Foux said, referring to the British vote to leave the European Union.

For the month, new money deals catapulted nearly 68% to $16.99 billion in 470 issues, from $22.21 billion in 799 issues during the same period last year.

Refundings, which have been strong for most of the year due to persistent low interest rates, were up 19% to $12.19 billion in 423 transactions from $10.23 billion in 353 transactions during September of last year.

Combined new-money and refunding issuance rose by 54.6% to $6.51 billion from $4.21 billion.

Negotiated deals were higher by 57.7 % to $27 billion, while competitive sales increased by 58.6% to $7.61 billion from $4.79 billion.

Issuance of revenue bonds increased 82.2% to $26.65 billion, while general obligation bond sales were down 9.1% to $9.05 billion.

Taxable bond volume increased 32.8% to $2.13 billion, while tax-exempt issuance increased by 45.2% to $32.25 billion.

Minimum tax bonds issuance gained to $1.32 million from $760 million.

Private placements sank to $1.09 billion from $2.66 billion.

Zero coupon bonds more than doubled to $360 million from $132 million.

Bond insurance increased 26% for the month, as the volume of deals wrapped with insurance rose to $1.84 billion in 140 deals from $1.46 billion in 117 deals.

Variable-rate short put bonds gained 7.7% to $1.06 billion from $986 million. Variable-rate long or no put bonds jumped to $734 million from $31 million.

“This is probably due to all the SIFMA related concerns, much higher SIFMA and libor rates are making issuing floating rate notes more costly,” said Foux.

Bank qualified bonds improved 6.4% to $1.59 billion from $1.49 billion.

Seven out of the 10 sectors saw year-over-year gains. Health care more than doubled to $5.69 billion from $1.67 billion, utilities also more than doubled to $3.32 billion from $1.36 billion, general purpose increased 34.6% to $8.44 billion from $6.27 billion, housing rose to $2.16 billion from $943 million, health care increased to $5.69 billion to $1.66 billion, environmental facilities climbed to $379 million from $76 million and electric power went up to $1.83 billion from $516 million.

On the other end of the spectrum, the education sector was barely down to $7.17 billion from $7.20 billion, development dropped 15.9% to $729 million and public facilities were down to $932 million from $1.04 billion.

As for the different types of entities that issue bonds, five were in the green: state governments, state agencies, counties and parishes, cities and towns and districts.

One other thing that Foux noted was that in general, issuers tried to bring deals before FOMC announcements, not just this month but in general.

“It seems that we see more pension obligation bonds, as issuers are trying to plug the pension funding gap.”

California is still the top state for issuance for the year to date, followed by Texas, New York, Pennsylvania and Florida. These numbers encompass all of the individual issuers within the state.

Golden State issuers this year have sold $47.53 billion, with the Lone Star State in second with $41.55 billion. The Empire State follows with $35.36 billion. The Keystone State is in fourth with $15.24 billion and The Sunshine State rounds out the top five with $15.08 billion.

“October could be solid as issuers could try to bring deals before the elections,” Foux said. “November and December should be lighter, though we have some uncertainty related to the December FOMC and issuers might try to pull deals from January to get in front of it.”

The Bond Buyer

By Aaron Weitzman

September 30, 2016

Deloitte Power & Utilities Seminar - Chicago, IL

United States District Court, N.D. Alabama, Northeastern Division - August 19, 2016 - Slip

Copy - 2016 WL 4414681

Deloitte Power & Utilities Accounting, Financial Reporting, and Tax Update
Tuesday, November 29, 2016

During day one of the seminar, Deloitte's energy specialists focus on industry technical accounting and tax issues to assist participants in preparing for calendar year-end accounting, reporting, and tax requirements. Participants may choose one of the following sessions:

- **The Accounting and Financial Reporting Update**
  This session includes presentations by Deloitte specialists and industry thought leaders, covering topics such as Securities and Exchange Commission (SEC) developments and trends in SEC comment letters, recently issued and proposed accounting standards, and current tax developments. After attending this seminar, participants will be able to better interpret and apply accounting, financial reporting, and tax rules to current industry issues.
- **The Tax Update**
  This session includes presentations by Deloitte specialists regarding federal income tax topics unique to the power and utility industry, regulatory reporting for income taxes and other income tax and financial accounting for income tax subjects relevant to large corporations. This session will assist participants in applying recent and pending tax and accounting developments in their tax planning and rate filings.

The Evolving Role of Controllership: Opportunities and Challenges
Wednesday, November 30, 2016

Day two of the seminar will address evolving issues facing the controllership function, including the opportunities and challenges associated with advances in technology, the release of new accounting standards, and market and regulatory changes.

This seminar will address topics of interest for energy accounting professionals, including those charged with responsibilities over finance, accounting and reporting.

After attending this seminar, participants will better understand the issues and opportunities currently facing the controllership function and leading practices that help you successfully manage these issues and opportunities.

Additional information

Below are a few key logistics for the Fall Seminars:
Location: Hyatt Regency O'Hare, 9300 W. Bryn Mawr Avenue, Chicago, IL 60018
Room rate: $187 per night plus tax
Registration Fees: $495 per person, per day. The registration fee is $990 for attending both seminars.
Group discounts available: Companies with five or more employees attending the seminars will receive a 10% discount on the registration fees. The discount will be reimbursed after the seminars based on attendance.
CPE: Participants can receive up to 12.5 hours of CPE credits for attending this conference in multiple subject areas depending upon sessions attended.

Click here to register.

SEC Votes to Propose Shortening Settlement Cycle Timeframe.

WASHINGTON – The Securities and Exchange Commission has voted to propose an amendment to one of its rules that would shorten the standard settlement cycle for most bond and other securities transactions to two instead of three days after the trade date.

The amendment is related to a previously SEC-approved proposal from the Municipal Securities Rulemaking Board that would similarly shorten the settlement cycle for muni transactions.

The SEC's proposal to amend Rule 15c6-1(a) of the Securities and Exchange Act of 1934 will be open for public comment for 60 days after publication in the Federal Register, the commission said in a release.

"Today's proposal to shorten the standard settlement cycle is an important step in the SEC's ongoing efforts to enhance the resilience and efficiency of the U.S. clearance and settlement system," SEC chair Mary Jo White said at a commission meeting on Wednesday. "The benefits of a shortened settlement cycle should extend to all investors, not just those directly involved in the trading, clearing, and settling of securities transactions."

The SEC amendment is designed to reduce the risks that arise from the value and number of unsettled securities transactions prior to their completion, including the credit, market, and liquidity risk that U.S. market participants face.

SEC commissioner Michael Piwowar has consistently supported the idea to shorten the settlement cycle.

"I have been quite vocal about the fact that I would have preferred for us to consider this rulemaking long ago," he said during the meeting. "Years from now, investors will be puzzled about how a T+3 settlement cycle existed for so long."

Piwowar also noted that the SEC is asking about the possibility of shortening the settlement cycle even further, to one day after the trade date.

"I preliminarily understand that a T+1 settlement cycle would produce distinct challenges and generate costs magnitudes above a T+2 settlement cycle, but I encourage commenters to tell us whether that is true and also identify the costs and benefits of each alternative relative to one another," Piwowar said.

The Investment Company Institute applauded the SEC's vote to propose the amendment, saying the change "will help make our markets more efficient and reduce risk to the benefit of all investors."

"The SEC's proposal sends a clear, important signal to industry stakeholders that regulators are committed partners in realizing this important change," said Marty Burns, chief industry operations officer at ICI. "Today's action represents a critical milestone that will keep the T+2 project moving along toward implementation next year."

The MSRB filed similar changes to its Rule G-12 on uniform practice, Rule G-15 on confirmation, as well as other requirements in November of last year.

The MSRB changes, approved by the SEC, are tied to the SEC shifting to a T+2 cycle and are part of an industry migration to the new cycle by the third quarter of 2017.

The self-regulator has not set a compliance date for its proposed rule changes but has said it will publish a notice on its website to align the compliance date to that of the rest of the markets.

John Vahey, director of federal policy for Bond Dealers of America, said BDA supports the shortening of the settlement cycle to trade date plus two and "believes it will provide meaningful benefits for the marketplace."

However, he said, the group continues "to be concerned with the potential for shortened time periods for other rules, such as confirmation delivery time requirements."

Kenneth Bentsen, president and chief executive officer for the Securities Industry and Financial Markets Association, said SIFMA commends the SEC for its leadership in establishing a regulatory framework that supports a shortened settlement cycle.

"The SEC's proactive efforts to update its rule will create the regulatory certainty the industry needs to move forward in its goal of achieving a T+2 settlement cycle by September 5, 2017," he said. "This is truly a win for investors, the industry and all market participants."

BDA, in a comment letter to the SEC, had expressed concern that the MSRB rule changes might impact retail investors who purchase securities using written checks. But the SEC said in its approval notice that the MSRB addressed the issue by arguing in its filing that the large majority of firms have access to technology that would allow their clients to deliver funds in a timely manner aligned with the T+2 timeline. The MSRB also suggested firms encourage their customers to use electronic funds payment to streamline processing.

Both BDA and SIFMA said the changes could affect MSRB Rule G-32 on disclosures in connection with primary offerings. BDA asked that the MSRB leave Rule G-32 unchanged while SIFMA said the changes for T+2 provided "an opportune time" to revise customer disclosure requirements under the rule. The MSRB, in its filing with the SEC, said it may consider suggested clarifications to the rule at a later date.

The Bond Buyer

By Jack Casey

September 28, 2016

MSRB Proposes Standalone Minimum Denomination Rule.

WASHINGTON – The Municipal Securities Rulemaking Board proposed on Tuesday to create a standalone minimum denomination rule that would revise current and proposed requirements because of dealer complaints.

The new standalone Rule G-49 would contain requirements added to Rule G-15 in 2002 to prohibit dealers from engaging in transactions with customers in amounts below the minimum denominations of municipal securities set by the issuers. It would also include two exceptions to the prohibition added in 2002, as well as two more exceptions proposed in April of this year to help maintain liquidity for below-minimum positions.

Under the proposed Rule G-49, one of the existing exceptions and one of the exceptions proposed in

April would be modified in response to market participants' comments.

The MSRB has asked for public comments to be submitted on proposed Rule G-49 by Oct. 18.

"As a result of input from industry and other commenters, the MSRB believes that creating a clearer, stand-alone rule on minimum denominations will facilitate understanding and compliance with these investor protections," said MSRB executive director Lynnette Kelly. "We want to support the practical application of the prohibition while emphasizing the overall importance of adhering to the minimum denomination for certain transactions."

The minimum denomination is the lowest amount of bonds that can be bought or sold, as determined by the issuer in its official statement for the bonds. In addition to a minimum denomination, issuers can also set a trading "increment" for their bonds. An increment of $10,000 for example would mean a dealer could sell a customer $110,000 of bonds but not $105,000.

Rule G-49 would eliminate the current requirement that a dealer, in some situations, must obtain a "liquidation statement" from a party that isn't the dealer's customer and is the party from which the dealer purchased the securities. The liquidation statement must be obtained before the sale of securities to another customer and confirm that the original selling customer fully and completely liquidated its below-minimum position.

The liquidation statement is key to one of the existing exceptions that was adopted as part of Rule G-15. Under that exception a dealer could sell a below- minimum denomination amount of a bond to a customer if the sale is a result of another customer liquidating his or her entire position in the bonds.

The elimination of the liquidation statement requirement would affect another exception that was proposed in April. That exception would allow a dealer that has bought a customer's liquidated position in an amount less than the minimum denomination to sell those bonds to one customer with no prior holdings of the bonds and to any customers who already have positions in the bonds. There was also a liquidation statement required for that.

The MSRB is proposing to eliminate the liquidation statement requirement after dealers said in comments in April that the requirement can be an impediment to using alternative trading systems or broker's brokers to sell below-minimum denomination positions.

Dealers were concerned that they could be subject to disciplinary action if they could not prove a liquidation had occurred. They would need to rely on another dealer, an ATS, or a broker's broker to obtain such a statement and were wary of such reliance. They were also concerned traders would be discouraged from bidding on below-minimum positions.

While the MSRB is proposing to delete the requirement for liquidation statements, it makes clear in its request for comment that it would still require a dealer purchasing a below minimum position from one of its customers and selling it to another to confirm that the selling customer has fully liquidated its position.

The MSRB has proposed a "new safeguard" in light of its elimination of the need for a liquidation statement. The safeguard would prohibit a dealer engaged in an inter-dealer trade from selling less than all of a below-minimum denomination position that the dealer acquired either from a customer that fully liquidated its below-minimum position or from another dealer. That prohibition would satisfy the MSRB's goal by preventing the creation of additional below-minimum denomination positions, the board said.

The MSRB is separately proposing to eliminate a condition it had put into its two additional exceptions proposed in April that would have required a dealer's sale to a customer to be consistent with any restrictions in the issuer's official statements regarding increment amounts.

Commenters had said the increment condition would unnecessarily limit the transfer of positions held by customers instead of providing more flexibility.

In addition to the two exceptions that would be affected by the liquidation statement's elimination, G-49 would incorporate two others, one that is already in existence and another that was proposed in April. The exception already in place allows dealers to buy from customers munis below the minimum denomination if the dealer determines, based on customer account information or a written statement from the customer, that the customer is selling its entire position in the bonds.

The second exception, proposed in April and added to G-49, would allow a dealer to sell bonds to any customer with a prior position as long as the sale brings the customer to or past the minimum denomination. The dealer could then sell the remaining below-minimum position to any number of customers that already hold the bonds.

The draft rule will carry over provisions that applied to past exceptions and require a dealer to use account records it has or written statements the customer provides when the dealer is buying from or selling to a customer. Dealers will also still be required to give or send to purchasing customers written statements telling them that the quantity of securities being sold is below the minimum denomination for the bonds and that its below-minimum nature may adversely affect the liquidity of the customer's position.

The rule would not, however, require such a written statement to be made to a customer who is brought up to or past the minimum denomination for the munis under the second proposed exception to the rule.

The Bond Buyer

By Jack Casey

September 27, 2016

California's New Fee Disclosure Law For Public Pension Plans Investing In Alternative Investment Vehicles.

On September 14, 2016, California Governor Jerry Brown signed into law a bill intended to provide transparency with respect to fees and expenses paid by California public pension or retirement systems ("PPPs") to private equity funds, venture funds, hedge funds and absolute return funds (each, a "Fund") in which they invest. This alert seeks to answer some of the key questions regarding the new law (the "Fee Disclosure Law") that we believe will be of particular interest to our clients.

Continue reading.

Last Updated: September 23 2016

Article by Ropes & Gray LLP's Private Investment Funds & Hedge Funds Practice Group and Ropes

& Gray LLP's Investment Management Practice Group

Ropes & Gray LLP

MSRB Improves Bank Loan Disclosure on EMMA After Issuer Complaints.

WASHINGTON – The Municipal Securities Rulemaking Board has improved its EMMA system to make it easier for issuers to disclose bank loans and other alternative financings after state and local officials complained the process was too confusing and seemed to lose some of these disclosures.

The self-regulator, which has been a frequent advocate for voluntary disclosure of bank loans, introduced new, step-by-step instructions for issuers to use when submitting information on alternative financings to EMMA. The system now includes a bank loan disclosure tab on issuer homepages and contains an advanced search function that will allow users to search for securities associated with bank loan disclosures.

The MSRB will also hold an educational webinar on the new process geared toward issuers from 3:00 to 4:00 p.m. on Oct. 13.

"Feedback from issuer representatives suggested that a simplified method of submitting bank loan disclosures to EMMA would support making this important information available to investors and the public," said MSRB executive director Lynnette Kelly. "With the new and streamlined process, the MSRB hopes to see more issuers submitting bank loan disclosures for display on EMMA."

Bank loans and other financings have become popular for issuers because they can be used as a cheaper and less regulated alternative to municipal bonds. However, there is no requirement that issuers disclose such financings and any disclosure that does occur is done on a voluntary basis.

Under the new submission guidelines, issuers are instructed to begin by finding the area for creating a bank loan or alternative financing filing under the "continuing disclosure" tab on the EMMA Dataport Submission Portal. They will then be able to enter a description of the financing, disclose the date of the financing, and be given the choice of three options, depending on whether they know the CUSIP numbers that they want to associate with the loan. If they know the CUSIPs, they will be able to add them in an additional box. If they do not have CUSIP information, they can either search for the specific securities they want to associate by issuer name or state, or choose to only enter the issuer name and state without tying the financing to CUSIPs.

The new disclosure capabilities come after several discussions between the MSRB and market participants that took place earlier this year.

Issuers on the Government Finance Officers Association's debt committee vented their frustrations about the complexity of bank loan disclosure on EMMA to MSRB chair Nat Singer during a meeting the committee held as part of GFOA's annual conference in Toronto in late May. They emphasized that the problem has less to do with issuers not disclosing and more with the complexity of the system that was in place making it hard to correctly submit and find the disclosed information.

Ivan Samstein, chief financial officer for Cook County, Ill., and a committee member, told Singer that while there may be a problem with a lack of disclosure, it is overstated.

Jonas Biery, vice chair of the debt committee and senior business operations manager at the City of

Portland, Ore.'s Bureau of Environmental Services, said that issuers didn't know where to post the information and investors didn't know how to find it, which led to the appearance of issuers largely under-disclosing.

"From our perspective, we have this potential momentum to create this structure that facilitates issuer posting, but the EMMA system just didn't quite seem to accommodate that," Biery said at the time.

The MSRB circulated a concept release in March that asked market participants to weigh in on whether it should pursue a rule to require municipal advisors to disclose information about the bank loans or privately placed munis of their issuer clients. The MSRB said it considered requiring the disclosures from MAs because issuers had not readily responded to prior requests for voluntary bank loan disclosures on EMMA.

Most commenters on the concept release applauded the MSRB's intent to increase disclosure but presented a host of reasons for why the concept of having MAs disclose bank loans is flawed. The main concerns centered on the likely threat to an MA's fiduciary duty to its issuer client if the issuer didn't want to disclose a bank loan but the MA was required to disclose it. Other commenters also questioned whether the MSRB had the statutory authority to require such disclosure.

The general consensus among commenters was that the issue would be better addressed with a change to the SEC's Rule 15c2-12 on disclosure. The idea to change 15c2-12 has proved popular in the market and lawyers in the Securities and Exchange Commission's Office of Municipal Securities have said they are exploring possible regulatory solutions that could address whether issuers should in some way be required to disclose information about their bank loans and privately placed securities.

The Bond Buyer

By Jack Casey

September 26, 2016

U.S. Infrastructure: Do More With Existing Resources.

Regardless of which candidate takes the oath of office next January, improving our country's infrastructure will be on the next President's agenda.

An Association of Equipment Manufacturers poll shows that over 70% of Americans want government to address our growing infrastructure crisis.

Turning that into reality will require a clear understanding that the need for additional investment is real.

Members of Congress, governors and mayors from across the country have advanced bipartisan solutions to broadly address this critical need. So too has the financial services sector that works with federal, state and local governments to raise capital crucial to infrastructure investment.

Nevertheless, the level of investment by government and the private sector falls short of meeting the nation's current and future infrastructure needs, and the central question remains how to pay for it.

We need to do more with existing resources while not losing sight of the crucial need for more investment to pay for infrastructure needs. While others attempt to address the political challenge of identifying more sources of infrastructure funding, we can work toward implementing a few tangible policy ideas.

Two ways for state and local governments to achieve more with existing resources is by encouraging broader use of a construction procurement method called design-build and treating infrastructure as assets.

The traditional approach to project procurement is known as “design-bid-build,” a multi-step process that separates the design and construction functions. Design-build simplifies the process by making a single entity responsible for both and collapses the procurement into one step, saving time and delivering a better, more cost effective result.

In New York, the NYU Rudin Center for Transportation and Citizens Budget Commission completed studies projecting design-build savings of up to 20% compared with traditional methods. However, design-build is still not broadly available for public infrastructure projects in all 50 states.

State and local government should also treat infrastructure as assets through better tracking and disclosure of on-going costs. The benefits are two-fold: a healthier understanding of the true ongoing costs and greater transparency will lead to more private sector involvement.

Identifying non-essential assets that can be auctioned to the private sector and put to productive use can create new revenue for government without affecting its core mission, a win-win scenario.

Three quarters of annual infrastructure spending in the U.S. is funded through the $3.7 trillion municipal bond market, where private investors purchase tax-exempt bonds issued by state and local governments.

The key advantage of municipal bonds is that interest on them is exempt from federal and state income taxes. This means investors will accept a lower interest rate, providing state and local governments with the benefit of borrowing money at the lowest interest rate available to anyone financing infrastructure, including the U.S. Treasury. This also allows state and local governments to raise capital up front to fund long use projects like airports, roads and bridges and amortize the cost over the life of the project.

The next administration should avoid calls to curb the use of tax-exempt bonds and rather seek to create a more certain tax and regulatory environment expanding the use and easing the availability of lower cost municipal debt for public-private partnership (P3) projects that involve a government entity.

Our economic competitors are using P3s as a way to capture private sector efficiencies while providing public infrastructure and retaining government ownership.

Making tax-exempt financing available for P3 projects would allow the two models to converge, leaving state and local governments with the best of both – access to the lowest cost financing available and private sector efficiencies.

The Move America Act, bipartisan legislation sponsored by Senators Ron Wyden (D-OR) and John Hoeven (R-ND), would authorize Move America Bonds, a new category of tax-exempt bonds that would be exempt from most private use restrictions, as long as the facilities are available for public use.

Providing tax incentives for investment in targeted sectors has been an effective in low income housing development and more recently renewable energy production. The Move America Act would provide for a limited, targeted tax credit applicable to equity investments in infrastructure, and Congress should consider such an idea.

The next president and Congress should embrace these ideas and spur a new chapter of infrastructure revitalization that will strengthen our economic future.

The Bond Buyer

By Kenneth E. Bentsen, Jr., and Chris Hamel

September 26, 2016

Kenneth E. Bentsen Jr. is president and CEO of the Securities Industry and Financial Markets Association. Chris Hamel is head of Municipal Finance at RBC Capital Markets and chair of SIFMA's Infrastructure Policy Committee.

Just in Case You Didn't Notice – Rev. Proc. 2016-44 Treats as Compensation under a Management Contract the Reimbursement of Amounts Paid by the Manager to its Employees.

Revenue Procedure 2016-44 is laudable because it significantly expands the scope of management contracts that can satisfy the safe harbor from private business use of facilities financed with proceeds of tax-advantaged bonds. It also makes much more feasible the use of tax-advantaged bonds in public-private partnership arrangements. Revenue Procedure 2016-44 does, however, effect one curious change of uncertain implication from its predecessor, Revenue Procedure 97-13.

The management contract safe harbors set forth in Revenue Procedure 97-13 provide that the reimbursement by the "qualified user"[1] of direct expenses paid by the manager to unrelated parties is not treated as compensation of the manager under the management contract. Consequently, such expense reimbursement is not taken into account in determining whether the management contract satisfies a Revenue Procedure 97-13 safe harbor from private business use. The Internal Revenue Service held in Private Letter Ruling 200222006 (Feb. 19, 2002) and Private Letter Ruling 201145005 (Aug. 4, 2011) that the payment of compensation by the manager to its non-executive employees (in the case of the former private letter ruling) and to its employees that do not have an ownership interest in the manager entity (in the case of the latter ruling) was the payment of direct expenses to unrelated parties, the reimbursement of which would not be considered compensation under Revenue Procedure 97-13.

Revenue Procedure 2016-44 changes this result. The reasons for, and implications of, this change are not immediately evident.

Under Revenue Procedure 2016-44, a manager is treated as receiving compensation from the qualified user if the qualified user reimburses the actual and direct expenses (and related administrative overhead expenses) paid by the manager. Revenue Procedure 2016-44 further provides that the reimbursement of actual and direct expenses paid by the manager to unrelated parties is disregarded as compensation for purposes of determining whether the management contract attempts an impermissible sharing of net profits of the bond-financed facility through the

payment of compensation that takes into account both the revenues and expenses of the managed facility. However, in direct contrast to Revenue Procedure 97-13, as interpreted by Private Letter Rulings 200222006 and 201145005, Revenue Procedure 2016-44 expressly provides that an employee of the manager is not an unrelated party to the manager.

If the reimbursement of the manager's employee compensation expenses constitutes compensation under the management contract, does this mean that in the not-uncommon arrangement where a manager receives a percentage of the managed facility's gross revenues and is reimbursed for its employee expenses the manager obtains a share of the net profits of the managed facility, which would result in private business use of the tax-advantaged bonds that financed the managed facility? This would be a bizarre result, as illustrated by the following examples.

Assume that a manager contracts with a qualified user to provide counseling services in the qualified user's tax-advantaged bond-financed facility. Assume further that (i) employee compensation is the sole variable expense of the managed facility, (ii) the manager is paid 100% of the facility's gross revenues and is reimbursed for the compensation it pays its employees, and (iii) the management contract otherwise satisfies the elements of Revenue Procedure 2016-44. Under this arrangement, the manager ultimately realizes only the gross revenues, not the net profit or loss, of the managed facility. If gross revenues in a given year are $1,000,000 and the compensation paid to the manager's employees is $500,000, the manager realizes only the $1,000,000 of gross revenues, because the $500,000 of employee compensation expense reimbursement offsets the amounts paid by the manager to its employees. The same is true if the gross revenues of the managed facility are $1,000,000 and the compensation paid to the manager's employees is $1,500,000 – the reimbursement of the manager's employee compensation expense leaves the manager with the gross revenues of the managed facility and with no portion of the $500,000 loss.

Now let's assume that we are dealing with the same management contract, except that the qualified user does not reimburse the manager for the manager's employee compensation expenses. This agreement at least facially complies with Revenue Procedure 2016-44, because the only element of compensation paid to the manager is the gross revenues of the managed facility. Unlike the arrangement where the qualified user reimburses the manager's employee compensation expenses, however, the lack of such reimbursement causes the manager ultimately to realize something other than the gross revenues of the managed facility. Where the gross revenues of the facility exceed the manager's employee compensation expenses, the manager is left with the surplus (which will by definition be less than the facility's gross revenues), and where the manager's employee compensation expenses exceed the facility's gross revenues, the manager will bear the loss.

This is not to say that a management contract results in the impermissible sharing of net profits and losses of the managed facility where the manager is paid a percentage of the facility's gross revenues and is not reimbursed for its employee compensation expenses. This is instead meant to highlight the absurdity of a literal application of Revenue Procedure 2016-44 where the manager is paid a percentage of the gross revenues of the managed facility and is reimbursed for its employee compensation expenses. In such a case, the manager ultimately receives only its percentage of the gross revenues, and the cost of operating the managed facility (in other words, the entrepreneurial risk associated with the facility) remains where it should – with the qualified user.

To avoid unwarranted confusion, the IRS should amend Revenue Procedure 2016-44 so that it accords with Revenue Procedure 97-13, as interpreted by Private Letter Rulings 200222006 and 201145005, to make clear that the reimbursement of a manager's direct and actual employee compensation expense is disregarded as compensation in determining whether the manager and qualified user have entered into an arrangement to share the net profits and losses of the tax-advantaged bond-financed facility.

[1] A qualified user of tax-advantaged bond-financed facilities is any state or local governmental unit or instrumentality thereof, and, in the case of qualified 501(c)(3) bonds, a 501(c)(3) organization if the bond-financed property is not used in an unrelated trade or business of such an organization.

Squire Patton Boggs

The Public Finance Tax Blog

By Michael Cullers on September 27, 2016

Following Revenue Procedure 2016-44, Is There Still a 'Facts and Circumstances' Test for Private Business Use?

As we have discussed in previous posts (here), most practitioners treat a management contract for services at bond-financed property that does not fit within a safe harbor from private business use as giving rise to private business use of the bonds for tax purposes. However, the Treasury Regulations provide that whether or not a management contract gives rise to private business use is based on all the facts and circumstances surrounding the contract.[1] A number of IRS private letter rulings, though they technically cannot be relied on as precedent, rule that various management contracts that don't fit within a safe harbor do not give rise to private business use (discussed here).[2]

In Revenue Procedure 2016-44 (discussed here) the IRS replaced the longstanding safe harbors for management contracts under Rev. Proc. 97-13[3] with a "one-size-fits-all" type safe harbor for all management contracts. This post will discuss the evolution of the policy behind the private business use rules and show that the relevance of the "facts and circumstances" analysis following Rev. Proc. 2016-44 may be diminished. The cause of the diminished value is attributable to the fact that Rev. Proc. 2016-44 has, in effect, imported many of the considerations that previously existed in the facts and circumstances test in the Treasury Regulations into the new safe harbor. As a result, many agreements that fail to qualify for the new safe harbor will no longer be eligible for the facts and circumstances test because the agreements convey a leasehold or ownership interest in bond-financed property (and are therefore not management contracts).

History

Prior to the first appearance of private business use safe harbors for management contracts in Rev. Proc. 82-14, , in 1978, the IRS released General Counsel Memoranda 37641 (the "**1978 Memo**") which includes a thorough discussion of the facts and circumstances that the IRS considered to be necessary for a management contract to be excluded from private business use.[4] Specifically, the 1978 Memo says the following:

> "The regulations are not clear as to the result where a bond-financed facility is owned by the political subdivision or exempt person but is operated by a nonexempt person under a contract. Obviously, the mere fact that a nonexempt person makes a profit, in his trade or business, with respect to certain aspects of bond-financed facilities, is not fatal. The architect who designs a state office building, and the contractor who constructs it, no doubt make a profit, but their activity ordinarily does not constitute a 'use' of the facility that will satisfy the 'trade or business' test. Often, bonds are issued to enable a political subdivision or exempt person to finance aspects of their governmental or exempt function.

> Sometimes the governmental or exempt function is carried out by way of contract with a nonexempt person who provides a commodity or service. Such arrangements do not necessarily amount to a 'use' of bond proceeds within the meaning of the 'trade or business' test. **We believe the test to be applied where a manager operates a bond-financed facility is whether the nonexempt person is merely providing a service or commodity to the political subdivision that owns or is responsible for the operation of the facility, or whether the nonexempt person is itself operating the facility as a proprietor** . . . . In the obvious and typical situations where the facilities are **leased** or sold to a nonexempt person, such person 'uses' the facility in the capacity of a proprietor . . . . On the other hand, a nonexempt person that . . . provides a service to the political subdivision may benefit from the facility in an indirect economic sense, but this does not amount to 'use' within the meaning of the 'trade or business' test, unless the involvement, whether direct or indirect, amounts to a proprietary use of the facility."[5]

To determine whether a service provider is merely providing a service, or is instead operating a bond-financed facility in a proprietary capacity, the 1978 Memo instructs taxpayers to consider (i) which party controls the use of the bond-financed facility, (ii) the term of the agreement, and (iii) compensation to the provider. Look familiar?

The 1978 Memo acknowledged that a management contract could convey a proprietary interest in a bond-financed facility if, for example, the service provider uses a bond-financed facility for its own benefit and not for the benefit of the owner of the facility. Unfortunately, there is no discussion of how to determine whether a service provider uses a bond-financed facility for its own benefit. In any event, the 1978 Memo strongly suggests that a proprietary interest is necessary for an agreement to result in private business use.

In Revenue Procedure 93-19, the IRS backed away from some of its assertions in the 1978 Memo. Likely emboldened by a 1986 acknowledgement by Congress that a management contract (as well as a lease) could result in private business use,[6] in Rev. Proc. 93-19 the IRS said that "[a] management or other service contract that gives a nongovernmental service provider a proprietary interest in the operation of a facility is not the only situation in which a contract may result in private business use of the facility."

In response to proposed private business use regulations promulgated in 1994,[7] commentators requested that the Treasury Department backtrack from the pronouncement in Rev. Proc. 93-19 and promulgate final regulations that conclude that a management contract should only give rise to private business use if it transfers a proprietary interest in financed property to the service provider. When Treasury finalized these regulations in 1997, the preamble explicitly rejected that request:

> "The final regulations . . . continue to reflect the view that Congress intended that a management contract can give rise to private business use even if it does not in substance transfer a leasehold or ownership interest to a nongovernmental person for general federal income tax purposes. Thus, the final regulations do not adopt the rule that a management contract gives rise to private business use only if it transfers a proprietary interest to a nongovernmental service provider. The final regulations provide that the determination of whether a management contract that does not meet the qualified management contract safe harbors gives rise to private business use is

based on all the facts and circumstances."[8]

These 1997 regulations, read together with the 1978 Memo, make clear that a management contract can result in private business use based on all the facts and circumstances even if it (a) does not convey a proprietary interest to the service provider and (b) is not properly characterized as a lease.

Prior to Rev. Proc. 2016-44, it was much easier to identify certain management contracts that did not result in private business use based on all the facts and circumstances even though the contract did not qualify for one of the private business use safe harbors in Rev. Proc. 97-13.[9] Following Rev. Proc. 2016-44, the application of the facts and circumstances standard is significantly limited because contracts that do not fit within the Rev. Proc. 2016-44 safe harbor will often be characterized as lease agreements, which are not eligible for the fall-back facts and circumstances analysis.

Rev. Proc. 2016-44

A more comprehensive analysis of Rev. Proc. 2016-44 is here. Under Rev. Proc. 2016-44, a management contract fits within a private business use safe harbor if it meets the following criteria:

- The service provider's compensation is reasonable, and it isn't based on net losses or net profits of the bond-financed facility.
- The term of the contract is within permitted time limits.
- Control over the managed property generally remains with the owner.
- Risk of loss of the managed property generally remains with the owner.
- The service provider must take tax positions consistent with it being a manager and not a lessee of the bond-financed facility.
- There are no circumstances substantially limiting the qualified user's ability to exercise its rights.

Certain of these criteria should look familiar. For example, control over managed property and risk of loss are two of the criteria explicitly mentioned in the 1997 private business use regulations as factors that distinguish management contracts from lease agreements.[10] Put another way, a management contract that conveyed too much control or the risk of loss to the service provider is not eligible to meet the "facts and circumstances" test because it is not a management contract. Furthermore, the ability to substantially limit a qualified user's ability to exercise its rights is another form of control, so arguably failing that requirement could also cause the agreement to be considered a lease.[11]

That leaves the following facts and circumstances criteria that are not already encapsulated by Rev. Proc. 2016-44:

- Reasonable compensation (incl. no net profits or net losses)
- Term of the contract
- Consistent tax positions

Although not drafted with tax-exempt bonds in mind, Section 7701(e) provides certain relevant criteria to distinguish a lease from a management contract. One of those criteria is whether the service provider has a significant economic interest in the property. In a 2015 letter to the IRS discussing the impact of Section 141 of the Code on public/private arrangements, the ABA Taxation Section interpreted Section 7701(e) and relevant case law as standing for the proposition that a "contract should be treated as a lease (as contrasted with a mere service contract), based upon . . . the operator's ability to share in both the combined revenues and expenses of the applicable

enterprise."[12]

That leaves the following facts and circumstances criteria that are not already encapsulated by Rev. Proc. 2016-44:

- Term of the contract
- Consistent tax positions

The 1978 Memo indicates that when the term of a contract is "unreasonable," the continued possession and operation of the bond-financed facility may amount to de facto control and virtual ownership regardless of any provisions in the contract that give the qualified user supervisory control. Furthermore, long-term contracts that exceed the permitted length in Rev. Proc. 2016-44 may raise an inference that the contract conveys an ownership interest in the bond-financed facility which results in private business use without regard to any facts and circumstances.[13] In addition, for qualified 501(c)(3) bonds, another byproduct of a contract term in excess of the permitted length in Rev. Proc. 2016-44 is the possibility that the contract results in a violation of the ownership requirement in Section 145(a)(1).

Finally, a management contract will not run afoul of the consistent tax position requirement if the manager agrees "not to take any depreciation or amortization, investment tax credit, or deduction for any payment as rent with respect to the managed property." To the extent that the manager fails this requirement, it is very likely that the provider's interest in the bond-financed facility is greater than that of a service provider and that the contract is not properly treated as a management contract.

In sum, Rev. Proc. 2016-44 has, in effect, swallowed up many of the considerations that previously existed in the facts and circumstances test in the Treasury Regulations, and they have been instead imported into Rev. Proc. 2016-44's bigger safe harbor.

Conclusion

Following the release of Rev. Proc. 2016-44, many of the contracts that fail to qualify for the new safe harbor will likely be considered to convey a leasehold or ownership interest in the bond-financed facility for federal income tax purposes. Because agreements that convey a leasehold interest or an ownership interest may not be excluded from private business use based on all facts and circumstances, the relevance of the facts and circumstances test is diminished (maybe significantly) by Rev. Proc. 2016-44.

[1] Treas. Reg. § 1.141-3(b)(4)(i).

[2] PLR 201228029 (although compensation was not within Original Safe Harbors, it was not based on net profits so, based on facts and circumstances, the management contract did not result in Private Business Use); PLR 201145005 (although the term of the agreement exceeded what was permitted to qualify for the Original Safe Harbors, based on facts and circumstances, the management contract did not result in Private Business Use); PLR 200813016 (although compensation was not within Original Safe Harbors, it was not based on net profits so, based on facts and circumstances, the management contract did not result in Private Business Use); PLR 200330010; PLR 200222006

[3] As amplified by Rev. Proc. 2001-39 and Notice 2014-67 discussed here and here.

[4] The "facts and circumstances" test was not included in the Treasury Regulations until the Final Regulations (defined herein) were promulgated in 1997. Practically speaking, as illustrated in the

detailed factual analysis in the 1978 Memo, even before the facts and circumstances test appeared in the Treasury Regulations, the IRS has always applied it.

[5] Emphasis added.

[6] Conference Report for the Tax Reform Act of 1986, H.R. Conf. Rep. No. 841, 99th Cong. 2d Sess. II-687, 1986-3 (Vol. 4) C.B. 687-88.

[7] 59 FR 67658.

[8] 62 FR 2275.

[9] See footnote 2.

[10] Treas. Reg. 1.141-3(b)(3)(i) and (ii).

[11] A valid argument could be made that the ability to "substantially limit" the exercise of the owner's rights and the "control" requirement are two separate requirements; however, consider the following language in the 1978 Memo: "[This control] requirement will be met if the [qualified user] retains control or a veto power over the decisions of the management company. To effectuate this requirement there should be no common or related members of the governing body or board of directors of the [qualified user] and the manager."

[12] Available here.

[13] Treas. Reg. § 1.141-3(b)(2).

Squire Patton Boggs

The Public Finance Tax Blog

By Joel Swearingen on September 23, 2016

Pennsylvania State Senate Passes Municipal Debt Reform Bills Born of Harrisburg iIncinerator Fiasco.

The state Senate Wednesday passed a series of municipal debt reform bills designed to prevent a repeat of the problems created by former Harrisburg Mayor Stephen R. Reed's aggressive use of bond financing for pet projects and budgetary needs.

Reed's actions, executed by municipal authorities that effectively served as rubber stamps for most of his 28 years in office, ultimately left Harrisburg facing a $300 million-plus debt load that forced the capitol city into state oversight.

Harrisburg's home senator, Rob Teplitz, D-Dauphin County, called the bills the logical conclusion of a forensic audit kicked off in 2010 by a post-Reed Harrisburg Authority.

That audit, and a follow-up investigation by the state Attorney General's office, has resulted in a pending criminal case against Reed.

Teplitz applauded prosecutors for those efforts at accountability, and Gov. Tom Wolf and lawmakers

for ongoing fiscal assistance to the Capitol city's recovery through the Act 47 process.

But he said it's just as vital to pass these bills as a preventive measure for other municipalities.

Sen. John Eichelberger, R-Blair County, who helped steer the current package of bills to the Senate floor in his role as former chair of the Senate's Local Government Committee, agreed.

"It was bad practice (in Harrisburg), it was done by people who are still operating in Pennsylvania, and we've got to make sure that something like this doesn't happen anywhere else again."

Each piece of the three bill package passed on a 50-0 vote. The bills, which still require action in the state House, would:

* Clarify that a performance bond or equivalent security must cover 100 percent of the construction cost for any major public works project entered into by local government entities.

Lack of a performance bond caused major issues for Harrisburg's incinerator project when the contractor hired for a major upgrade in 2003 couldn't complete the project, forcing the Harrisburg Authority into subsequent borrowings both to finish the original project, and to make additional fixes when it failed to work.

* Prohibit one government body from charging a fee to another to provide a guarantee of bonds, something both the City of Harrisburg and Dauphin County did in exchange for backing Harrisburg Authority loans on its incinerator upgrades.

Cross-government guarantees could still be extended to solidify a borrowing; but the guarantor would no longer be able to use its backing as a money-maker, thereby driving up the overall costs of the borrowing.

* Seek to build more transparency throughout the bond process, including clarifications that any proceeds from bond issues or similar borrowings can only be used for the original, specified purposes.

This was also a problem in Harrisburg, state prosecutors allege, when vague administrative fees charged by the Harrisburg authority were used to support Reed's agenda of economic development projects.

* Clarify that no borrowing can include more than one year of "working capital," or funds intended to keep certain revenue-generating enterprises afloat through its start-up period.

This change is intended to prevent repeat refinancings on bad projects that show little chance of becoming self-sufficient.

* Create new enforcement provisions for willful violations of the state's debt act, and adds members of municipal authorities to the list of public officials covered by the state's Ethics Act.

* Beef up state review of local government borrowings by requiring filings with the state Department of Community and Economic Development prior to, instead of after, final votes by local officials.

It was not immediately clear if the municipal debt reform package will be considered in the House before the end of the current legislative session. Only a handful of session days are scheduled between now and the Nov. 8 election.

Steve Miskin, spokesman for the majority House Republicans, could only say that “we will look at the Senate bills and give them due consideration.”

Eichelberger, however, said after Wednesday’s votes he will try to help close the sale in the House by explaining the package to anyone with questions, highlighting its unanimous passage, and noting that the Wolf Administration and numerous other stakeholders have thoroughly vetted it.

Penn Live

By Charles Thompson | cthompson@pennlive.com

on September 28, 2016 at 4:25 PM, updated September 29, 2016 at 7:09 AM

IRS Says Florida Jail Bonds May Be Taxable.

WASHINGTON – The Internal Revenue Service has informally advised the Baker Correctional Development Corp. in Florida that $45 million of first mortgage revenue bonds it issued in 2008 are taxable.

BCDC disclosed the IRS’ stance in a material event notice posted on the Municipal Securities Rulemaking Board’s EMMA website this week.

Jeffrey Cox, finance director for the Baker County Sheriff’s Office, said Thursday that the IRS audit found the bonds failed to meet the private payment use test due to the jail’s large federal inmate population.

“From what I can gather from speaking with the IRS and our attorneys, it’s a revenue problem,” Cox said.

BCDC is currently exploring options to refinance the tax-exempt bonds ahead of an IRS potential adverse determination, according to the event notice.

Because BCDC has not received anything in writing from the IRS, Cox said it does not have any definitive plans on how and when it will refinance the bonds. It is relying on communication between its attorneys and the IRS.

“From those conversations, the IRS is wanting us to pull the bonds off the market as quickly as we can,” Cox said. “We’ve interpreted that to be 60-90 days.”

As of Thursday, the Baker County Detention Center, located in Macclenny, Fla., has 480 inmates, roughly 350 of which are federal.

The detention center, which opened in Sept. 2009 and is roughly 30 miles west of Jacksonville, is owned by BCDC and operated by the Baker County Sheriff’s Office. BCDC was formed as a nonprofit in 2006 to acquire, construct, maintain and/or operate one or more jails in Baker County.

Jails in border states often have contracts to house inmates from the U.S. Citizenship and Immigration Service or the U.S. Marshals Service. The U.S. Immigration and Customs Enforcement’s (ICE) enforcement and removal operations division began housing detainees at Baker County Detention Center in 2009 under an intergovernmental service agreement with Baker County, according to ICE.

Tax-exempt bonds become private activity bonds if more than 10% of the proceeds are used for private use and more than 10% of the debt service payments are from or secured by private parties. Under the federal tax code, PABs are only exempt if they are issued for "qualified" purposes; jails do not fall under a qualified category.

On average, the jail is comprised of roughly 60-70% federal inmates, Cox said, making it more than six times as high as the private payment test allows. That ratio has been relatively consistent over the past six years. The federal government pays BCDC $84.72 per day for each federal inmate it houses, Cox said.

The IRS opened its audit of BCDC's bonds a little over a year ago, according to Cox.

The IRS began a widespread audit of tax-exempt bond-financed jails about three years ago, especially those that housed a large amount of federal inmates. The federal government is deemed a private entity in under the federal tax code, while state and local governments are classified as governments.

BCDC's material event notice said that the jail has cooperated in the audit and is in discussions to resolve the issues raised, but added there "can be no assurance as to the ultimate outcome."

Peter Dame, a partner at Akerman, tax counsel for BCDC, told the bondholders Tuesday in a conference call that he and the IRS have set a "joint target date" to wrap up the audit by the end of October.

"The IRS has not been confrontational about this but obviously something needs to get done to resolve their audit. I think at this point they have all the information they need," he said.

Dame said Baker is considering refunding the jail bonds with a bank loan, but no letters of interest have been sought yet. PFM has been hired to advise the issuer on the refinancing.

According to the bonds' official statement, the Series 2008 first mortgage revenue bonds were issued to finance the acquisition of roughly 90 acres of land to use as the jail site, as well as the construction of a 512-bed jail facility to house inmates, administrative offices for the Baker County Sheriff's Office. Sell & Melton in Macon, Ga., served as bond counsel for the issue and Bergen Capital, a division of Scott & Stringfellow in Hasbrouck Heights, N.J., served as underwriter.

In 2011, BCDC entered a forbearance agreement for principal payments on the $45 million bond issuance in 2008. The move came after the jail had lower-than-projected inmate counts and higher-than-expected startup costs.

The 508-bed jail was constructed after the county's existing 132-bed jail reached its capacity and was in need of replacement, according to the OS for the bonds.

The Bond Buyer

By Evan Fallor

September 29, 2016

Shelly Sigo contributed to this story.

What Hurdles Are Faced by Infrastructure Projects?

WASHINGTON – Infrastructure projects in the U.S. are plagued by long pre-construction periods, an under-utilization of the public-private partnership financing model, and an inability to both gain public support and access capital, a panel of market participants said this week.

The four-member panel at the Securities Industry and Financial Markets Association's annual conference here on Tuesday, entitled "Financing Infrastructure for the 21st Century," discussed ways in which P3s could be used in order to improve roads, bridges and other struggling areas in a more effective manner.

Chris Hamel, the moderator of the panel and the managing director and head of the municipal finance group for RBC Capital Markets, said the panel's goal was to foster a discussion on solutions rather than the underlying problems. He stressed the advantageous features of the $3.7 trillion muni market that allows for borrowing at a cost lower than Treasury rates.

The panel estimated that the U.S. is in need of $3.6 trillion of infrastructure investments by 2020, and cited a recent study that found 70% of Americans want governments at all levels to do more about infrastructure.

"We need to capture what is unique about our tax exemption and our highly decentralized government structure and combine it with the effectiveness of the private sector," Hamel said.

"It is going to come from a collaboration of people with multiple levels of expertise."

Several of the panel members, including Geoffrey Chatas, senior vice president and chief financial officer for Ohio State University, gave examples of how private help has been used effectively to expedite projects and help in their management after construction.

Chatas cited how his school's airport, seven hospitals, set of energy assets and parking garages have been made possible by using the expertise of private entities. Ohio State is not shying from issuing debt, he said, adding that the school has had $3.5 billion in issuances over the last 20 years, while higher education costs have quadrupled.

The $483 million upfront payment for a 50-year lease for a campus parking lot in 2012 has allowed for an endowment distribution of $105 million over the past four-and-a-half years, he said. Those funds have been allocated toward an arts district, a campus bus system, student scholarships and faculty hirings.

Chatas said there have been "outstanding" financial results, although he did admit growing pains in managing some of the parking facilities during the culture change.

"We're trying to think very differently," Chatas said. "Let's bring in partners, let them raise the capital and then manage the properties. Let us focus on teaching and learning."

Tyler Duvall, a partner at McKinsey & Company in Washington, said that the pre-construction process for national infrastructure projects is "a major problem," one that can often take between 40-60 months. This is often due to complex disclosure mechanisms around the environmental review process, leading to more discussions than decisions, he said.

There is no federal government entity that currently exists to accelerate both this process as well as

a more effective revenue stream once construction begins. He suggested the federal government create one to have someone accountable for the end-to-end process and put the U.S. more on a par with Canada and Australia in terms of their infrastructure success.

The federal government has also been plagued by a lack of a problem statement in the highway area, he added.

“The capital is there and it’s cheaper than ever,” Duvall said. “That’s not the issue. Connecting the capital with projects is the issue.”

Suzanne Shank, chairwoman and CEO of Siebert Cisneros Shank & Co., a municipal investment bank based in New York City and Oakland, Calif., agreed Tuesday that the U.S. has some catching up to do with other countries.

“We’re not making headway and the gap is growing,” she said.

Duvall said the U.S. has “phenomenal” lending programs that need to be tweaked to create better revenue streams, a task he said can be done administratively without legislation.

“It’s all about prioritization,” he said.

Another successful P3 cited by the panel was the $4 billion renovation of LaGuardia Airport in New York, which began in June. Francis Sacr, managing director of infrastructure and transportation project finance for Societe Generale, the corporate and investment bank that served as the financial advisor to LaGuardia Gateway Partners, said it proved complicated because of the multiple financers involved.

Sacr said the project to renovate the dilapidated airport used $1 billion of passenger facility charge revenues from the Port Authority of New York and New Jersey as well as $2.5 billion from special facilities bonds and up to $500 million in taxable delayed-draw private placement bonds.

As the largest airport financing deal ever done in the U.S., the P3 structure proved especially beneficial because of the cost overruns, he said.

“Finding multiple sources of capital was the most important part of the solution,” Sacr said.

On a macro level, Sacr said an underinvestment in U.S. infrastructure comes partially as a result of what he feels is shortsightedness.

“Infrastructure is a long-term investment, while politics is a short-term focus,” Sacr said. “It really does require a long-term vision from the governments involved.”

The Bond Buyer

By Evan Fallor

September 28, 2016

DC Water Closes Historic Deal.

PHOENIX – The DC Water and Sewer Authority closed on a historic deal Thursday, issuing the

nation's first Environmental Impact Bond (EIB) to fund the initial green infrastructure project in its DC Clean Rivers Project.

The $25 million, tax-exempt EIB was sold in a private placement to the Goldman Sachs Urban Investment Group and Calvert Foundation, netting DC Water a 3.43% interest rate that is comparable on a cost of funds basis to its historic cost.

The proceeds of the bond will be used to construct green infrastructure to absorb and slow surges of stormwater during periods of heavy rainfall, preventing an overflow of untreated sewage (known as a combined sewer overflow, or CSO) into the Potomac and Anacostia Rivers or their tributaries. The green infrastructure includes absorbent materials and gardens that mimic natural rain absorption processes.

The EIB allows DC Water to attract investment in green infrastructure through an innovative financing technique whereby the costs of installing the green infrastructure are paid for by DC Water, while the performance risk of the green infrastructure in managing stormwater runoff is shared among DC Water and the investors. As a result, payments on the EIB may vary based on the proven success of the environmental intervention as measured by a scientific evaluation of the results.

The structure of the deal includes three "tiers" of performance depending on how well the green infrastructure controls the runoff.

The investors will receive interest payments as typical for bondholders. Depending on the results, an additional payment may be due on the bonds' mandatory tender date of April 1 2021.

If runoff reduction is greater than 41.3%, a "tier 1" outcome, the investors will receive from DC Water an "outcome payment" of $3 million. In a tier 2 outcome where runoff reduction is 18.6% or better but less than 41.3%, the investors will be due only their normal principal and interest.

In a failed tier 3 outcome where runoff reduction is less than 18.6%, the investors will owe DC Water a "risk share" payment of $3.3 million that the trustee will then factor into future payments. That would net the investors a roughly 0.5% return, and DC Water would abandon green infrastructure for traditional tunnels or "gray" infrastructure.

"This environmental impact bond represents the first time that DC Water has explicitly tied financial payments to environmental outcomes, in this case reducing stormwater runoff, which causes the CSOs that pollute the District's waterways," said DC Water chief financial officer Mark Kim.

Kim said the EIB is on DC Water's subordinate lien, on par with the majority of its debt. DC Water is a regional water authority that provides services to the District of Columbia, as well as to parts of Maryland and Virginia.

"This unique bond offering is the result of DC Water's relentless commitment to innovate and pursue every available avenue to provide the best service at the best price to our customers and to the greater community we serve," said chief executive officer and general manager George S. Hawkins.

Kim said that a tier 2 result is thought to be most likely, and that DC Water and its nontraditional muni investors were willing to make a bet together that green infrastructure would be successful.

"We're thrilled to partner with DC Water to help pioneer this innovative financing mechanism that will not only benefit the community environmentally, but also stimulate local job creation," said Margaret Anadu, Goldman Sachs managing director who leads the Urban Investment Group. "This

first ever environmental impact bond will finance the construction of green infrastructure and support economic development in the District."

Beth Bafford, investments director for Bethesda, Md. based nonprofit Calvert Foundation said the foundation was excited to test how effective the green infrastructure would be and noted its potential as a national precedent for water utilities.

"This work is critical for residents in our hometown and has national implications for how to finance green infrastructure solutions to combat the effects of extreme weather on aged, vulnerable sewer systems," Bafford said.

The White House also commented on the potential of the unique deal to create a model for other issuers. The project's development was aided by a federal Social Innovation Fund Pay For Success Grant.

"In launching a project that is the first of its kind in the nation, DC Water has opened the door for others to follow their example," said Dave Wilkinson, director of the White House Office of Social Innovation.

Public Financial Management is financial advisor for the deal, with Squire Patton Boggs as bond counsel and the Harvard Kennedy School Government Performance Lab providing technical advice. Quantified Ventures was the Pay for Success transaction coordinator, and Orrick, Herrington & Sutcliffe is investors' counsel.

The Bond Buyer

By Kyle Glazier

September 29, 2016

On the KC Front-Burner: Infrastructure and an $800 million Bond Proposal.

Kansas City's big airport debate is on the back burner.

A streetcar expansion election for Main Street has been postponed.

So what is the City Council up to?

The focus for the rest of this year is likely to be on one of the city's most formidable challenges. It's also the never-ending source of griping from residents: inadequate streets, sidewalks, bridges, flood control and public buildings.

"Basic infrastructure has to be paramount," Mayor Sly James says. "We have to take care of some immediate needs."

City Manager Troy Schulte agrees the city's massive deferred maintenance backlog can't wait any longer. He's proposing an $800 million bond authorization that voters would decide next spring. It's believed to be the largest general obligation bond proposal in city history.

"There aren't any conversations about an airport, about streetcar or light rail or anything like that," Schulte told an audience of about 60 residents at a recent neighborhood gathering. "What I'm

talking about is the very basic infrastructure that we need to continue to operate in the city."

Schulte and the City Council aren't pretending they can address the problem in a financially painless way.

"It would require a property tax increase," Schulte bluntly told the crowd.

Critics say that could make it hard to pass, especially on the East Side where people already struggle financially. And a grass-roots proposal for a different tax is in the works that would be targeted just to East Side improvements rather than citywide ones.

The signature project to build support for the citywide bond package could be a new animal shelter at Swope Park to replace a horribly outdated facility for Kansas City's four-legged friends. But the bulk of projects would be street and sidewalk fixes all over the city. So, as city spokesman Chris Hernandez said, one slogan for this initiative could be "puppies and pavement."

James and Schulte said they're trying to keep the bond financing as affordable as possible, which is why the target dollar amount is about $800 million, not $1 billion or more.

This is a work in progress, and much could change. But as initially conceived, the bonds would be issued in $40 million increments annually over 20 years and paid off with property tax proceeds.

The Finance Department calculates that, for the owner of a $140,000 home and a $15,000 car, the increase in the first year would be $7.50 on a city property tax bill that's currently about $500. That's not much more than the price of a McDonald's Double Quarter Pounder meal and large Coke.

However, the tax increase would compound each year as more bonds are issued, amounting to about $150 more per year for the average homeowner at the end of 20 years.

The election would be April 4, 2017, because, under the vagaries of Missouri law, voter approval for bonds in that election requires a 57 percent supermajority. If the election were held later next year, it would require an even higher majority, 66.7 percent.

The council must approve ballot language in January, so that means hashing out details in the next few months.

"That's the conversation this fall at City Hall," Schulte said, citing low interest rates and job creation as other pluses for the program. "There's no better time like the present to just bring this forward."

Huge needs

James says he realized Kansas City had a massive deferred maintenance problem when he first took office in 2011. At that time, he proposed a possible $1 billion bond package.

The idea fizzled, in part because the Fitch credit rating agency put the city on a "negative" watch. Kansas City already had a high debt load from guaranteeing several hundred million dollars in bonds for projects like the downtown Power & Light District, various hotels and parking garages, and other economic development ventures.

But the city has continued to pay down debt over the past five years, and its credit rating has improved. In the next decade, Schulte said, more principal should come off the books each year in $80 million increments. Meanwhile, the city would be adding about $40 million per year in general obligation bond debt, which has the best interest rates and can be its own economic development

engine.

Right now, Kansas City spends money in relatively paltry amounts on many infrastructure projects, because dollars are spread thin among so many needs. So it can take forever to complete big projects. The Blue River channel project, just completed, took 50 years. The Turkey Creek tunnel restoration project has already taken years and still needs $15 million more. Brookside flood control is a $30 million problem.

“It delays things because we do it $1 million at a time,” Schulte said.

The council may also ask next April to renew the city’s 1-cent sales tax for infrastructure, set to expire in 2018. That sales tax raises about $70 million per year, but it too is spread thin among too many projects. If the bond money could pay for big-impact projects, Schulte suggested, the sales tax dollars could provide a consistent, sustainable funding source for basic maintenance.

Without this extra money, Kansas City will just keep falling farther and farther behind on crucial repairs, said Public Works director Sherri McIntyre. She points out that, according to a recent pavement analysis, only 55 percent of the city’s roads were rated in good to fair condition, while 45 percent were rated poor or worse.

Currently, the city spends about $10 million per year resurfacing about 170 miles of roadway. But with 6,600 lane miles of roads, Kansas City should spend $40 million or more per year to fix 600 miles per year, she said.

Among possible street projects:

■ Wornall Road from 79th Street to 47th Street, which should be fully rebuilt.

■ Blue River Road, which is sliding into the Blue River in several locations.

■ Holmes Road in south Kansas City.

■ Two-lane Northland roads that need widening like North Brighton from Pleasant Valley Road to 76th Street, and Parvin Road.

Schulte also hopes to use bond money to fix crumbling sidewalks in low-income neighborhoods, where costs exceed what residents can afford. But both Schulte and James acknowledge a challenge with that strategy.

Until now, Kansas City has required homeowners to pay for sidewalk upgrades with their own money, which can be $5,000 or more, although financed over 15 years. What do city officials tell people who have paid for their own sidewalks and now have to pay a property tax increase for other people’s sidewalks?

“Unfortunately, this is an issue of the collective good,” Schulte said, pointing out that property values in affluent areas can support a homeowner’s $5,000 sidewalk investment, but not in depressed areas. “From an urban revitalization standpoint … I think curbs and sidewalks are the best way to do it.”

Neighborhood reaction

Council members believe voters will support the plan, since citizen satisfaction surveys every year give top priority to streets.

“The issue I hear about probably more than any other is infrastructure,” said 6th District Councilman Kevin McManus. “I would put it up with public safety and economic development as things that people care about.”

But longtime South Kansas City neighborhood leader Carol Winterowd reminded the council that some significant development projects are tax abated, meaning owners pay little or no property tax into city coffers. If this involves a property tax increase, she said, everyone should pay a fair share.

The Finance Department is gathering data on how much property is abated but does not yet have that information.

The Rev. Sam Mann, spokesman for the Urban Summit, which advocates for the East Side, said his group is working on its own ballot proposal for next spring: a one-eighth-cent sales tax that would raise money specifically to benefit the Prospect Corridor from Ninth Street to Gregory Boulevard. He said the group wants something more targeted than a citywide general obligation bond package.

“It’s going to be a hard sell, because it’s too general,” Mann said of the bond proposal.

But 5th District Councilwoman Alissia Canady, who represents part of east and south Kansas City, thinks residents will see its job creation and economic benefits.

“This council will be reviewing that information to make sure it makes sense and it is fair,” she said. “Fair is not going to be allocated by council district but based upon the needs, making sure our infrastructure is addressed and making sure we’re doing that wisely.”

THE KANSAS CITY STAR

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Read more here:
http://www.kansascity.com/news/politics-government/article103734806.html#storylink=cpy

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Governor Brown Signs Bill Strengthening PACE Program For Consumers.

SACRAMENTO, Calif., Sept. 26, 2016 /PRNewswire/ — Governor Jerry Brown today signed legislation establishing uniform disclosures for consumers of the Property Assessed Clean Energy (PACE) program. The Governor’s action is expected to increase adoption of PACE at a time when his Administration is encouraging more Californians to conserve water and become more energy efficient in response to climate change. The action completes months of negotiations between Ygrene and other PACE industry providers, the California Association of Realtors, the California Mortgage Bankers Association and other stakeholder groups.

PACE enables local governments to give property owners, who may be unable to afford the up-front costs of energy improvements such as solar panels and rainwater catchment systems, an alternative to short-term, high interest rate loans. AB 2693, authored by Assemblymember Matt Dababneh (D-Encino), accurately identifies important consumer issues with the program and prescribes on-point solutions that preserve PACE’s unique structure and benefits, while improving consumer disclosures

and safeguards.

Among its provisions, the new law will prevent homeowners from taking out more financing than they can afford. It will require that PACE administrators provide consumers with important disclosures such as notice of a special tax lien, the total amount of interest charged, and notification that some lenders may require the homeowner to pay off the total amount of the assessment if refinancing or selling. Homeowners will also be guaranteed new contract safeguards such as a three-day right to cancel.

“Consumers will now be able to evaluate the terms and conditions of PACE financing in a similar fashion as they can with other lending products,” said Mike Lemyre, senior vice president of government affairs at Ygrene Energy Fund. “This new consumer protection policy is consistent with the Consumer Financial Protection Bureau’s ‘Know Before You Owe’ form.”

By strengthening the PACE program, AB 2693 is critical to advancing the state’s climate change agenda and can serve as a model for the effective administration of PACE programs across the country. California is on track to meet its renewable energy, energy efficiency, and water conservation goals in large part because PACE helps make financing for these types of projects available to homeowners who may not otherwise qualify for a bank loan.

PACE has helped over 100,000 California property owners save money on their energy and utility bills while contributing to the state’s reduction of greenhouse gas emissions and water usage. The program accounts for 2.5 million tons of reduced emissions and for the creation of over 13,000 local jobs. Residential PACE improvements in California to date will save:

9.1 billion kilowatt-hours (kWh) of energy;
3.4 billion gallons of water; and
$2.5 billion in utility bills.

AB 2693 would take effect on January 1, 2017. The full text of the bill can be found here.

About Ygrene Energy Fund

Ygrene Energy Fund is the nation’s leading provider of residential, multifamily and commercial property assessed clean energy financing. The award-winning, privately funded YgreneWorks program provides immediately accessible financing with no upfront payments for energy efficiency, renewables, water conservation, and, in certain areas, hurricane protection, electric vehicle charging stations and seismic upgrades. Ygrene is committed to making it easy for property owners to invest in their future and a healthier environment. Over the next five years, YgreneWorks is expected to create tens of thousands of jobs and invest billions of dollars into local economies. Learn more at ygreneworks.com.

Burlington Wins ‘Neighborly Bonds Challenge’

Award projected to save up to $185,000 in costs related to anticipated bonding; Neighborly’s innovative, technology-based platform seeks to democratize tax-exempt bond market with bonds as small as $100, reducing City interest rates + allowing Burlingtonians + others to invest in local projects

Burlington, VT: The City of Burlington is one of five winners of the “Neighborly Bonds Challenge,” a

contest that called on public agencies interested in offering their communities the opportunity to invest directly in local projects through the purchase of municipal bonds. The five Neighborly Bonds Challenge winners, announced on September 22 at the Bond Buyer Conference in Los Angeles, are Austin, TX, Somerville, MA, the Housing Trust of Silicon Valley, and Lawrence, KS. Winners of the Neighborly Bonds Challenge receive an innovative issuance platform, which provides the same services typically provided by City underwriters, bond counsel, and financial advisers, with issuance fees waived, as well as free marketing financing.

By winning the competition, the City could save up to $185,000 in lower transaction costs on anticipated bonding. The Neighborly technology-based platform is expected to make the municipal bond market accessible to a wider range of investors, potentially reducing the long-term interest rates for Burlington bonds and saving taxpayers hundreds of thousands of dollars over the life of the bonds. Those savings are expected to lower the cost of the City's Sustainable Infrastructure Plan for the 21st Century, approved unanimously by the City Council on September 19, 2016 and coming to the voters on the November ballot.

"This award is welcome news at a time when the City is focused on infrastructure investment," said Mayor Miro Weinberger. "I am excited about the potential for this award and this new technology-based platform to bring down the cost of our Sustainable Infrastructure Plan for the 21st Century. I hope voters will see in this news another example of how the City is using innovation and hard work to bring down the cost of necessary, responsible local government investment. It is also exciting that winning this competition will create a new civic opportunity for Burlingtonians to directly invest in the City's future."

Neighborly selected Burlington as one of its winners because of the City's focus on financial and environmental sustainability, one of Neighborly's primary interests when choosing projects. Other measures used to evaluate the participating cities included community impact, credit quality, civic engagement of local residents, and the innovative nature of proposed projects. Winners were drawn from more than $100 million of proposed issuances.

"We are honored to work with such esteemed issuers," said Jase Wilson, CEO and Founder of Neighborly. "As a broker-dealer, the opportunity to issue bonds for cities so committed to improving the lives of citizens fits directly with our mission to modernize public finance."

Neighborly is a San Francisco-based firm that provides municipal bonds issued in a lower denomination chosen by the issuer and sold through the firm's innovative technology platform. The platform offers document generation services, expert bond counsel opinion, investor marketing assistance, data driven pricing, sale and closing functions, as well as continuing disclosure and investor relations. Traditionally, state and local governments have issued municipal bonds to finance long-term public projects. Bonds are typically $5,000 or more, a cost that can be prohibitively expensive for average community members, but is attractive to larger institutional buyers as bond interest is often exempt from federal income tax (and in some cases from state and local taxes as well).

Using the Neighborly platform, cities can now limit the cost of employing bond counsel, financial advisors, and underwriters, which for Burlington can total up to about $185,000 with a major bond issue. In addition, cities can propose projects and open investment opportunities to smaller retail buyers by issuing bonds as low as $100. By working with Neighborly, Burlington will join a Vermont tradition going back to 1996, when the State of Vermont began selling lower denomination Citizen Bonds.

In the coming weeks, the City will work with Neighborly to determine the amount it wishes to bond

for on the platform, and other transaction terms and details.

News Release — Mayor Miro Weinberger
September 26, 2016

In Cash-Strapped States, Voters Could Protect Transportation Funds.

Chronic budget problems in Illinois and New Jersey prompted lawmakers to shortchange their transportation funds. But voters could make sure legislators in the future keep their hands off.

Should transportation revenues — things like gas taxes and vehicle registration fees — be set aside and used only to fund transportation expenses? Most states say yes. And ballot initiatives in November could add two more to the list.

Voters in Illinois and New Jersey will determine on Election Day whether money raised from transportation-related activities should be protected from the general budget.

The ballot measures would change both states' constitutions to make the transportation set-asides permanent. The Illinois amendment would create a so-called lockbox, while New Jersey's measure would expand the types of revenue that are designated for transportation purposes.

Both states have gone more than 25 years without raising their fuel taxes, the primary source of transportation funds. Political gridlock in the two states has stymied other attempts to raise more money for infrastructure improvements.

In Illinois, new transportation revenue is nowhere on the horizon because the Republican governor and Democratic legislature have barely been able to pass a budget to keep the state government open.

In New Jersey, Republican Gov. Chris Christie and Democratic legislators have clashed repeatedly over transportation funds, as they have drained the pool of transportation money nearly dry. Things got so bad that Christie ordered a statewide shutdown of construction projects in July, and prospects of reaching a compromise soon to end the standoff are bleak.

So instead, lawmakers in both states overwhelmingly sent the lockbox measures to voters, even though the measures would tie the hands of legislators in the future.

"Illinois politicians have wasted millions of tax dollars on bureaucracy and mismanagement," said Frank Manzo of the Illinois Economic Policy Institute, pointing to $6.8 billion of transportation money lawmakers diverted since 2002. That cost the state 4,700 jobs, he says. "Requiring transportation money to be spent on transportation would improve the Illinois economy."

Although the Illinois amendment has not received a lot of publicity, a broad array of groups are supporting it, including labor unions, business groups and transportation advocates. To pass, the amendment must receive the support of either 60 percent of those voting on the question or a majority of those voting in the election.

The strongest criticism of the proposal has come from Chicago's two largest newspapers.

"No one doubts that transportation projects are in a sorry state in Illinois, with roads and highways

in need of billions of dollars of repairs even as money collected from a gas tax, tolls and license fees is spent elsewhere. But the solution is a budget, not a shell game," wrote the editorial board of the Chicago Sun-Times. "A lockbox is nothing but an admission of failure, and we urge you to vote the idea down in November."

The Chicago Tribune said the measure should have been called "The Illinois Crony Protection Amendment of 2016." Its editorial board argued, "The diabolical effect is that contractors, and the unions whose members they employ, would have constitutionally guaranteed dibs on future billions of state and local revenue dollars."

The debate has been more subdued in New Jersey, where the main attention has been on what mix of taxes should be raised and lowered to replenish the Transportation Trust Fund. But Christie has pushed the amendment, even as he's negotiated with lawmakers on a tax deal.

"Vote yes on that because otherwise that increase will be able to be spent on anything, and if you leave an unguarded pot of money in Trenton — bad move, everybody. Bad move," the governor said in a radio interview.

Thirty states have constitutional restrictions on how the revenues in transportation funds can be spent, according to the Council of State Governments. Maryland and Wisconsin became the most recent two to add those restrictions, when voters in those states added lockbox protections in 2014. Maryland voters approved the new rules shortly after lawmakers there passed a major transportation funding package. Wisconsin passed its amendment amid a long search for new transportation revenues, an issue that continues to divide its Republican governor and GOP-led legislature.

GOVERNING.COM

BY DANIEL C. VOCK | SEPTEMBER 23, 2016

Houston's Plan to Cut Pension Costs in Half Overnight.

Mayor Sylvester Turner is garnering praise for his proposal's comprehensiveness and balance.

Earlier this month, Houston Mayor Sylvester Turner released his outline for fixing the city's underfunded pension system, an issue that earned the city a credit rating downgrade in March.

Observers say the plan is the best effort yet at solving a problem that has eluded past city officials. If approved, the proposal would immediately cut Houston's unfunded liability by $3.5 billion — or nearly in half — while putting Houston on a path to pay off the rest of its pension debt over the next generation.

The proposal has several moving parts, including concessions from city workers, a requirement that the city make its payments going forward and a change in some accounting assumptions as a way of making the system less exposed to the risks of the financial market. It also calls for issuing pension obligation bonds to help plug the funding hole.

What makes the effort even more remarkable is that Turner is less than a year into his first term. But Turner is no ordinary first term mayor.

Prior to being elected, he had already spent 25 years serving a portion of the Houston metro area in the state legislature. It's his experience and the connections he's made, both politically and in the business community, that Turner will draw on when he takes the proposal to the city council in early October. The state legislature ultimately has final approval on any changes to the pension system, but most believe that Turner will encounter little resistance there.

"The number one thing is the relationships Mayor Turner has," said city finance director Kelly Dowe, whom Turner kept on from the previous administration. "When he says, 'Folks, this isn't sustainable,' it's different from someone else saying it."

Indeed, Turner's proposal appears to strike the right amount of give-and-take that's required for all parties to get on board. First, the city is stepping up in terms of accountability, meaning it would be required to make its pension payment annually.

What's more, the system would immediately incorporate a more realistic investment rate of return assumption in valuing its pension liabilities. Currently, Houston is an outlier among public plans and assumes its investments will earn 8 or 8.5 percent annually. That's much higher than the national average of plans and even higher than Houston's recent investment experience. Turner's proposal assumes a 7 percent rate of return, which is lower than the national average and bumps up Houston's total liabilities to a more realistic $7.7 billion (from under $4 billion as reported).

The pension plans would also switch from an open amortization period — which is like refinancing your home every year and never paying off the loan — to a closed one. That change puts the city on a path to fully pay off its pension debt over 30 years.

In terms of employee concessions, Turner is deftly leaving it up to the unions. At a press conference announcing the reform, he said the three plans in the pension system had identified a collective $2.5 billion in cuts. While not specific, that will likely mean some combination of cuts to retirees' cost-o-living adjustments and their deferred retirement option plans benefits, which allow retirement-age employees to keep earning retirement benefits as they continue to work.

The planned issuance of pension obligation bonds would infuse another $1 billion into the system, bringing down the total unfunded liability to about $4.2 billion. Issuing bonds to plug pension funding holes can be controversial because it doesn't eliminate debt, it simply moves it from a pension system's balance sheets to the city's debt ledger.

City Controller Chris Brown said at a discussion last week hosted by Rice University's Kinder Institute that he is typically skeptical of issuing pension obligation bonds. But he added he would support the idea as long as the city doesn't use the bonds as a replacement for making its annual payments and if Houston receives a favorable interest rate on the bonds.

Notably, Turner's proposal doesn't call for a new tax as has often been done in other places — such as Chicago — as a way to get a poorly funded pension plan back to health. That aspect has pleased the business community, which has said it wants the city to get its pension costs under control before discussing taxes. But Turner does plan to ask city voters next year to lift Houston's 12-yea-old revenue cap to help reinvest in needed infrastructure and parks projects.

So far, the Houston Municipal Employees Pension System and the Houston Police Officers' Pension System have signed on to the mayor's plan. That leaves the Houston Firefighters' Relief and Retirement Fund, which has yet to endorse Turner's proposal. The firefighters' plan is directly controlled by the legislature. That means if they don't sign on to the reform, they risk "the horrendous challenge" of the legislature making changes to their plan, said Max Patterson, the

executive director of the Texas Association of Public Employee Retirement Systems.

“Generally speaking, [employees] should be happy with this,” he said at last week’s event. “Because you have to measure it against the other side of, if I don’t get this, what will I get?”

GOVERNING.COM

BY LIZ FARMER | SEPTEMBER 29, 2016

Why Investors Shouldn't Buy Pension Obligation Muni Bonds.

For years there have been voices writing, speaking and worrying about U.S. unfunded pension liabilities. I, for one, included. Never should investors ever buy pension obligation municipal bonds. Cities, states and counties issue POBs because their pensions are grotesquely under water and they cannot meet their liabilities. The reasons are long, but pretty simple: Poor investment results; demographic shifts due to people living longer; mismanagement; devastating union-negotiated wage and benefit increases; low retirement age; and unrealistic assumed rates of return on assets.

The numbers in many circumstances are unconscionable. California State Teachers Retirement System returned 1.4% in fiscal year end June 30. Their target was actually 7.50%. Springfield, Illinois owes $21 million to pay police and firefighter pensions. That doesn’t sound too bad until you realize the $21 million represents 98% of all property tax revenues. According to Standard & Poor’s, the city of Houston, Texas has racked up pension costs from 2012 to 2015 that rose 48%. What will they do? Issue $1 billion in POBs—a hail Mary pass if ever there was one.

You are probably wondering why pension funds don’t reduce their assumed rates of return to something realistic. Like taking their 7.50% fantasy returns to a more logical 4% to 5% return. The reason is simple. Such target rate of return reductions require real cash infusions to make up the difference.

So we find ourselves at the tail end of an equity bull market that began in March 2009 and a 30-plus year bond bull market. And yet pensions remain woefully underfunded.

The best objective source of research comes from PEW Research. Google PEW Research, unfunded pension liabilities. You’ll find analyses on states and city funding gaps, states in the worst and best shape, data on the 50 state trends, and retiree health care trends. It all adds up to dismal funding for many cities that made promises to pensioners they simply cannot keep.

So why the rant? As the problem gets worse and being we are at the tail end of this credit cycle, general obligation municipal bonds issued by these same states, cities and counties will be severely downgraded. More nails in the coffin that GOs should no longer be the darlings of your municipal bond portfolio .

Connect the dots. As pension funding takes more and more revenue from their general funds, more GO bonds will have to be issued for essential services—schools, roads, welfare, the homeless. All will create a giant revenue sucking sound while essential services deteriorate. The reasons are precisely why revenue bonds—specific revenue bonds—are more desirable than GOs.

Invest in senior airport revenue bonds from major U.S. airports—no local mini airports. Names like Atlanta Hartsfield, Los Angeles International, Dallas Fort Worth, JFK and San Francisco. Major city

senior airport revenue bonds are my top pick now.

If you are seeking more yield than airport revenue bonds, then selectively buy hospital revenue bonds. Not your local hospital, but major institutional teaching hospitals like Stanford, Mayo Clinic, Mount Sinai, Cedars-Sinai, University of Colorado Hospital, to name a few.

The weather report declares an unfunded pension tsunami. Please prepare so your portfolio doesn't drown.

Forbes

by Marilyn Cohen, Contributor

SEP 26, 2016 @ 12:39 PM

Marilyn Cohen is president of Envision Capital Management, Inc., a Los Angeles fixed-income money manager.

Opinions expressed by Forbes Contributors are their own.

Meadowlands Mega-Mall Wins Bond-Market Subsidy It Long Coveted.

New Jersey is on the brink of realizing the American Dream — if the definition is a mega-mall in the middle of a marsh.

A state agency approved $1.2 billion of tax-exempt municipal bonds for Canadian developers Triple Five Worldwide. The company plans to complete a partially built "world-class destination" of shops, restaurants and entertainment attractions in the Meadowlands, 10 miles west of Manhattan, where previous developers ran out of money.

The Sept. 15 decision to float the bonds reignites a debate in New Jersey over the use of government subsidies to foster economic development. Buyers of the bonds won't pay federal tax on the income, making U.S. taxpayers silent partners in the project. And in addition to paying a lower interest rate than they would on taxable bonds, the developers get a $390 million state grant over time if they reach sales-tax targets.

"It's essentially crony capitalism," said Republican State Senator Michael Doherty, who represents a west-central New Jersey district. "Our credit rating is in the crapper and we're going to triple down by giving more than $1 billion to a private mall developer." The state has halted non-emergency road improvements for lack of money and faces an $80 billion pension deficit.

Boost Economy

To supporters, American Dream promises to boost New Jersey's economy, which lagged the U.S. through most of the recovery. The state's Economic Development Authority estimates it will generate $340 million in state tax revenue over 20 years and create about 11,000 full- and part-time jobs at the complex and 5,800 construction jobs.

"We've had false starts," said James Cassella, mayor of East Rutherford, New Jersey, where the complex sits unfinished. "Hopefully this time is real."

The 2.9 million square-foot (270,000 square-meter) American Dream, originally called Xanadu, features an indoor amusement park and water park, an 800-foot (245-meter) indoor ski slope, a 300-foot Ferris wheel, aquarium, 1,500-seat performing-arts theater, skating rink and a 1,400-seat movie theater with “wind, rain, snow, fog and scents all synchronized to the on-screen action,” the company says. It will also have 500 stores, restaurants and food shops.

MetLife Stadium

The project broke ground in 2004 across the highway from what is now MetLife Stadium. Construction was abandoned after Mills Corp. and Mack-Cali Realty Corp. and then Colony Capital LLC ran short of funding.

Every day for the last 10-plus years, hundreds of thousands of people pass by what looks to be aging, scattered hunks of metal and concrete, painted in checkerboard shades of pastel blue and orange near the New Jersey Turnpike and within sight of NJTransit commuter trains.

Now construction cranes have appeared again.

Triple Five, run by the billionaire Ghermezian family that also owns Mall of America in Minnesota and West Edmonton Mall in Canada, says it’ll succeed where the others failed. It says the development, slated to open in 2018, will offer plenty to entice an estimated 40 million annual shoppers and thrill-seekers from all over the area and the world.

Tax Dollars

“This will bring much-needed jobs and tax dollars back to our region,” said Rick Sabato, president of the Bergen County Building and Construction Trades Council.

Critics say the development will suck business away from existing enterprises. Paramus, New Jersey, 10 miles north, has three indoor malls, including the 2.1 million square foot Garden State Plaza, owned by Westfield Corp.

The nonprofit New Jersey Alliance for Fiscal Integrity asked a state court last week to stop the project, saying the New Jersey Sports and Exposition Authority, which owns the site, violated state law when it authorized the bonds.

Tax exempt

Tax-exempt bonds are normally used for roads, sewers, schools and bridges.

In order for Edmonton, Alberta-based Triple Five to be eligible, a state or local government must finance the project and the company must pay bondholders what’s called PILOT, or payment in lieu of taxes. Triple Five will pay $800 million of the bond debt in this way.

Triple Five won’t pay property taxes to its host town either. Instead, East Rutherford will receive an upfront payment of more than $20 million from the bond sale and annual payments starting at $750,000 when American Dream opens. Triple Five will also make infrastructure improvements to smooth traffic.

A Brookings Institution report this month found that, since 2000, tax-exempt financing of professional sports stadiums has siphoned $3.7 billion from federal revenue. The report didn’t mention malls.

Rather than sell bonds to the public, the Sports and Exposition Authority will sell them to the Wisconsin Public Finance Authority, which will in turn market its own debt to the public. Tony Armlin, Triple Five's vice president of development and construction, said the Wisconsin agency charges lower issuance fees.

New Jersey officials have said New Jersey taxpayers won't be at risk if the bonds default.

Goldman Sachs Group Inc. is managing the tax-exempt bond issue for Triple Five.

Rug Merchant

Don Ghermezian, president of Triple Five, is the grandson of Jacob Ghermezian, an Iranian rug merchant who moved to Canada in 1964. The family built a real estate empire that also includes banking and energy divisions.

Triple Five is investing $300 million in cash and borrowing another $1.5 billion through a construction loan arranged by Deutsche Bank AG.

Triple Five, which says it's leased 70 percent of the complex, is forecasting $1.5 billion in annual retail sales, even though Bergen County is the last county in the country with a ban on Sunday shopping.

Political Contributions

Bloomberg News reported that members of the Ghermezian family and their employees contributed $40,000 to the New Jersey State Republican Committee in May and $50,000 to the Republican National Committee in June, according to campaign-finance records.

"It's indicative of a sick economy in New Jersey that you keep having to do these special deals for connected people," said Doherty, the state senator.

American Dream may end up providing ammunition to critics of the tax-exemption for municipal bonds, said Lisa Washburn, a managing director at Municipal Market Analytics.

New Jersey is "bending over backwards to provide tax-exempt financing along with a whole host of other sweeteners in order to get a non-essential project, benefiting a for-profit company," Washburn said. "It just doesn't look good."

Bloomberg Markets

by Martin Z Braun

September 26, 2016 — 2:00 AM PDT

Yearlong Rush Into Muni Funds Leaves Investors Wary of an Exodus.

Investors have plowed money into municipal-bond funds for almost a year, allowing local governments to borrow at near record-low yields. That's making it easier to ignore the cracks beneath the market's surface.

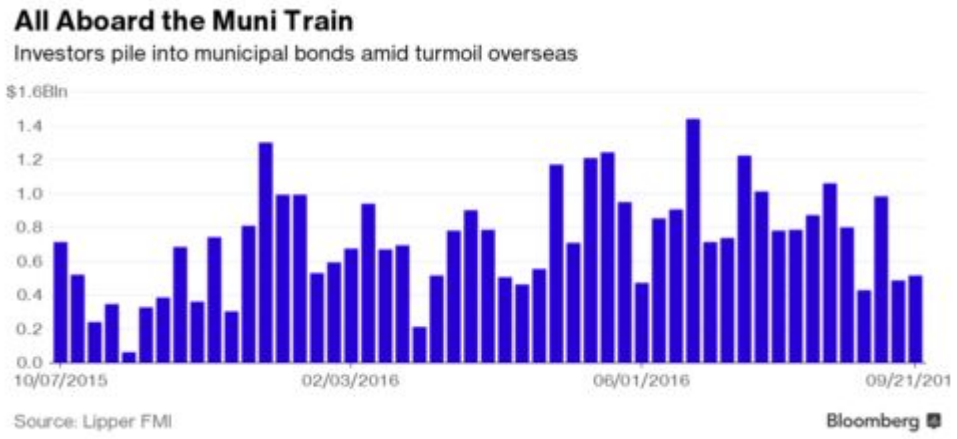
This week may mark the 52nd straight one with inflows into state and local-government bond funds,

the longest streak since 2010, according to Lipper US Fund Flows. Even with the influx, the securities are headed toward the biggest monthly loss since February 2015 on speculation the Federal Reserve may raise interest rates in December. If investors start yanking money out, that could weigh on prices because securities firms have pulled back from the market.

“There’s this anxiety that’s looming under the surface where people are saying, everything is going really well, there’s all these muni inflows but what happens if that stops suddenly?” said Katie Koster, a managing director in public finance investment banking for Piper Jaffray Cos. in Laguna Beach, California. “How will the markets react? They could seize up quite quickly.”

The municipal market has been whipsawed in the past when mom-and-pop investors dumped their bonds en masse. Prices tumbled in late 2010 amid concern the recession would trigger a wave of defaults, a fear that later proved unwarranted. The securities dropped again in 2013 during the so-called taper tantrum, when then-Fed Chair Ben Bernanke jarred investors with plans to scale back the central bank’s bond purchases.

The influx of cash for the past year has been fostered by stock-market volatility and negative interest rates overseas, which have made even rock-bottom municipal yields attractive by comparison. Foreign buyers, who don’t benefit from U.S. tax breaks tied to the debt, increased their holdings to $89.7 billion at the end of June from $74 billion three years earlier.



The streak of cash “shows strong investor demand for an income-producing asset class that has high credit quality, low volatility and continues to act as a diversifier against equity and equity-like risk,” said Sean Carney, head of municipal strategy at BlackRock Inc., which manages about $124 billion of municipal debt. “There’s no indication that flows are about to turn negative, just less robust.”

Municipals have produced a return of 4 percent in 2016, according to Bank of America Merrill Lynch data, thanks to a rally that came as the Fed held off on interest-rate increases that were anticipated this year. The central bank indicated this month that the case for tightening monetary policy has strengthened, and the securities posted a loss of 0.5 percent in September.

Despite the wall of cash that’s allowed even junk-rated borrowers to issue debt, governments continue to deal with mounting pension-fund shortfalls that are exerting a drag on their credit ratings. And the impact of a selloff could be exaggerated by the brokerage industry’s diminished role in the market since new regulations went into effect after the financial crisis: Dealers’ holdings fell to about $20 billion at the end of June, down by half from $40 billion in mid-2011, according to Fed data.

“Investors have to be careful about not lulling themselves into a false sense that this abundant liquidity in the market right now is driven by dealers,” said James Iselin, head of the municipal fixed income team in New York at Neuberger Berman, which oversees about $10 billion. “It’s really driven by investors and asset managers who have pumped a lot of money into the space.”

To prepare, he said investors should buy bonds from highly-rated governments even if they offer less yield than more speculative ones.

“Giving up a little bit more to be more flexible and nimble for an environment that could be less liquid, that’s a trade that investors should certainly think about right now,” he said.

But with the interest rates so low, investors have been doing the opposite, said Piper Jaffray’s Koster. “That could be a problem down the road.”

Bloomberg Markets

by Romy Varghese

September 28, 2016 — 2:00 AM PDT

Bloomberg Brief Weekly Video - 09/29

Taylor Riggs, a contributor to Bloomberg Briefs, talks with Joe Mysak about this week’s municipal market news.

Watch the video.

Senators Propose Bill to Include Municipal Debt as Liquid Assets.

A group of U.S. senators introduced a bipartisan bill that includes municipal bonds among assets that banks need to hold to weather a financial shock.

Democratic Senators Mark Warner and Chuck Schumer and Republican Mike Rounds introduced a scaled-down version of legislation that passed the House in February that would classify investment grade municipal bonds on par with U.S. agency securities issued by Fannie Mae and Freddie Mac to meet bank liquidity rules.
The Senate measure classifies munis as “Level 2B” assets comparable to certain corporate bonds and stocks.

Level 2B assets are subject to a 50 percent “haircut,” meaning if a bank holds $1 million of a municipal bond, $500,000 counts towards its liquidity buffer. The House bill classifies munis as Level 2A assets, which have a 15 percent haircut. Level 2A and 2B assets can make up no more than 40 percent of total “high quality liquid assets,” with Level 2B assets restricted to no more than 15 percent of HQLA.

“As a former governor, I know firsthand how critical it is for states and municipalities to issue bonds that fund their basic operations, including the construction of schools, roads, and local projects,” Warner said in a news release “We must ensure a continued and reliable access to capital markets

for our local governments, and this legislation represents a compromise that achieves that while appropriately balancing concerns for the long term stability of our financial system."

Local-government officials and securities-industry lobbyists turned to Congress after regulators including the Fed adopted rules that would restrict or bar banks from including munis among high quality liquid assets. State treasurers and city finance officers said the new rules, if not changed, will saddle them with higher borrowing costs eliminating incentives banks have to purchase the bonds.

"Having bipartisan, bicameral legislation is an excellent first step," said Emily Brock, federal liaison for the Government Finance Officers Association. "It shows a commitment on their part for what we municipal securities to be, which is high quality and liquid."

Bloomberg Markets

bu Martin Z Braun

September 27, 2016 — 10:07 AM PDT Updated on September 27, 2016 — 1:36 PM PDT

Municipal Prison Bonds Turn to Junk as Inmate Population Falls.

The privately run prison in Walnut Grove, Mississippi, was besieged for years by violence and legal fights over deplorable conditions. Then last month, with local sentencing reforms keeping fewer behind bars, officials shut it down, leaving the state on the hook for $121 million of debt left behind.

"The taxpayers are paying for that building and it's just sitting there," said Chip Jones, an alderman for the 1,600-person town about 63 miles (101 kilometers) east of Jackson, the state capital.

The closing is part of a shift taking place nationwide among states and local governments that have sold $30 billion of bonds to build prisons and jails, some of which were leased to for-profit operators. With officials re-evaluating tough-on-crime laws that caused inmate populations to soar and the federal government moving to jettison its use of private prisons, the reduced need for such facilities is rippling through a niche of the $3.8 trillion municipal-securities market.

On Friday, a Texas prison that serves as a U.S. detention center had its credit rating cut to junk by S&P Global Ratings, joining half a dozen others that were downgraded below investment grade by the company since federal officials in August announced plans to phase out for-profit facilities. About $300 million of tax-exempt debt issued for almost two dozen prisons has already defaulted, and investors are demanding higher yields on other securities amid speculation the distress will spread.

"At any point there are only so many prisoners out there to fill the private prison beds," said Matt Fabian, managing director for Municipal Market Analytics Inc. "It creates unequal distribution and you have prisons competing against one another."

The number of Americans behind bars has been on a steady decline. After peaking at 1.62 million in 2009, the state and federal prison population dropped over the next five years, reducing it by 54,000, or 3 percent, by 2014, the most recent year for which figures are available, according to the U.S. Bureau of Justice Statistics.

It's not certain that such reductions will continue, said Daniel Hanson, an analyst who follows the

municipal-bond market for Height Securities in Washington. Even with the decrease, some federal prisons are still over capacity and states may already have done much of what they can to keep non-violent offenders out of their penal systems, he said.

“The low hanging fruit of criminal-justice reform is already done,” said Hanson.

At the federal level, the impact is poised to trickle down. The Department of Justice on Aug. 18 said it will cancel or scale back the scope of private prison contracts after the number of federal inmates fell by about 25,000 over the past three years. About two weeks later, the U.S. Department of Homeland Security, which houses immigration detainees in privately run facilities, said it will review whether to curb their use too.

Such a step would jeopardize the repayment of local-government bonds issued for prisons, which are typically repaid with revenue from leasing them instead of with taxpayer money. Since August, S&P has lowered to junk debt issued by, among others, the Washington Economic Development Financing Authority, the Garza County Public Facility Corp. in Texas, and the La Paz County Industrial Development Authority in Arizona.

The prices of some securities have tumbled, pushing up the yields as investors demand higher compensation for the risk. The yield on bonds issued for the Reeves County detention center in Pecos, Texas, which mature in 2021 and were among those downgraded, rose to as much as 6.4 percent last month from 4.6 percent in early August.

Additional closures could spread the impact. In Florence, Arizona, a 31,000-resident town southeast of Phoenix, the seven prisons — four of which are privately-run — are a major employer, said Jess Knudson, town spokesman. One of them is an immigration facility that could be hit if Homeland Security follows Justice’s lead.

“Our ability to influence that decision doesn’t exist,” Knudson said.

The Mississippi Department of Corrections closed the Walnut Grove prison because of budget constraints and the number of inmates, with the annual average population dropping by about 10.5 percent between fiscal 2011 and 2016, bond documents show.

The decline was driven in part by the passage of criminal-justice reform that gave judges more discretion over sentencing, according to the Pew Charitable Trusts, which partnered with a state task force to push the 2014 law. The measure is projected to save the state $266 million over 10 years while also “safely reducing” the number of inmates, the group said.

With less need for prison beds, Mississippi chose to shut down a facility that had a troubled history under former operator Geo Group. After it was sued by inmates, the Justice Department faulted it in 2012 for widespread staff misconduct and deliberate indifference to the welfare of the young offenders housed there.

A federal judge said the description of life inside painted “a picture of such horror as should be unrealized anywhere in the civilized world.”

Mississippi said it has been pleased with Management and Training Corp., the for profit company that took over Geo Group after the Justice Department investigation.

The prison was closed last month and its 900 inmates were moved to other facilities. Mississippi still owes $121 million of debt for Walnut Grove, which the department of corrections has an “absolute and unconditional” obligation to pay off, according to bond documents. There state is considering

using the emptied prison for another purpose.

“Anything’s better than nothing,” said Jones, the local alderman. “The taxpayers are paying for that building, and it’s just sitting there.”

Bloomberg Markets

Amanda Albright and Darrell Preston

October 3, 2016 — 2:00 AM PDT Updated on October 3, 2016 — 7:45 AM PDT

Fitch: Moderate Growth to Continue for U.S. Transportation.

Fitch Ratings-New York-03 October 2016: Growth for the remainder of 2016 will remain healthy for all three U.S. major transportation sectors (airports, ports and toll roads) albeit at a slightly lower rate than the first half of the year, according to Fitch Ratings in a new report.

Fitch expects passenger traffic growth to increase around 3% for the second half of 2016 (2H16), with the bulk of air passenger growth coming from international hub airports. All but one major U.S. carrier has seen positive traffic growth through the first part of 2016, though a wide range of performance continued. JetBlue (12.1%) and Southwest Airlines (7.8%) led the way with strong increases in revenue passenger miles while increases among American Airlines (1.9%) and United Airlines (-0.1%) were more marginal.

Ports nationwide will continue to benefit from a stronger dollar driving imports, with 20-foot equivalent units (TEUs) growing at a level above GDP for the 1H16. A primary focus for ports remains “big ship readiness”. That said, shippers, logistics providers and ports will be keeping close watch over the expanded Panama Canal, which opened for commercial traffic this year. While large-scale shifts in cargo are not expected, some adjustments are possible.

As for toll roads, low fuel prices have boosted growth in traffic (6.3%) and revenue (7.0%) for the 1H16. The Southeast and Southwest U.S. have and will continue to lead in traffic performance. The higher rate of growth in revenues is reflective of typical inflationary toll rate increases, which Fitch expects to average roughly 2% over time.

A degree of uncertainty always remains for the long-term direction of the broader economy.

The Transportation Trends report includes an expanded data set in its appendices, including six-month year-to-date 2016 volume and revenues, six-month percentage change year-over-year for volume and revenue, 2015 full year volume and revenues, 2010-2015 five-year compounded annual growth rates, and recessionary peak-to-trough data. ‘U.S. Transportation Trends’ is available at ‘www.fitchratings.com’ or by clicking on the above link.

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Fitch: State Housing Finance Agencies' Assets Continue to Decline While Equity Increases.

Fitch Ratings-New York-22 September 2016: Despite balance sheet contractions, State Housing Finance Agencies (SHFA) have increased overall equity, according to a Fitch Ratings report.

In FY 2015, aggregate adjusted equity rose 2.6% from FY 2014 levels and increased 15.9% from FY 2010 levels.

Marking the fifth straight year of across-the-board declines, aggregate SHFA assets decreased by 0.8%; aggregate debt fell by 2.9%; and aggregate loans declined by 1.8%. Albeit at a reduced rate of decline compared with recent fiscal years, these decreases are reflective of the economic and mortgage-lending environments during that period and the shift in SHFAs' business model in response.

"FY 2015 contained the same challenges for SHFAs as the past several years. Low interest rates continued to suppress investment income and low conventional mortgage rates decreased the volume of SHFA-issued debt for originating new whole loan mortgages," said Ryan Pami, Associate Director.

"SHFAs sought other ways to remain profitable, such as originating loans through the to-b--announced market, utilizing direct sales of MBS and issuing MBS pass-through instruments. Despite the challenging environment, FY 2015 results demonstrated that SHFAs are financially sound, as median ratios, such as Net Interest Spread, Net Operating Revenue and Debt-to-Equity (DTE), continued to trend positively."

Leverage ratios continued to improve as the median adjusted DTE ratio declined to 3.1x in FY 2015 from 3.4x in FY 2014. This is significantly lower than the five-year average median and the FY 2010 median, which were 3.9x and 5.5x, respectively, and now stands as the lowest median DTE ratio in the past decade.
For more information, a special report titled "State Housing Finance Agencies – Peer Study" is available on the Fitch Ratings web site at www.fitchratings.com.

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Fitch on Dedicated Tax Bonds.

Palomar Health, CA – Impact of Pledged Special Revenue Analysis on GO Bonds

Amy Laskey, Jim LeBuhn and Tom McCormick on Monday, September 26th discussed Palomar Health and Fitch's views on dedicated tax bonds.

Listen to the Audio.

Battle Over Munis Moves to Senate.

WASHINGTON — A bipartisan group of senators is pushing to include municipal bonds in bank-safety rules, the latest wrinkle in a continuing fight over how safe—and salable—the debt of states and localities would be in another financial crisis.

Sens. Mark Warner (D., Va.), Charles Schumer (D., N.Y.) and Mike Rounds (R., S.D.) are set to introduce legislation on municipal bonds this week, according to Senate aides. The bill aims to open the door for big U.S. banks to count municipal bonds as liquid assets under rules completed in 2014

that were designed to ensure Wall Street firms have enough cash during a crisis to fund their operations for 30 days.

The Senate legislation would place municipal bonds on the lowest rung of the "high quality liquid assets" category. That means they would be treated on par with corporate bonds, but not as favorably as under related legislation approved by the House early this year.

"We must ensure a continued and reliable access to capital markets for our local governments," Mr. Warner said in a written statement. "This legislation represents a compromise that achieves that while appropriately balancing concerns for the long term stability of our financial system."

The rules, slated to go into effect next year, are aimed at making banks hold more cash or securities that are easy to sell. The Federal Reserve and two other bank regulators had originally decided debt issued by states and localities didn't make the cut—prompting a backlash from banks, lawmakers and states and localities who warned the move would make the bonds less attractive and raise borrowing costs for municipalities.

The Fed completed amendments in April to allow some investment-grade municipal bonds to qualify. But the two other regulators involved in the rules—the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corp.—haven't followed suit.

Aides to Senate lawmakers say their bill was scaled back from the House version to gain broad support for it in the Senate, though it is unclear if there is sufficient time in the remaining year to advance the bill.

Sen. Richard Shelby (R., Ala.), chairman of the Senate Banking Committee, indicated earlier this year that he was reluctant to second-guess banking regulators that originally excluded municipal bonds when they wrote the rules in 2014. But an aide to Mr. Shelby said he wouldn't object to the coming bill as it incorporates changes the Fed already adopted in its version of the rules.

Banks underwrite muni bonds, buy them as investments and sell them to clients. Lenders have played an increasingly central role in the thinly traded, $3.7 trillion market and are now the biggest buyers of municipal debt, according to Municipal Market Analytics Inc., a research firm.

Municipal officials have generally applauded the Fed's willingness to make changes to the rules but say legislation is necessary, largely because banking firms typically hold municipal debt in units that are overseen by the other policy makers involved in the rules, particularly the OCC, which regulates national banks.

Officials at the OCC remain dismissive of including the municipal bonds in the rules and don't believe the debt is sufficiently liquid, according to people familiar with their thinking. The FDIC is waiting until the rules go into effect next year before considering amending its version, according to people familiar with that agency.

While the Senate bill would rank municipal debt similarly to the Fed's amended rules—allowing the banks to count 50% of the bonds' face value when including them in their funding buffers—the legislation would allow banks to include more types of municipal bonds, a Senate aide said.

These include revenue bonds, or securities backed by a specific revenue stream, that comprise the bulk of debt issued by states and local governments but that are kept out of the current Fed version of the rules.

The House bill, meanwhile, is broader than both the Senate bill and the Fed's version of the rules,

allowing banks to count 85% of the bonds' face value.

To date, banks have by and large continued to hold lots of municipal bonds despite the rules, in part because they are seen as less risky than corporate debt and are priced competitively to other types of debt, according to bank officials. If interest rates rise this year, banks are expected to begin to pare their muni holdings.

Corrections & Amplifications:
An aide to Sen. Richard Shelby (R., Ala.), chairman of the Senate Banking Committee, said he wouldn't object to the coming municipal bond legislation. An earlier version of this story said an aide to Mr. Shelby said he would support the bill. Also, these comments were made by an aide to Sen. Shelby. Due to an editing mistake, an earlier correction to this story erroneously cited Sen. Shelby for these remarks.

THE WALL STREER JOURNAL

By ANDREW ACKERMAN

Updated Sept. 27, 2016 10:27 a.m. ET

Write to Andrew Ackerman at andrew.ackerman@wsj.com

NY Updates Levels of Municipal Financial Stress.

ALBANY, N.Y. — New York's comptroller reports eight municipalities were under "significant" fiscal stress last year, with low fund balances and operating deficits, while another 14 were under moderate stress and 18 were considered susceptible.

The eight are the counties of Monroe, Broome, Franklin and Rockland; the cities of Port Jervis and Albany; and the towns of Tuxedo and Parish.

Comptroller Thomas DiNapoli says the fourth annual report shows it can be difficult for localities to overcome problems years in the making.

Each year, 19 municipalities have been designated.

The 2015 financial information was provided by nearly 1,000 municipalities whose fiscal year ended Dec. 31.

That includes the counties and towns, 44 cities and 10 villages, though 62 failed to file information in time to be scored the past three years.

Associated Press

Updated Sept. 27, 2016 12:41 p.m. ET

Chicago's Struggling Schools Made Wall Street $110 Million From $763

Million in Bonds.

J.P. Morgan, Nuveen invest in school board's bonds at big profit

The Chicago school system needed money—fast. Two Wall Street players saw an opportunity to invest.

J.P. Morgan Chase & Co. and Chicago-based Nuveen Asset Management have made realized and paper profits exceeding $110 million on purchases this year of $763 million in Chicago Public Schools bonds. The school system has said it needed the money to replenish its dwindling coffers before the new school year and to build and repair facilities.

The terms of the bond sales highlight the choices the school district faces after years of pension shortfalls and relying heavily on borrowing. The 397,000-student school district struggled to sell municipal bonds in February until Nuveen bought about one-third, and the district decided in July to borrow directly from J.P. Morgan for fear that investors might balk again, a spokeswoman for the Chicago Board of Education said.

"CPS did not have the luxury of waiting longer to demonstrate to the market that the progress we were making was real," said Ronald DeNard, the school district's senior vice president of finance, in an emailed statement about the bonds purchased in July by J.P. Morgan.

J.P. Morgan, the country's largest bank by assets, made a 9.5% profit on $150 million in bonds it bought in July and sold in September, or 82% annualized. Nuveen, an investment firm managing $160 billion, has bought $613 million in bonds since February for a total return, including price gains and interest payments, of about 25%. That is almost 50% on an annualized basis, an especially large gain at a time of near-zero interest rates.

The school system's bonds are a favorite for John Miller, Nuveen's co-head of fixed income, who said the firm bought when the market feared a default, a concern he called overblown. "At the end of day, this school system is critically important to Chicago—to the whole country really," he said.

Its bonds are rated B3 by Moody's Investors Service and traded as low as 73 cents on the dollar in March before rebounding to about 90 cents in September. CPS said the bond sales facilitated much-needed fixes like lead abatement and classroom construction, though they increased the school system's already heavy debt load and its annual interest payments.

"We took a period of market risk on behalf of our client when they needed it most and the market has recognized their improved financial position," a J.P. Morgan spokeswoman said.

Chicago's school district operates on a budget of $5.5 billion with a below-investment-grade, or junk, credit rating on nearly $7 billion of bonds. Its teachers union is threatening to strike, in part, over proposed changes to its pension plan, which has a nearly $10 billion funding gap. The school system's rainy-day fund is nearly empty and relies on short-term borrowing.

"J.P. Morgan and Nuveen are taking advantage of a distressed school district at the expense of our most vulnerable students," said Jackson Potter, staff coordinator at Chicago Teachers Union.

Nuveen held few Chicago Public School bonds in recent years but has been watching its prices closely since May 2015, when Moody's cut its credit ratings of the school board and the city of Chicago to junk.

The investment company, which now owns about $806 million of the school district's bonds,

dedicated an analyst to cover the district full time to better understand its capacity to increase revenue and the likelihood of a bankruptcy filing.

Prices of outstanding Chicago school bonds were hit in 2013 and 2015 after defaults by Detroit and Puerto Rico. Illinois Gov. Bruce Rauner called for a state takeover of the school system and for a potential bankruptcy filing over the past year and prices fell below 75 cents on the dollar.

Nuveen determined that the default risk was far lower than that implied by the bond prices. When J.P. Morgan was struggling to find buyers of $725 million in bonds in February, the fund manager agreed to buy about 36% of the issue at about 84 cents on the dollar.

Mr. Miller continued buying after and now owns 60% of the bonds, making it the single largest investment in the $15 billion Nuveen High Yield Municipal Bond Fund. Nuveen has made unrealized gains of about $103.3 million on all the CPS bonds it owns, a company spokeswoman said.

Demand for Chicago Board of Education debt grew over the summer as investors gained confidence that the school board could plug much of its 2017 budget gap with budget cuts, state aid and new tax revenues. Market conditions also improved significantly, sending prices of municipal bonds with junk credit ratings up and pushing their yields down to about 4.6% in early July, a 17-year low, according to the S&P Municipal Bond High Yield Index.

Still, when the school district turned to J.P. Morgan for more money in July, it decided to sell the bonds directly to the bank to avoid the risk that investors would reject it. Instead, demand for the bonds rose throughout the summer, and J.P. Morgan sold all of the debt for a $12 million profit in September, Wall Street Journal analysis of data from the Municipal Securities Rulemaking Board shows.

“You’ve gone from having maybe two to three people being interested in these deals to all of a sudden having 20 investors interested,” said Mr. Miller of Nuveen.

J.P. Morgan committed to hold the $150 million in bonds it purchased for about six weeks until the board of education prepared documentation allowing them to be sold to institutional investors.

The certainty J.P. Morgan provided came with a high price: The bank paid 91 cents on the dollar for the debt at a yield of 7.25%, much higher than the approximately 6% yield on the school board’s outstanding bonds at the time. It sold the debt at prices as high as 102 cents on the dollar in early September and its trading profits, plus a $1.2 million purchaser’s fee, amount to the 9.5% return in six weeks.

J.P. Morgan has a longstanding relationship with Chicago Public Schools and is the top underwriter of its bonds over the past 10 years, according to data from Thomson Reuters. The bank views the school board as a high-priority client that it understands well and is willing to support its short- and long-term capital needs, the bank spokeswoman said.

THE WALL STREET JOURNAL

By MATT WIRZ and HEATHER GILLERS

Updated Oct. 2, 2016 11:31 p.m. ET

—Aaron Kuriloff
contributed to this article.

Write to Matt Wirz at matthieu.wirz@wsj.com and Heather Gillers at heather.gillers@wsj.com

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Obstacles Abound as 2 Poor U.S. Cities Consider Merging.

CLEVELAND — Two of the country's poorest cities are talking about a merger they say could help both. But Cleveland could need a sizeable boost in taxpayer dollars to absorb East Cleveland, a place so impoverished that some residents fill their own potholes.

Cleveland officials are looking at development possibilities that exist in its struggling neighbor East Cleveland. But Cleveland has its own problems. The warm glow of positive publicity after its successful turn hosting the Republican National Convention cannot gloss over its big-city ills — a shrinking population, entrenched poverty and neighborhoods beset with decay and violent crime.

In East Cleveland, City Council members had long balked at the idea of dissolving their city. But with no viable solution short of an economic miracle in sight, they agreed last month to pursue annexation without a list of demands — such as continuing to receive their salaries as members of an "advisory council" after annexation — originally submitted to the dismay of Cleveland officials.

"Without a revenue stream, I don't know how we would exist," said Thomas Wheeler, president of East Cleveland City Council. He and mayor Gary Norton agreed their city is out of options and needs money now.

East Cleveland has millions in unpaid bills and hasn't been able to borrow money on the municipal credit market for years. The city can barely make payroll even after deep cuts in its workforce. Wheeler said only five firefighters were available to respond to a recent house fire.

East Cleveland residents tired of crumbling streets, abandoned buildings and anxious waits for emergency services appear ready to be absorbed by Cleveland in the hope they will receive basic city services long in short supply.

"They don't fix anything around here," Robert Occhionero said.

Occhionero said residents on Savannah Avenue have been filling potholes as best they can to avoid being awakened by the sound of vehicles rattling through them.

Nearby, abandoned homes line the street that Morris Glenn and Anthony Donner call home. Donner cuts the grass on one of the vacant lots across Northfield Avenue because the city doesn't. Donner said he also clears storm sewer grates to try stopping their street from turning into a riverbed during heavy rains.

The men said East Cleveland has become so dangerous that people have armed themselves, knowing it could be a long wait for police. Call 911, they said, and there's a chance you'll be put on hold.

"Nobody wants to live here," Glenn said. "I'm only here by necessity."

Despite these problems, some Cleveland politicians are enthusiastic about the possibility of a merger, citing development possibilities along a main thoroughfare that connects East Cleveland with Cleveland's fastest-growing neighborhood, University Circle, the home of research hospitals, Case Western Reserve University and most of the city's cultural institutions.

Negotiations by a commission consisting of three members from both cities could begin sometime in the next few months. One thing officials from both cities agree on is the state of Ohio needs to provide millions of dollars to repair East Cleveland's crumbled infrastructure and to stanch the city's financial bleeding.

"It's a small city with big city problems," Kevin Kelley, Cleveland council president, said of its poor neighbor. "We don't have the resources to deal with what problems they've got."

There are few signs Ohio is willing to help. Ohio Auditor Dave Yost this year asked the Legislature to approve $10 million to help East Cleveland, a request that lawmakers summarily rejected. Gov. John Kasich isn't in a giving mood, either, despite the state's $2 billion rainy day fund that has been bolstered by deep cuts in funding to Ohio communities since he took office in 2010.

"The city of East Cleveland's complicated financial struggles have spanned decades and despite everyone's best efforts, little progress has been made to pull the city out of fiscal emergency," Emmalee Kalmbach, a Kasich spokeswoman, said in a statement.

Cleveland voters are being asked to raise the income tax from 2 percent to 2.5 percent in November to close a projected $40 million budget deficit and to cover the cost of implementing a federal court-monitored consent decree aimed at reforming the Cleveland police department.

"We have a lot of balls in the air in Cleveland," Kelley said. "We have to approach this responsibly to make sure this is in the interest of all parties."

By THE ASSOCIATED PRESS

SEPT. 24, 2016, 11:39 A.M. E.D.T.

Senate Bill Would Count Munis Toward Bank Liquidity.

CHICAGO — Bonds sold by U.S. states, cities, schools and other issuers in the municipal market could be held as liquid assets by banks under legislation introduced on Tuesday in the U.S. Senate, bolstering the case for purchasing the debt while helping financial institutions weather market crises.

The bipartisan measure would classify high-quality municipal bonds at the same level as corporate debt, allowing banks to use munis to comply with new 30-day federal liquidity requirements.

Federal rules approved in 2014 and effective next year are aimed at ensuring big banks will be able to access sufficient cash during a financial crisis. But the rules excluded muni bonds from the types of securities that count as high quality liquid assets, or HQLAs.

Muni debt issuers fear the exclusion would deter banks from buying muni debt, hurting their ability to fund everything from schools and bridges to water treatment plants and hospitals.

"If banks retreat from the muni-bond market, it could choke off a critical source of investment on which our cities and localities rely. This bill protects the stability of our markets while providing continued access to muni bonds for local governments," Senator Chuck Schumer, a New York Democrat, said in a statement.

Schumer, along with Senators Mark Warner, a Virginia Democrat, and Mike Rounds, a South Dakota Republican, led a group sponsoring the legislation.

Putting munis on par with corporate debt "would be acceptable," according to Washington State Treasurer James McIntire, president of the National Association of State Treasurers (NAST), which has been pushing for the inclusion of munis under the rules.

A House bill would also allow banks to count munis toward banks' liquidity but at a higher face value, 85 percent, versus 50 percent in the Senate bill, according to NAST.

By REUTERS

SEPT. 27, 2016, 6:39 P.M. E.D.T.

(Reporting by Karen Pierog; editing by Daniel Bases, Bernard Orr)

S&P Cuts Illinois' Credit Rating on State's 'Weak' Management.

CHICAGO — S&P Global Ratings dropped Illinois' credit rating one notch to BBB on Friday and warned it could fall further absent a long-term solution that deals with the state's chronic structural budget deficit and pension woes.

"The downgrade reflects our view of continued weak financial management and increased long-term and short-term pressures tied to declining pension funded levels," said S&P analyst John Sugden in a statement.

Illinois, the lowest-rated U.S. state, is in its second straight fiscal year without a complete budget due to an impasse between its Republican governor and Democrats who control the legislature.

The impasse, along with a $111 billion unfunded pension liability and a growing pile of unpaid bills have pounded Illinois' credit ratings into the low-investment grade triple-B level.

S&P said another downgrade could follow "should the state continue to demonstrate a lack of ability or willingness to adopt a long-term structural budget solution that also incorporates a credible approach to its long-term liabilities."

The credit rating agency added that continued political gridlock could affect Illinois' ability to pay off its debt.

"Although we don't foresee this in the immediate

future, challenges to the state's debt payment priority could emerge should liquidity dwindle to the point where it affects the state's ability to provide essential services," S&P said.

The downgrade to just two notches above the junk level came as the nation's fifth-largest state prepares to sell as much as $1.7 billion of new and refunding general obligation (GO) bonds in October despite having to pay a hefty penalty in the U.S. municipal market.

Governor Bruce Rauner's office said S&P's report underscores the need for "tangible" pension reform.

“It’s time for the super majority in the legislature to recognize the current pension system is fatally flawed and requires immediate action,” his office said in a statement. “Governor Rauner continues to fight for pension reform and other fundamental, structural reforms that will free up resources to help balance the budget.”

The Illinois Supreme Court in 2015 voided on state constitutional grounds a 2013 law aimed at curbing pension costs.

Earlier this week, Illinois’ GO ratings were affirmed at Baa2 by Moody’s Investors Service and BBB-plus by Fitch Ratings, which warned of a downgrade should the state fail to take comprehensive action in January towards solving its fiscal problems.

By REUTERS

SEPT. 30, 2016, 10:54 P.M. E.D.T.

(Reporting By Karen Pierog; Editing by Christian Schmollinger)

GASB Webinar on Fiduciary Activities Project.

Norwalk, CT, September 26, 2016 — The Governmental Accounting Standards Board (GASB) today announced the opening of registration for an upcoming webinar that provides an overview of its proposed guidance on fiduciary activities. IN FOCUS: Update on GASB’s Fiduciary Activities Project will take place on Tuesday, October 11, 2016, from 2:00 to 3:15 p.m. Eastern Daylight Time.

Participants in the live broadcast (which is offered free of charge to those who preregister) will be eligible for up to 1.5 hours of Continuing Professional Education (CPE) credits. (Please note that CPE credit is not available for group viewing of the live broadcast.)

The webinar will be moderated by David R. Bean, GASB director of research and technical activities, and Dean Mead, GASB senior research manager. Featured speakers will be Lisa Parker, GASB senior project manager, and Scott Reeser, GASB supervising project manager.

The purpose of the webinar is to update and receive feedback from stakeholders on the GASB’s fiduciary activities project. The Board has deliberated the feedback received on the Exposure Draft, *Fiduciary Activities*, and has made tentative changes to the proposed guidance to address many of the issues raised.

The webinar will cover the following topics:

- An overview of the fiduciary activities project
- An update on the tentative changes the Board has made, including the guidance on how to identify and report fiduciary activities
- Resources that will be available to help with implementation questions
- Audience question-and-answer session.

An archive of the webinar will be available on the GASB website through January 8, 2017. (CPE credit will not be available to those who view only the archived webcast.)

For more information about the webinar, visit www.gasb.org.

GASB Proposes Omnibus Statement Addressing a Broad Range of Practice Issues.

Norwalk, CT, September 26, 2016 — The Governmental Accounting Standards Board (GASB) has proposed guidance to address a diverse set of accounting and financial reporting issues identified during the implementation and application of certain GASB pronouncements.

The issues covered by the Exposure Draft, Omnibus 201X, include:

- Blending a component unit in circumstances in which the primary government is a business-type activity currently reporting a single column for financial statement presentation
- Reporting goodwill and "negative" goodwill
- Classifying real estate held for both operations and investment purposes by insurance entities
- Measuring certain money market investments and participating interest-earning investment contracts at amortized cost
- Timing of the measurement of pension and other postemployment benefits (OPEB) liabilities and related expenditures recognized in financial statements prepared using the current financial resources measurement focus
- Recognizing on-behalf payments for pensions or OPEB in employer financial statements
- Presenting payroll-related measures in required supplementary information for purposes of reporting by OPEB plans and employers that provide OPEB
- Classifying employer-paid member contributions for OPEB
- Accounting for and reporting OPEB provided through certain multiple-employer defined benefit OPEB plans, and
- Simplifications related to the alternative measurement method for OPEB.

The Exposure Draft is available on the GASB website, www.gasb.org. Stakeholders are encouraged to review and provide comments by November 23, 2016.

NFMA Recommended Best Practices in Charter School Disclosure.

The NFMA Disclosure Committee released the draft Recommended Best Practices in Disclosure: Charter School Disclosure (Primary Offering & Continuing Disclosure).

Comments will be taken through November 30, 2016.

To view the paper, click here.

To read the press release, click here.

Discover New GFOA Resource Center on Financial Resiliency.

GFOA's Resiliency Task force has produced numerous articles, case studies, and other resources on Financial Resilience.

Access the Resiliency Resource Center.

S&P U.S. Not-For-Profit Health Care Stand-Alone Hospital Median Financial Ratios - 2015 vs. 2014

Similar to the overall medians for stand-alone hospitals and health care systems combined, we saw stronger operating margins for stand-alone hospitals in 2015 at each rating category, offset by consistently softer non-operating revenue compared to 2014.

Continue reading.

Sep. 21, 2016

S&P U.S. Not-For-Profit Health Care System Median Financial Ratios - 2015 vs. 2014

System medians, similar to the stand-alone medians, demonstrated operating margin improvement in 2015, which when combined with softer non-operating income produced modest coverage gains in the higher rating categories, with slight declines in the lower rating categories.

Continue reading.

Sep. 21, 2016

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

Speculative grade ratings are defined as those rated ‘BB+’ or below. Within speculative grade, a majority of the health care organizations are rated in the ‘BB’ category with fewer in the ‘B’ and ‘CCC’ categories.

Continue reading.

Sep. 21, 2016

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

S&P Global Ratings defines a small stand-alone acute care hospital, which is a subset of our stand-alone hospital universe, as one having net patient service revenue below $125 million.

Continue reading.

Sep. 21, 2016

S&P: U.S. Not-For-Profit Acute Health Care Ratios Are Calm On The Surface But Turbulent Underneath.

The overall financial performance of U.S. not-for-profit acute health care organizations rated by S&P Global Ratings continued the improvement we saw last year when we returned the sector outlook to stable from negative, albeit at a more reserved pace.

Continue reading.

Sep. 21, 2016

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

Children’s hospital ratios are generally rated higher on the rating spectrum than stand-alone hospitals and more in line with health care systems even though most are stand-alone providers.

Continue reading.

Sep. 21, 2016

Wells Fargo May Exit Public Finance, Court Street Group Says.

Wells Fargo & Co. may be forced to leave the municipal-debt underwriting business for a short period of time because of the backlash from the bank’s mishandling of client accounts, according to Court Street Group, a New York-based research and consulting firm.

- No consideration of leaving the business, Wells Fargo spokesman Gabriel Boehmer says in an e-mail response
- “We believe the long-term prospects for Wells Fargo in municipal finance remain very promising. We expect to continue to work closely with our clients in municipal finance and remain committed to the industry as a department and as a firm,” Boehmer says
- Impact of California’s ban of Wells Fargo in bond deals may exceed that of UBS Group AG exiting muni underwriting, says report by Court Street’s Matt Posner, Bob Donahue and Joseph Krist
- Other states may follow suit and bar Wells Fargo from managing bond deals, report says
- Firm sees less demand for high-grade general obligations from states as the bank pulls back, report says

Bloomberg Markets

by Romy Varghese

September 30, 2016 — 11:40 AM PDT Updated on September 30, 2016 — 2:24 PM PDT

Chicago to Pull $25 Million From Wells Fargo After Scandal.

Chicago Treasurer Kurt Summers plans to divest $25 million the city has invested with Wells Fargo & Co. after the company admitted to opening potentially millions of bogus client accounts, joining state officials who have pulled business from the bank because of the scandal.

Summers, whose office manages the city's $7 billion investment portfolio, plans to "unwind these assets as expeditious as possible in a fashion that is prudent and will protect taxpayer money,'' according to a statement from his office sent to Bloomberg News.

"The City Treasurer is proud to stand with working families from Chicago and across the nation by divesting in Wells Fargo & Co.,'' according to the e-mailed statement. "Chicago deserves better.''

The move comes amid mounting pressure on Wells Fargo, which is facing a national furor over the fake accounts debacle. After California's treasurer barred the bank from bond and investment deals last week, Illinois Treasurer Michael Frerichs said he plans to take similar steps. On Monday, he said he's suspending $30 billion in investment activity from Wells Fargo, which won't be a broker dealer for the state for at least a year.

Illinois won't be using Wells Fargo on any new bond sales until further notice, according to Governor Bruce Rauner's administration, which hasn't done any bond business with the bank.

Council Measure

"We are very sorry and take full responsibility for the incidents in our retail bank," said Gabriel Boehmer, a spokesman for Wells Fargo. "We have already taken important steps, and will continue to do so, to address these issues and rebuild the city's trust."

Chicago may take further steps to sever relations with the bank. Alderman Edward Burke, chair of the city council's finance committee, introduced a measure on Sept. 30 that would bar Chicago from doing business with Wells Fargo for the next two years. The plan, which will be considered at a finance committee meeting on Oct. 5, would prevent Chief Financial Officer Carole Brown, the comptroller and treasurer from using Wells Fargo as a municipal depository, bond underwriter, trustee in loan agreement, investment broker or financial adviser, according to a statement. The plan would also "encourage" pension funds to divest their Wells Fargo investments.

Chicago has paid Wells Fargo more than $19 million since 2005, according to Burke's office.

Bloomberg Markets

by Elizabeth Campbell

October 3, 2016 — 7:06 AM PDT Updated on October 3, 2016 — 9:20 AM PDT

California Suspends 'Business Relationships' With Wells Fargo.

California, the nation's largest issuer of municipal bonds, is barring Wells Fargo & Co. from underwriting state debt and handling its banking transactions after the company admitted to opening potentially millions of bogus customer accounts.

The suspension, in effect immediately, will remain in place for 12 months. A “permanent severance” will occur if the bank doesn’t change its practices, State Treasurer John Chiang said Wednesday. The state also won’t add to its investments in Wells Fargo securities. Chiang already replaced Wells Fargo with Loop Capital for two muni deals totaling about $527 million that will be sold next week.

“Wells Fargo’s venal abuse of its customers by secretly opening unauthorized, illegal accounts illegally extracted millions of dollars between 2011 and 2015,” Chiang said in a news conference in San Francisco. “This behavior cannot be tolerated and must be denounced publicly in the strongest terms.”

The move by California is the latest to punish the bank, which is facing a national furor over the fraudulent accounts. San Francisco, the home of Wells Fargo, last week removed it from a banking program for low-income residents. Authorities including the U.S. Consumer Financial Protection Bureau fined Wells Fargo $185 million on Sept. 8 for potentially opening about 2 million deposit and credit-card accounts without authorization. Chief Executive Officer John Stumpf has forfeited $41 million in pay.

Connecticut decided last week to add Morgan Stanley to serve as lead underwriter with Wells Fargo on a state bond issue planned for next month to help ensure a successful sale, according to the state treasurer’s office. Connecticut is reviewing its relationship with the bank. New York’s Metropolitan Transportation Authority voted to hold off on approving Wells Fargo as a underwriter until the agency completes its analysis of the company’s practices, according to an online broadcast of a board meeting Wednesday.

Federal prosecutors in New York and San Francisco have opened criminal inquiries, a person familiar with the matter has said. Wells Fargo already faces a raft of lawsuits by fired or demoted workers, customers and investors.

Chiang, a Democrat who’s running for governor in 2018, oversees about $2 trillion in banking transactions a year and manages a $75 billion investment pool that includes $800 million in Wells Fargo securities. Chiang said the effect on the bank is “significant” since he targeted the most profitable lines of business. Wells Fargo made $1.7 million from underwriting three bond deals, according to his office.

Gabriel Boehmer, a spokesman for Wells Fargo, said the bank has “diligently” worked with the state for the past 17 years.

Underwriter Rankings

“We certainly understand the concerns that have been raised. We are very sorry and take full responsibility for the incidents in our retail bank,” Boehmer said in an e-mailed statement. “We have already taken important steps, and will continue to do so, to address these issues and rebuild your trust.”

Wells Fargo was the second-largest underwriter of municipal debt in California in the first half of the year, according to data compiled by Bloomberg. The firm, which trailed Citigroup Inc., handled sales of $3.9 billion in securities, or 11 percent of total issuance.

The bank ranked fifth in overall municipal-bond underwriting this year through June, selling $13.7 billion in debt, for 5.9 percent market share.

Chiang, who called for the resignation of Stumpf, said other state treasurers should also withhold business from the company. “Those that have the financial wherewithal, those who have the

courage, I think they ought to follow suit," he said.

Bloomberg Markets

by Romy Varghese

September 28, 2016 — 11:40 AM PDT Updated on September 28, 2016 — 5:11 PM PDT

Illinois to Suspend Wells Fargo From Bond, Investing Work.

Illinois is joining California in suspending Wells Fargo & Co. from handling "billions" of dollars in investment work and the underwriting of state debt after the company admitted to opening potentially millions of bogus customer accounts.

Treasurer Michael Frerichs said in a statement the he will announce details of the ban during a news conference in Chicago on Monday. The suspension includes municipal-bond underwriting, according to Greg Rivara, a spokesman for the treasurer.

"In isolation, Illinois is not as significant as California, but its part of a mosaic that's starting to take form," Charles Peabody, a managing director at Compass Point Research LLC, said in a telephone interview, noting that it's surprised industry watchers that the cross-selling scandal has begun to impact Wells Fargo's corporate bank. "And the mosaic that's being built out does not paint a bright picture for 2017 earnings."

The pullback comes as pressure builds on Wells Fargo Chief Executive Officer John Stumpf and the bank's board to resign because of the fake-account debacle. Stumpf told Congressional lawmakers this week that the San Francisco-based bank was working to help any customers who where hurt by its actions and is "deeply sorry" that Wells Fargo broke clients' trust. Stumpf has forfeited $41 million in pay.

"We certainly understand the concerns that have been raised," said Gabriel Boehmer, a spokesman for Wells Fargo. "We are very sorry and take full responsibility for the incidents in our retail bank. We have already taken important steps, and will continue to do so, to address these issues and rebuild trust with the State of Illinois."

Authorities including the U.S. Consumer Financial Protection Bureau fined Wells Fargo $185 million on Sept. 8 for potentially opening about 2 million deposit and credit-card accounts without authorization. Federal prosecutors in New York and San Francisco have opened criminal inquiries, a person familiar with the matter has said. Wells Fargo already faces a raft of lawsuits by fired or demoted workers, customers and investors.

California Treasurer John Chiang suspended Wells Fargo for one year on Wednesday and called for Stumpf to quit. Connecticut decided last week to add Morgan Stanley to serve as lead underwriter with Wells Fargo on a state bond issue planned for next month to help ensure a successful sale. Other states such as Alaska and Oregon said they're maintaining business with Wells Fargo.

Wells Fargo wasn't ranked among the top four underwriters of municipal debt in Illinois during the first half of 2016, according to data compiled by Bloomberg. The company was the second-largest underwriter in California during that period, handling sales of $3.9 billion in securities, or 11 percent of total issuance.

The bank ranked fifth in overall municipal-bond underwriting this year through June, selling $13.7 billion in debt, for 5.9 percent market share, according to data compiled by Bloomberg.

Bloomberg Business

by Katherine Greifeld and Elizabeth Campbell

September 30, 2016 — 2:49 PM PDT Updated on September 30, 2016 — 5:11 PM PDT

California Replaces Wells Fargo as Underwriter in Two Bond Sales.

SAN FRANCISCO — The California State Treasurer's Office said it replaced Wells Fargo & Co as the lead underwriter on two bond sales that had originally been for scheduled for Tuesday, a day before the state announced sweeping sanctions against the company.

Management of the two sales, totaling nearly $730 million, was replaced by Jefferies LLC in one sale and by Loop Capital Markets LLC and Raymond James & Associates, Inc in the other.

On Wednesday, State Treasurer John Chiang announced the suspension of Wells Fargo as a managing underwriter on state negotiated bond sales for the next 12 months. California is the nation's largest issuer of municipal debt.

Wells Fargo agreed on Sept. 8 to pay $190 million to settle a case by California prosecutors and federal regulators over what were potentially more than 2 million unauthorized credit card and deposit accounts opened by branch employees scrambling to meet sales quotas. The bank said it fired 5,300 employees over the issue.

Tuesday's postponed bond sale had consisted of $200 million of general obligation index floating rate bonds. The state replaced Wells Fargo with Jefferies LLC as the senior manager, and the sale is now scheduled for Thursday.

The second sale was nearly $528 million of lease revenue refunding bonds from the State Public Works Board, issued to refund certain outstanding debts. Loop Capital and Raymond James will now manage the sale, which is scheduled to take place on Oct. 5.

Chiang, who oversees nearly $2 trillion of California's annual banking transactions and manages a $75 billion investment pool, called for the state on Wednesday to suspend Wells Fargo's "most highly profitable business relationships with the state of California."

Over the past 21 months, Wells Fargo had served as senior manager in three California deals, resulting in $1.7 million of profits, according to the Treasurer's Office.

By REUTERS

SEPT. 28, 2016, 7:21 P.M. E.D.T.

(Reporting by Robin Respaut; Additional reporting by Dan Freed in New York; Editing by Peter Cooney)

Illinois and Chicago Eye Wells Fargo Business Bans.

CHICAGO — Wells Fargo & Co faces possible bans from doing business with the city of Chicago and the state of Illinois in the wake of its sales scandal that erupted earlier this month.

Alderman Edward Burke, who heads the Chicago City Council's finance committee, introduced an ordinance on Friday that would suspend the bank from acting in several capacities, including as a municipal depository, bond underwriter and financial adviser.

"The city council should not engage in any business for the next two years with this institution that has deceived, defrauded and duped its customers," Burke said in a statement.

Illinois Treasurer Michael Frerichs set a Monday news conference to announce "plans to suspend billions of dollars in investment activity with Wells Fargo," according to an advisory from his office on Friday.

Wells Fargo staff opened checking, savings and credit card accounts without customer say-so for years to satisfy managers' demand for new business, according to a $190 million settlement with regulators reached on Sept. 8. The bank said it fired 5,300 employees over the issue.

On Wednesday, California State Treasurer John Chiang announced a sweeping suspension of the state's business relationships with Wells Fargo for the next 12 months. The bank is also under pressure from Oregon's treasurer to reform its management structure and executive compensation.

U.S. lawmakers called on Thursday for Wells Fargo chief John Stumpf to resign and a top House Democrat demanded the bank be broken up because it is too big to manage.

Chicago's finance committee is scheduled to take up the proposed ordinance on Wednesday. The city has paid Wells Fargo $19.45 million in fees since 2005, according to the committee.

The bank served as senior underwriter on five Chicago bond issues totaling nearly $969 million since 2006, according to Thomson Reuters data.

Wells Fargo made the list of 15 senior underwriters tapped by Illinois this month for bond sales over the next three years. A spokeswoman for Governor Bruce Rauner declined to comment on whether his office is rethinking Wells Fargo's selection.

By REUTERS

SEPT. 30, 2016, 5:42 P.M. E.D.T.

(Reporting by Karen Pierog; Editing by Matthew Lewis)

California Suspends Ties With Wells Fargo.

Citing Wells Fargo's "venal abuse of its customers," the California treasurer took the unusual step on Wednesday of suspending many of its ties with the San Francisco bank as it continues to reel from the scandal over the creation of as many as two million unauthorized bank and credit card accounts.

The state treasurer, John Chiang, said he was suspending Wells Fargo's "most highly profitable business relationships" with the state for at least a year, including the lucrative business of underwriting certain California municipal bonds.

On Tuesday alone, he said, he had pulled Wells Fargo off two large municipal bond deals.

"How can I continue to entrust the public's money to an organization which has shown such little regard for the legions of Californians who placed their financial well-being in its care?" Mr. Chiang wrote in a letter on Wednesday to the bank's chairman and chief executive, John G. Stumpf, and the bank's board members.

Mr. Chiang said he was also suspending making any additional investments in Wells Fargo securities and would suspend the bank's work as a broker-dealer hired to buy investments on the treasurer's behalf.

The suspensions will last for one year, Mr. Chiang said, or longer if he finds evidence that Wells Fargo has "re-engaged in the same behavior" or failed to abide by the terms of a consent order it signed with the Consumer Financial Protection Bureau and the Office of the Comptroller of the Currency.

The move could cost Wells millions of dollars in banking fees because California is the largest issuer of municipal debt in the country. A state official said the suspension did not affect Wells Fargo's role in every municipal bond deal, but it would cut them out of a significant portion. In addition to overseeing bond deals, the state treasurer also manages $75 billion worth of investments.

But more than anything the move is symbolically hurtful for Wells, which has a large presence in California, particularly in San Francisco, where its top executives work and live.

Mr. Chiang, a Democrat who is running for governor in 2018, said his office had "long relied on Wells Fargo, our oldest California-based financial institution, as a partner to meet the state's investment and borrowing needs."

So far this year, California has sold about $50 billion in municipal debt out of total of about $318 billion issued nationwide, according to Municipal Market Analytics, a research firm.

Mr. Chiang noted that he sits on the board of the state's giant public pension funds, Calpers and Calstrs, which have a combined $2.3 billion invested in Wells Fargo stock and debt securities. He said he would use his position on the pension boards to push for governance changes at Wells Fargo, including separation of the chairman and chief executive roles. Currently, Mr. Stumpf holds both positions.

In a statement, the bank responded: "Wells Fargo has diligently and professionally worked with the state for the past 17 years to support the government and people of California. Our highly experienced and proven government banking, securities and treasury management teams stand ready to continue delivering outstanding service to the state."

Separately, on Thursday, Mr. Stumpf is scheduled to testify in Washington before the House Financial Services Committee, having already appeared last week before the Senate's banking panel. The responses he gave to the Senate committee investigating the bank's misdeeds were widely viewed as a disaster. Nevertheless, according to a copy of his prepared remarks, he plans to stick with the same script he used last week.

His planned testimony, which was obtained by The New York Times, is a nearly word-for-word

repetition of the introduction he prepared for last week's Senate hearing, with just one notable difference: Hastening a policy change, Mr. Stumpf plans to say that Wells Fargo will eliminate sales goals for its retail bankers by Oct. 1, three months earlier than it had planned.

Those aggressive sales goals, which pushed Wells Fargo employees to open as many accounts as possible for customers or risk losing their jobs, have been blamed for the scandal now engulfing the bank, where myriad banking and credit card accounts may have been opened without the customers' authorization.

"We decided that product sales goals do not belong in our retail banking business," Mr. Stumpf will say, according to the testimony.

As he did at the Senate hearing, Mr. Stumpf plans to say he is "deeply sorry" and will "accept full responsibility for all unethical sales practices."

Under fire over the unauthorized accounts, Wells Fargo's board announced on Tuesday that it was stripping Mr. Stumpf of unvested stock awards valued at $41 million. He will also forgo his bonus this year and a portion of his $2.8 million base salary.

The clawback of both Mr. Stumpf's compensation and that of Carrie L. Tolstedt, who until recently ran Wells Fargo's retail banking division, was a move that members of the Senate panel suggested last week. The fact that the board decided to do so right before the House hearing does not seem coincidental.

And the move to retract a portion of Mr. Stumpf's lavish compensation — at the time of Wells Fargo's latest annual disclosure, he held shares and options valued at around $247 million — has not appeased some senators who criticized Mr. Stumpf last week.

"This is a small step in the right direction, but nowhere near real accountability," Senator Elizabeth Warren, Democrat of Massachusetts, said in a statement.

She again called for Mr. Stumpf to resign, to "return every nickel he made while this scam was ongoing" and to face a criminal investigation.

On Wednesday, in what felt a bit like a warm-up for Mr. Stumpf's appearance on Thursday, the House Financial Services Committee grilled the Federal Reserve chairwoman, Janet L. Yellen, about the handling of the Wells Fargo scandal. Some lawmakers called for tougher punishment of big banks and their executives when they run afoul of the law.

"Will you at least seriously consider breaking up Wells Fargo?" asked Representative Brad Sherman, Democrat of California.

Ms. Yellen responded that regulators would hold financial institutions to "exceptionally high standards of risk management, internal controls, consumer protection."

Others on the committee continued to press the issue.

"How long does this stuff have to go on before you get outraged and take action?" asked Representative Michael Capuano, Democrat of Massachusetts. He said that the $185 million fine against Wells Fargo, which has $1.9 trillion in assets, "is barely a footnote in their annual report."

Ms. Yellen said that regulators had already begun a review of practices at all of the largest banks.

“We are undertaking a look comprehensively, not only in the consumer area but compliance generally, because there has been a very disturbing pattern of violations,” she said.

And regulators are working to complete a long-pending rule on executive compensation designed to limit excessive risk-taking at financial firms, Ms. Yellen said. “I will do everything that I can at the Federal Reserve to be ready to act on this as soon as possible,” she added.

Wells Fargo has been in crisis mode since it acknowledged this month that its employees had, over the course of several years, opened as many as 1.5 million bank accounts and 565,000 credit card accounts that may not have been approved by customers. The company has fired 5,300 employees for ethics violations.

Mr. Stumpf’s efforts to minimize these actions did not play well at last week’s Senate hearing. Facing a barrage of criticism about Wells Fargo’s leadership and what ex-employees describe as a toxic sales culture of relentless pressure to meet unrealistic goals, Mr. Stumpf maintained that the problem did not extend beyond rogue employees whose activities “did not honor our culture.”

Banking analysts were not enthusiastic about the idea of him continuing that line of argument at Thursday’s House hearing.

“Given the nearly universal assessment that Mr. Stumpf’s Senate appearance was lackluster, sticking with the script may prove imprudent,” Isaac Boltansky, an analyst at Compass Point Research & Trading, wrote in a note to clients after reading the prepared remarks.

One big question facing Mr. Stumpf is whether he will remain at the helm of the bank. Some analysts who follow the bank are beginning to openly speculate about Mr. Stumpf’s possible ouster.

“Our support for the C.E.O. is now wavering,” Mike Mayo, a banking analyst at CLSA, wrote in a research note on Monday. “His actions have been reactionary versus leading.”

THE NEW YORK TIMES

By MICHAEL CORKERY and STACY COWLEY

SEPT. 28, 2016

SEC, FINRA, MSRB to Hold Compliance Outreach Program for Municipal Advisors.

Washington, DC – The Securities and Exchange Commission (SEC), Financial Industry Regulatory Authority (FINRA), and the Municipal Securities Rulemaking Board (MSRB) today announced the opening of registration for the Compliance Outreach Program for Municipal Advisors to be held on November 10, 2016 as a live webcast on the MSRB website.

The SEC’s Office of Compliance Inspections and Examinations (OCIE) and Office of Municipal Securities are partnering with FINRA and the MSRB to sponsor the program, which will run from 3:00 p.m. to 4:30 p.m. Eastern Time. The webinar will highlight OCIE and FINRA staff examination findings on municipal advisors’ registration and give municipal advisors a detailed explanation of the registration process.

"This webinar is designed to promote compliance with municipal advisor registration rules by providing municipal advisor professionals the opportunity to hear from all three regulators on the important topics of initial and ongoing SEC and MSRB registration obligations," said Jessica Kane, Director of the SEC's Office of Municipal Securities.

"This municipal advisor outreach will take municipal advisors through the registration processes at the SEC and the MSRB to help ensure proper regulatory compliance," said Suzanne McGovern, Assistant Director of the SEC's broker-dealer and municipal advisor examination programs.

Mike Rufino, FINRA's Head of Member Regulation-Sales Practice, said, "The discussions covering the information required to complete the initial registration process and meet firms' ongoing obligations will be valuable to municipal advisors. Any firm that is uncertain as to the regulatory expectations of firms in completing and updating their municipal advisor applications will benefit from participating in the webinar."

"This program is consistent with the MSRB's goal of providing resources to municipal advisors to help them understand their regulatory obligations," said Lynnette Kelly, Executive Director of the MSRB. "Municipal advisors will benefit from hearing first-hand from our staff."

There is no cost to attend the program. Registration is open to all municipal advisor professionals. Please register for the program here.

Information on accessing the webcast will be posted on the SEC, FINRA and the MSRB websites on the day of the program. For additional information visit the SEC, FINRA, or the MSRB website.

Date: October 3, 2016
Contact: Jennifer A. Galloway, Chief Communications Officer
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MSRB Seats New Board and Announces Priorities for New Fiscal Year.

Washington, DC – On October 1, 2016, the Municipal Securities Rulemaking Board (MSRB) began its new fiscal year and seated the 21-member Board of Directors that establishes regulatory policies and oversees operations.

Colleen Woodell, a Board member since 2013, takes over as Chair with a focus on advancing transparency initiatives, clarifying dealer syndicate rules and emphasizing the role of education in market regulation. "I look forward to guiding the continued evolution of the municipal market as it adopts necessary structural and transparency changes, and ensuring that all participants operate with integrity," Woodell said. Board member Arthur Miller, who joined in 2015, serves as Vice Chair for the upcoming year.

Among the MSRB's operating objectives for FY2017 are the expected implementation of a rule requiring dealers to disclose to retail investors information about dealer compensation when buying municipal bonds from, or selling them to, investors. "Our mark-up disclosure proposal will bring the municipal market in line with the equity market when it comes to investors' understanding of the cost of their transactions," Woodell said.

The MSRB also will continue to improve the usefulness and usability of the Electronic Municipal

Market Access (EMMA®) website, with an evaluation of how it can best serve all stakeholders and the addition of features that support market transparency, including a new-issue calendar, third-party yield curves and, potentially, pre-trade price data.

In 2017, the MSRB also will expand its MuniEdPro course catalog to provide municipal market participants with high-quality, interactive educational content, and develop additional professional qualification standards for municipal advisors, including a principal exam and continuing education requirements. With respect to municipal advisor regulation, the MSRB will address advertising practices and activities of solicitor municipal advisors, and additional professional qualification requirements, including continuing education.

For the dealer community, the MSRB plans to update and clarify several uniform and fair practice rules, and scrutinize dealer syndicate practice rules for necessary changes.

The MSRB Board of Directors has 11 independent public members and 10 members from firms regulated by the MSRB, including broker-dealers, banks and municipal advisors. In March 2016, the Securities and Exchange Commission, which oversees the MSRB, approved lengthening the term of service for the MSRB Board members to four years from three. Under the new structure, four staggered classes—one class of six members and three classes of five members—will ensure consistent and manageable annual turnover.

Four standing committees—Steering, Audit, Finance, and Nominating and Governance—perform work at the direction of the Board, with responsibilities defined by their charters. See a list of MSRB Board members and their committee assignments below.

FY 2017 MSRB Board of Directors and Committee Assignments

Steve Apfelbacher – Finance (Chair) and Steering
J. Anthony Beard – Nominating and Governance
Renee Boicourt – Audit
Robert Clarke Brown – Finance, and Nominating and Governance
Julia H. Cooper – Audit
Ronald Dieckman – Nominating and Governance
Richard K. Ellis – Audit
Jerry W. Ford – Audit, and Nominating and Governance
Dall Forsythe –Finance
Richard Froehlich – Nominating and Governance
Gary Hall – Nominating and Governance, and Steering (non-voting member)
Lucy Hooper – Nominating and Governance
Mark Kim – Audit (Chair) and Steering
Kemp J. Lewis – Finance
Arthur Miller – Steering
Christopher M. Ryon – Steering and Nominating and Governance
Rita Sallis – Nominating and Governance (Chair), and Steering
Edward J. Sisk – Nominating and Governance
Patrick Sweeney – Finance
Dale Turnipseed – Nominating and Governance, and Steering
Colleen Woodell – Steering (Chair) and ex officio member of each committee

Date: October 3, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer

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MSRB Requests Comment on Establishing Continuing Education Requirements for Municipal Advisors.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) is seeking comment on a draft rule amendment to establish continuing education (CE) requirements for municipal advisors. The CE requirements would complement the MSRB's professional qualification program for municipal advisors, including an examination for municipal advisor representatives and a forthcoming examination for municipal advisor principals at municipal advisor firms.

The Dodd-Frank Wall Street Reform and Consumer Protection Act mandated that the MSRB develop professional qualification standards and CE requirements for municipal advisors. The draft amendments to MSRB Rule G-3, on professional qualification requirements, aim to establish robust CE requirements for municipal advisors while balancing the need to avoid unnecessary regulatory overlap with existing CE requirements for municipal securities dealers, who may also act as municipal advisors.

"Creating appropriate CE requirements for municipal advisors will ensure that firms provide minimum levels of training to individuals whose advice can have such a long-lasting impact on the financial health of states, cities and other municipalities across the country," said MSRB Executive Director Lynnette Kelly. "This is an important next step in the development of a comprehensive regulatory framework for municipal advisors."

The MSRB will host a free educational webinar on Thursday, October 20, 2016 at 3:00 p.m. to 4:00 p.m. Eastern Time to review the draft requirements and assist stakeholders in providing input on the proposal. Register for the webinar.

Read the request for comment.

Comments should be submitted no later than November 14, 2016.

Date: September 30, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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MSRB Seeks Comment on Creating New Rule to Clarify Minimum Denomination Provisions.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) is seeking comment on a draft proposal to clarify regulatory provisions that generally prohibit dealers from buying or selling bonds below the minimum denomination allowed in a bond offering document. The revised provisions would form a new stand-alone rule.

The MSRB's minimum denomination regulations, currently provisions of MSRB Rule G-15 on customer transactions, are designed to protect investors in cases where municipal securities issuers determine that the complexity, risks, lack of disclosure or other factors make the securities inappropriate for a retail customer. The MSRB first sought comment in April 2016 on clarifying its minimum denomination provisions and adding exceptions that would be consistent with this investor protection intent and would also enhance liquidity for investors that hold positions below the minimum denomination. The MSRB has decided to gather additional public input before considering proposing any changes to the Securities and Exchange Commission.

"As a result of input from industry and other commenters, the MSRB believes that creating a clearer, stand-alone rule on minimum denominations will facilitate understanding and compliance with these investor protections," said MSRB Executive Director Lynnette Kelly. "We want to support the practical application of the prohibition while emphasizing the overall importance of adhering to the minimum denomination for certain transactions."

Draft MSRB Rule G-49 provides for several exceptions to the minimum denomination prohibition to facilitate liquidity for investors that for various reasons may own bonds in lots below the minimum denomination. The MSRB believes the proposed exceptions provide benefits to these investors while at the same time avoiding the creation of additional below-minimum denomination positions. The draft rule also aims to reduce administrative burdens when transacting in positions that resulted from customers totally liquidating their entire below-minimum position. Read the request for comment.

Comments should be submitted no later than October 18, 2016.

Date: September 27, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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MSRB Improves Bank Loan Disclosure on EMMA Website.

Washington, DC – To facilitate greater transparency of bank loans and other alternative financings used by municipal securities issuers, the Municipal Securities Rulemaking Board (MSRB) today enhanced the bank loan disclosure submission process and the display of these documents on its Electronic Municipal Market Access (EMMA®) website.

The MSRB has long advocated for increased voluntary disclosure of bank loans and alternative financings by municipal bond issuers to enable current bondholders and prospective investors to assess a municipal entity's creditworthiness and evaluate the potential impact of these financings. Read more about the MSRB's market leadership on the issue of bank loan disclosure.

"Feedback from issuer representatives suggested that a simplified method of submitting bank loan disclosures to EMMA would support making this important information available to investors and the public," said MSRB Executive Director Lynnette Kelly. "With the new and streamlined process, the MSRB hopes to see more issuers submitting bank loan disclosures for display on EMMA."

Access step-by-step instructions for submitting disclosures for bank loans and alternative financings to EMMA. The MSRB will host an educational webinar geared toward issuers on submitting bank

loan disclosures on Thursday, October 13, 2016 at 3:00 p.m. to 4:00 p.m. Eastern Time. Register to attend.

The MSRB also has improved the display of bank loan disclosures on EMMA to make them easier for investors to find. A new dedicated bank loan disclosure tab is available on the issuer homepage of issuers that voluntarily submit these filings to EMMA. EMMA's advanced search function also now allows users to search specifically for securities with associated bank loan disclosures.

The MSRB's EMMA website is the official source of data and disclosure documents on more than 1 million outstanding municipal securities. The MSRB operates the EMMA website in support of its mission to protect investors, state and local governments, and the public interest by promoting a fair and efficient municipal market.

Date: September 26, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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- How MCDC Has Changed Continuing Disclosure Practices.
- Try These Weird Tricks to Split a Bond Issue Into Separate Portions: Squire Patton Boggs
- How Can Water Systems Pay for Aging Infrastructure?
- Why Dealers Are Struggling with Proposed Markup Disclosure.
- NABL: The Bond Lawyer – Summer 2016
- GASB RFC: Exposure Draft, Certain Debt Extinguishments.
- NFMA Introduction to Municipal Bond Credit Analysis.
- *Phillips v. Snyder* – Court of Appeals upholds constitutionality of Michigan's Local Financial Stability and Choice Act, which provides for temporary appointment of emergency managers for municipalities or public school systems facing financial crisis.
- And finally, Dog (literally) Bites Man/Man (figuratively) Bites Dog is brought to you this week by *Panattieri v. City of New York*, in which Dog A mixed it up with Dog B on a city street. The owner of Dog A claimed that Dog B had been the actual aggressor in the incident and that any injuries possibly sustained by Dog B's owner must have been inflicted upon him by Dog B as he attempted to restrain the savage beast from attacking Dog A. Let's review the evidence, shall we? Items include: one healthy (albeit municipally-condemned) pit bull; one puncture-free pit bull owner; one deceased chihuahua; and one heavily-perforated chihuahua owner. Tough one to call.

EMERGENCY MANAGERS - MICHIGAN

Phillips v. Snyder

United States Court of Appeals, Sixth Circuit - September 12, 2016 - F.3d - 2016 WL 4728026

Voters and local elected officials from areas with emergency managers brought action challenging the constitutionality of Michigan's Local Financial Stability and Choice Act, a statute allowing for the temporary appointment of an emergency manager for a municipality or public school system facing financial crisis.

The United States District Court granted defendants' motion to dismiss, and plaintiffs appealed.

The Court of Appeals held that:

- Plaintiffs had standing to bring action;
- Voters do not have a substantive due process right to vote for the individuals exercising legislative power at the local level;
- Claims brought under the Guarantee Clause are nonjusticiable political questions;
- The Act did not violate the Equal Protection Clause;
- Section 2 of the Voting Rights Act (VRA) did not provide plaintiffs an avenue for recovery;
- The enactment of the Act was not an instance of viewpoint discrimination; and
- The Act did not violate the Thirteenth Amendment.

Voters and local elected officials from areas with emergency managers had standing to challenge constitutionality of Michigan's Local Financial Stability and Choice Act, a statute allowing for temporary appointment of emergency managers for municipalities or public school systems facing financial crisis. Cities and school districts in which plaintiffs lived were under emergency managers when complaint was filed, such that they allegedly suffered constitutional deprivations that residents elsewhere did not suffer, that is, "concrete and particularized" injuries that affected them in personal and individualized ways, injury was ongoing and thus actual and imminent as opposed to conjectural or hypothetical, alleged deprivations would be redressed by decision favorable to plaintiffs, and though cities were no longer governed by emergency managers, they were now governed by receivership transition advisory boards (TABs) provided for by Act, which limited powers of local elected officials.

Voters do not have a substantive due process right to vote for the individuals exercising legislative power at the local level; rather, states have "absolute discretion" in allocating powers to their political subdivisions and therefore to the officers running those subdivisions, and so may allocate the powers of subsidiary bodies among elected and non-elected leaders and policymakers.

Claims brought under the Guarantee Clause are nonjusticiable political questions; it is up to the political branches of the federal government to determine whether a state has met its federal constitutional obligation to maintain a republican form of government.

Michigan's Local Financial Stability and Choice Act, a statute allowing for the temporary appointment of an emergency manager for a municipality or public school system facing financial crisis, did not violate the Equal Protection Clause. The Act, which gave vast powers to emergency managers to deal with the problems of financially distressed localities, was rationally related to the legitimate legislative purpose of improving the financial situation of a distressed locality.

Michigan's Local Financial Stability and Choice Act, allowing for temporary appointment of emergency managers for municipalities or public school systems facing financial crisis, did not violate the Equal Protection Clause by discriminating against entities already having "emergency financial managers" (EFM) from prior statute. Although, under the Act, EFM appointed under prior statute who was still serving when Act took effect was deemed to be emergency manager under the Act, was subject to Act's 18-month provision, and would effectively remain in place longer than emergency manager who was appointed for first time under new law, this different treatment was justified, as 18-month limitation on removal was rational because managers in place before Act took effect had much less power, giving them time to adjust to new, broad powers was legitimate interest, and giving them same 18 months as other emergency managers to work with those powers was rationally related to that interest.

In assessing equal protection challenge to Michigan's Local Financial Stability and Choice Act, which allowed for temporary appointment of emergency managers for municipalities or public school systems facing financial crisis, there was no basis for applying stricter scrutiny than rational basis review. Although plaintiffs challenging Act argued that statute violated the Equal Protection Clause by denying their right to vote and by conditioning their vote on wealth, Act did not in fact impair their right to vote, as it did not remove local elected officials but simply vested the powers of the local government in an emergency manager, plaintiffs did not show that they had been denied the right to vote on equal footing within their respective jurisdictions, and Act's alleged wealth discrimination, without the involvement of some other fundamental right or suspect category, did not require scrutiny any closer than rational basis scrutiny.

Section 2 of the Voting Rights Act (VRA) does not cover appointive systems and, thus, did not provide an avenue for recovery for plaintiffs challenging Michigan's Local Financial Stability and Choice Act, a statute allowing for temporary appointment of emergency managers for municipalities or public school systems facing financial crisis. Case was not one involving a voting qualification or prerequisite to voting or standard, practice, or procedure resulting in the denial of a right to vote.

Michigan's Local Financial Stability and Choice Act, a statute allowing for temporary appointment of emergency managers for municipalities or public school systems facing financial crisis, did not violate the Thirteenth Amendment. Plaintiffs did not challenge the label of "financial emergency" attached to their localities, and there was no sufficiently direct connection to race in the Act that could amount to something comparable to the odious practice the Thirteenth Amendment was designed to eradicate, but, instead, the state's remedy for financially endangered communities, which was passed by state-elected bodies for which African-Americans had a constitutionally protected equal right to vote, and was facially entirely neutral with respect to race, was far removed from being a "badge" of the extraordinary evil of slavery.

MUNICIPAL ORDINANCE - NEW YORK

Panattieri v. City of New York

Supreme Court, New York County, New York - August 30, 2016 - N.Y.S.3d - 2016 WL 4691555 - 2016 N.Y. Slip Op. 26283

Dog owners, whose pet dog was seized after killing a dog and injuring its owner, brought article 78 proceeding challenging seizure, alleging that city code governing dangerous animals was pre-empted by state law, and seeking declaration that determination of city department of health and mental hygiene (DOHMH) to execute their dog was unconstitutional.

The Supreme Court, New York County, held that city code governing dangerous animals was not preempted by state statute governing dangerous dogs.

City code governing dangerous animals was not preempted by state statute governing dangerous dogs, since statute governing licensing, identification, and control of dogs expressly allowed municipalities to enact their own rules governing dangerous dogs provided their program was not less stringent than state program, and city's code incorporated standards that were as or more protective of public health and safety as those set forth in statute.

ANNEXATION - NORTH DAKOTA

New Public School Dist. No. 8 v. State Bd. of Public School Educ.

Supreme Court of North Dakota - August 17, 2016 - 883 N.W.2d 460 - 2016 ND 163

School district appealed State Board of Public School Education's decision approving annexation of certain real properties to another school district.

The Northwest Judicial District Court affirmed the Board's decision, and school district appealed.

The Supreme Court of North Carolina held that eligibility requirements for annexation by a school district were met when the annexations became effective, even though the real properties to be annexed were not contiguous with the school district at the time the annexation petition was heard.

Statutory eligibility requirements for annexation by a school district were met when the annexations became effective, even though the real properties to be annexed were not contiguous with the school district at the time the annexation petition was heard. The properties to be annexed were contiguous to other property which was contiguous to the school district, to which annexation had previously been approved, and annexation of all of the properties became effective on the same date.

EMINENT DOMAIN - OHIO

Gordon Cox, et al., Plaintiffs v. State of Ohio, et al., Defendants

United States District Court, N.D. Ohio, Western Division - August 29, 2016 - Slip Copy - 2016 WL 4507779

In 2012, Ohio exempted specified pipeline companies from regulatory scrutiny by the Ohio Power Siting Board. As a result, a company like the defendant, Kinder Morgan Utopia LLC, that intends to build such a pipeline may select the pipeline's route and initiate eminent-domain proceedings to acquire the necessary easements and rights-of-way – all without oversight from any Ohio governmental or regulatory body.

Three property owners in Wood County, Ohio – received notices from Kinder Morgan that the company intends to acquire, whether by voluntary agreement or a state-court appropriation action, easements across their properties. The landowners, who have refused to grant the easements voluntarily, argue that the delegation of eminent-domain power to Kinder Morgan is an impermissible delegation of legislative authority and, as such, violates the Due Process Clause of the Fourteenth Amendment.

Landowners moved for a preliminary injunction.

The District Court denied the motion, finding that landowners were unlikely to prevail on the merits and had not established an irreparable injury.

"I conclude that plaintiffs are unlikely to prevail on their impermissible-delegation claim. This is because the courts of Ohio will undertake judicial review of Kinder Morgan's exercise of its eminent-domain powers. That means that the company cannot take property over an objection without obtaining judicial approval of the appropriation."

"Because Ohio law does not delegate that kind of "final" legislative power to Kinder Morgan, plaintiffs are unlikely to prevail on their nondelegation claim."

ELECTIONS - OHIO

State ex rel. Ganoom v. Franklin Cty. Bd. of Elections

Supreme Court of Ohio - September 16, 2016 - N.E.3d - 2016 WL 5221159 - 2016 -Ohio-5864

Candidate filed petition for writ of mandamus to compel city to conduct election to fill seat on city council.

The Supreme Court of Ohio held that:

- Personal knowledge affidavit was adequate;
- Delay in filing personal knowledge affidavit did not prejudice city; and
- City charter required vacant city council seat to be filled through election, rather than appointment.

Personal knowledge affidavit included with petition for writ of mandamus seeking to compel election for vacant city council seat was not deficient due to failure to include specifics of claim in affidavit, where there were no additional details for candidate to submit by way of affidavit, rather, case presented single, discrete question of law of whether city charter required an election.

Candidate's one-day delay in filing affidavit of personal knowledge along with petition for writ of mandamus seeking to compel election for vacant city council seat did not prejudice city, where parties understood and briefed the single legal issue and the affidavit provided no additional legal or factual information.

City charter required an election for vacated city council seat, rather than permitting city council to appoint replacement for remainder of term. Charter tied the duration of the appointment to the next general election, suggesting that the intent was to fill the seat at that next election, and permitting city council to fill vacant seat by appointment multiple times would have lead to an absurd result.

REFERENDUM - OHIO

State ex rel. Jacquemin v. Union Cty. Bd. of Elections

Supreme Court of Ohio - September 19, 2016 - N.E.3d - 2016 WL 5222401 - 2016 -Ohio-5880

Objectors filed petition for writ of mandamus seeking to prevent referendum regarding zoning amendment from appearing on ballot.

The Supreme Court of Ohio held that summary contained in referendum petition was misleading, and therefore petition was invalid.

Summary of resolution's contents contained in referendum petition regarding proposed zoning amendment was misleading, and therefore petition was invalid, where summary stated incorrect intersection when listing nearest intersection to property at issue.

EMINENT DOMAIN - SOUTH CAROLINA

Dominion Carolina Gas Transmission, LLC v. Acres

United States District Court, D. South Carolina, Columbia Division - August 24, 2016 - Slip Copy - 2016 WL 4475032

Dominion Carolina Gas Transmission, LLC (DCGT) was granted certain eminent domain powers pursuant to the Natural Gas Act ("NGA") and the applicable Federal Energy Regulatory Commission (FERC) Certificate order in connection with its pipeline project.

DCGT moved for partial summary judgment as to its right to condemn certain easements after negotiations with the applicable landowners failed.

The District Court granted the motion, holding that:

- DCGT's unsuccessful two-year effort to obtain the easements satisfied the FERC negotiation requirement; and
- Any contention by landowners that DCGT was not in compliance with the FERC Certificate order is not properly raised as a defense in this action but rather must be made to the FERC.

NABL: MSRB Updates Congress on Implementation of Dodd-Frank Act.

On September 19, the Municipal Securities Rulemaking Board (MSRB) sent to the leadership of the Senate Banking, Housing and Urban Affairs and House Financial Services Committees a letter concerning the MSRB's creation of the core regulatory framework for municipal advisors (MAs). In the letter, MSRB Chair Nathaniel Singer detailed the MSRB's completion of a core regulatory framework for MAs through the implementation of MSRB rules, including MSRB Rule G-42 (establishing core standards for non-solicitor MAs) and MSRB Rule G-44 (creating supervision and compliance obligations for MA firms). In addition, the MSRB has created education and outreach initiatives for MAs. Singer also included in the letter that the MSRB's Electric Municipal Market Access (EMMA) system has been enhanced to include credit ratings from all major rating agencies, an economic calendar and an email reminder tool to alert municipal entities of approaching annual disclosure deadlines.

The MSRB's letter to Congress is available here.

GASB RFC: Exposure Draft, Certain Debt Extinguishments.

The Exposure Draft, *Certain Debt Extinguishments*, is out for public comment through October 28, 2016.

Let us hear from you!

KBRA Comments on the City of Chicago, IL's Water-Sewer Utility Tax.

Last week the Chicago City Council passed a newly created utility tax. The tax is a key part of the City's strategy to address and stabilize the chronically underfunded Municipal Employee's Annuity

and Benefit Fund (MEABF). The tax is one piece of a multilayered strategy that combines new dedicated revenues, amended employee contribution rates and eligibility requirements, and a movement towards actuarial pension funding, as opposed to statutorily determined pension funding. Ultimately, the strategy is intended to achieve actuarially required funding levels for the MEABF by 2022 and a funded ratio of 90% by 2057. The newly codified utility tax will appear on the combined water-sewer utility bills of Chicago residents and businesses beginning in 2017.

Kroll Bond Rating Agency (KBRA) views adoption of the new revenue source as positive, since it establishes a path to addressing MEABF funding insufficiency. Some elements of the larger plan will require the approval of the Illinois General Assembly, which the city intends to seek during the fall of 2016.

Click here for the full report.

NABL: The Bond Lawyer - Summer 2016

The Summer 2016 issue of The Bond Lawyer® is now available.

Click here to download the document.

MSRB Updates Congress on Completion of Core Regulatory Framework for Municipal Advisors.

In a letter to Congress on the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Municipal Securities Rulemaking Board (MSRB) describes the completion of its core regulatory framework for municipal advisors and the complementary education and transparency initiatives aimed at protecting municipal entities.

Read the full press release.

Read the MSRB's letter to Congress.

Issuers: Verify the Professional Qualifications of Your Municipal Advisor.

Working with a municipal advisor? Be sure to check their registration status and professional qualifications.

All municipal advisor firms must be registered with the Municipal Securities Rulemaking Board (MSRB) and the Securities and Exchange Commission (SEC).

View a list of all registered municipal advisor firms here or on the MSRB's website by clicking the Check Out Your Municipal Finance Professional button on the homepage, at msrb.org.

Municipal advisor professionals are also now required to take a professional qualifying examination developed by the MSRB. By September 12, 2017, every municipal advisory professional is expected

to have taken and passed the MSRB's qualifying exam (Series 50) in order to continue providing municipal advisory services.

A list of associated persons at registered municipal advisor firms who have passed the Series 50 exam is available on the MSRB's website.

GASB: On the Horizon.

This article explores the Omnibus Exposure Draft, the Leases project, and the forthcoming Statement on fiduciary activities.

GASB RFC: Financial Reporting Model Reexamination.

The GASB is working toward the issuance of an initial document for public comment in its project reexamining the financial reporting model. The Invitation to Comment will seek feedback from stakeholders on elements of the existing model that the GASB's research identified as areas of potential improvement. This article previews what the Board is preparing for issuance at the end of 2016.

Unlike other due process documents, which contain proposals from the Board for new or amended standards, an Invitation to Comment is a neutral document that seeks stakeholder input on a variety of alternatives before the Board develops a position on them.

It is important to note that the feedback received during the initial pre-agenda research indicated that much of the financial reporting model has been effective in providing information that is useful for making decisions and assessing accountability. Therefore, the Board decided that the approach of the financial reporting model reexamination will be to make improvements to the existing model, rather than start over with a clean slate.

TARGETED AREAS OF POTENTIAL IMPROVEMENT

The Invitation to Comment is expected to present a number of targeted areas of potential improvement to governmental fund financial statements, including:

- Recognition approaches
- Format of the governmental funds statement of resource flows
- Specific terminology
- Reconciliation to the government-wide statements, and
- For certain recognition approaches, a statement of cash flows.

The Board plans to consider other areas identified for potential improvement during the research in future due process documents.

MAPPING OUT THE INVITATION TO COMMENT

Chapter One

The first chapter will make the case for why the Board is exploring recognition approaches for

governmental funds—to improve the effectiveness of governmental fund information, develop conceptual consistency, and provide a basis for establishing guidance for complex transactions.

Chapter Two

This chapter will introduce three alternatives that fall on a continuum for recognition approaches for governmental fund financial statements:

- Near-term financial resources
- Short-term (working capital) financial resources, and
- Long-term (total) financial resources.

For each of these three recognition approaches, the document will describe:

- The messages that financial statements using the recognition approach would be trying to communicate
- The assets, liabilities, deferrals, and inflows and outflows of resources that would be reported under the recognition approach, and
- Potential benefits and challenges to the recognition approach.

Stakeholder input will give the Board additional insight as to which recognition approach yields the most understandable and useful information about the governmental funds.

Chapter Three

This portion of the document will consider a statement of cash flows for governmental funds for the short-term (working capital) financial resources and long-term (total) financial resources recognition approaches.

A cash flows statement presents a government's receipts and disbursements into different categories—operating activities, noncapital activities, capital and related financing activities, and investing activities—based on the nature of the transaction. Currently, cash flows statements are required in the proprietary funds (funds reporting activities for which a government generally charges a fee for goods or services).

This document will seek input on whether there would be a need for a cash flows statement if the governmental funds were to use either of the recognition approaches other than near-term financial resources. It also would consider which cash flows categories are most relevant.

The chapter also will consider two presentation format alternatives for the resource flows statement for governmental funds:

- The first would retain the existing format (the statement of revenues, expenditures, and changes in fund balances).
- The second would be a current activities and long-term activities format.

Input on these very different formats will assist the Board in evaluating which provides financial statement users with the most understandable and useful information.

We welcome your input once the Invitation to Comment has been issued in December 2016.

NABL: Minnesota Delegation Sends Letter to IRS on Political Subdivisions.

The members of the Minnesota congressional delegation from both parties sent a letter to Treasury Secretary Lew and Internal Revenue Service (IRS) Commissioner Koskinen, criticizing the IRS's proposed rule on the definition of political subdivision (REG-129067-15). The delegation expressed concern that the proposed rule would affect the diverse array of entities that provide essential services to Minnesota communities. The delegation specifically pointed to the "incidental private benefit" portion of the proposed rule and the unclear provisions regarding voter control of a political subdivision, saying those provisions could bar many entities from accessing tax-exempt financing for community projects.

The letter is available here.

NABL: House Financial Services Subcommittee Holds Hearing on Municipal Securities.

On September 22, the House Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing entitled "Examining the Agenda of Regulators, SROs, and Standards-Setters for Accounting, Auditing, and Municipal Securities". Members of the panel included Securities and Exchange Commission (SEC) Office of Municipal Securities (OMS) Director Jessica Kane and Municipal Securities Rulemaking Board (MSRB) Executive Director Lynnette Kelly. Members of the committee were primarily concerned with protecting issuers and the public from high costs and providing investors with transparency in the muni market. During the hearing, a number of representatives raised specific concerns, including Rep. David Sweikert (R-AZ), who raised concerns regarding "extraordinary legal fees" for state and local governments when refinancing bonds, and Rep. Bruce Poliquin (R-ME), who raised concerns with "hidden costs" in negotiated sales as compared to competitive sales. Kane and Kelly continued to emphasize the progress made by their respective agencies in transparency and disclosure. They specifically mentioned the SEC's MCDC Initiative and the MSRB's proposed markup of disclosure rules.

The witnesses' written testimonies and a recording of the hearing are available here.

Muni Pros Expect Rates to Drive 2017 Volume, See Green Bonds As a Ploy.

Los Angeles – Municipal bond pros at the 26th annual Bond Buyer California Public Finance Conference expect interest rates to have the biggest impact on issuance next year.

In a live market survey Wednesday 50% of the audience said rates will have the biggest effect on the market, 25.8% picked new money, and 22% chose refunding activity.

A panel of municipal bond market influencers at the conference in Los Angeles, which attracted a record number of attendees, commented on results as the audience responses were tabulated. Led by moderator Jessica Matsumori, analytical leader, education team for S&P Global Ratings, the panel was comprised of Bill Lockyer, counsel for Brown Rudncik LLP and former Treasurer of the State of California, Andy Nakahata, managing director and head of new business development for

the western region at National Public Finance Guarantee and Rep. Loretta Sanchez, D-Calif., a candidate for the U.S. Senate.

“It’s such a great way to get the pulse of the market,” Matsumori said.

The audience was nearly split about whether it matters if the Federal Reserve raises interest rates by less than 100 points, as 56.9% said yes and the remaining 43.1% said no. This question was especially timely, as it was announced Wednesday that the Fed will hold rates where they are now.

“Even if they did something in December, it would be a small move up. I think the question is, is the government going to step and build more infrastructure? These are issues that are hard to grapple with in Congress,” Sanchez said.

Defaults have been a hot topic, so it was surprising to see that 60.5% of the audience said that muni defaults have not affected the market.

“On an absolute rate level that is correct,” Nakahata said. “Credit spreads are so thin — but on the other hand, it has affected how certain people look at certain types of credits.”

Pensions are another popular topic and one that won’t be going anyway anytime soon. When asked what will happen if investment assumptions prove to be too optimistic for CalPERS pension returns, 43.5% said that employer/employee contributions will be increased, 20.1% said benefits will be cut for future employees, 1.3% said benefits will be cut for current employees and 35.1% said all of the above.

“Given the magnitude of the issue, it would be great to come up with a solution that is all of the above, where everyone would share a little bit of the pain, but I don’t see a clear path to achieve a solution like that,” Nakahata said.

Green bonds were also a topic of conversation, in the midst of a record year for their issuance. A whopping 50.9% of the audience said that green bonds are purely a marketing ploy and part of a fad that won’t last. Still, 31.3% said that the designation makes some difference to investors, 13.5% said they have the potential to drive serious environmental change and 4.3% said greenness is “The wave of the future – will soon be a requirement for most bonds.”

“It is going to take some time and I do think we have to wait and see what happens, but part of that will be if there is a greater definition of what exactly truly is a green bond. In order for it to be meaningful, there has to be a common [definition] which everyone subscribes to or … my cup of coffee could be a green bond,” Nakahata said.

The Bond Buyer

By Aaron Weitzman

September 21, 2016

MSRB to Lawmakers: 680 Firms, 4,500 Professionals Registered as MAs.

WASHINGTON – About 680 firms, with 4,500 associated professionals, were registered as municipal advisors as of September, the Municipal Securities Rulemaking Board’s chairman told House and

Senate committee leaders in a letter detailing the board's compliance with the Dodd-Frank Act.

"I am writing to update you regarding a major milestone for the MSRB," Nat Singer, the board's chairman told the leaders of House Financial Services and Senate Banking committees. "We have just concluded development of a core regulatory framework for municipal advisors, implementing a regime mandated by Congress under the [Dodd-Frank Act]."

The letter describes the new MSRB rules that make up that framework as well as the initiatives the board has implemented to protect municipal issuers and other entities and to enhance its EMMA system as well as its educational and outreach efforts.

The MSRB also created a majority-public member board, as mandated by the Dodd-Frank Act, which was signed into law by the president on July 21, 2010.

Dodd-Frank required non-dealer MAs for the first time ever to become subject to federal regulation and gave the MSRB regulatory jurisdiction over them.

On Sept. 30, 2013, the Securities and Exchange Commission adopted final registration rules for MAs, which defined the term "municipal advisor" and set forth exemptions from that definition. MAs must register with both the SEC and the MSRB.

The MSRB amended its Rule A-12 on registration to require new MA registrants to pay a $300 annual fee per professional in addition to a MA firm's payment of a $1,000 initial and a $1,000 annual fee. Singer told the committee leaders that the MSRB projects for its fiscal 2017, which begins on Oct. 1, that 3.2% of its revenues will be funded by MA fees.

Dodd-Frank also required MAs to become subject to a federal fiduciary duty to put their issuer and other clients' interests first before their own. MSRB Rule G-42, which took effect on June 23 of this year, establishes core standards of conduct for MAs under which they owe a fiduciary "duty of loyalty" to their municipal issuer clients and are required "without limitation … to deal honestly and with the upmost good faith with a municipal entity and act in the client's best interests without regard to the financial or other interests of the municipal advisor."

The rule also contains a "duty of care" to their clients requiring MAs to: exercise due care in their work; be qualified to provide advisor services; make a "reasonable inquiry" into the facts relevant to a client's request before deciding whether to proceed; and undertake a "reasonable investigation" to determine their advice is not based on bad information.

The rule requires written documentation of the advisory relationship between an MA and its client, including: the scope of services to be performed and the disclosure of any conflicts of interest or legal and disciplinary events; the specific fee structure associated with the engagement, and a prohibition against the MA acting as a principal in muni transactions.

New Rule G-44 establishes supervisory and compliance requirements for MAs under which they must develop, implement and maintain supervisory procedures reasonably designed to ensure their MA activities comply with all regulatory requirements.

The MSRB has extended a number of its rules to MAs, including G-17 on fair dealing, G-20 on gifts and gratuities, and G-37 on political contributions. Rule G-37, which took effect on Aug. 17, is designed to prevent pay-to-play practices of giving contributions to state or local officials who can award MA business.

The MSRB also amended its Rule G-3 on professional qualifications requirements to define two

classifications for MA professionals: representatives and principals. Both classifications of MAs are required to take and pass the Series 50 Municipal Advisor Representative Examination. The MSRB is developing a separate qualification exam for principals. The board also amended its Rules G-8 on books and records and G-9 on preserving records to require MAs to retain records on general business proceedings, gifts, gratuities, and written supervisory procedures, among other things.

Singer said MSRB protects municipal issuers and other entities through three mission-driven objectives: rules for broker-dealers and MAs that promote fair, and prevent fraudulent and manipulative, market practices; the collection and dissemination of underwriting and trade data; and education and outreach activities. The letter details those activities as well as improvements that have been made to EMMA.

The Bond Buyer

By Lynn Hume

September 20, 2016

House Financial Services Committee Holds Hearing on Municipal Securities Regulators.

On September 22, the House Financial Services Committee hosted a hearing with witnesses from the SEC, MSRB, FINRA, PCAOB and FASB to discuss their agenda in regulating accounting, auditing and municipal securities. Ranking Member Carolyn Maloney (D-N.Y.) asked about enforcement actions taken in the municipal market. The SEC's Jessica Kane replied that the MCDC initiative was introduced to address the lack of compliance with continuing disclosure initiatives, and called the program "incredibly successful." MSRB Executive Director Lynette Kelly's testimony focused on the "significant strides" made by the Board to promote and foster increased transparency in the municipal securities market.

- Hearing Summary
- Written testimony submitted by the MSRB
- Additional information about the hearing
