Recap: Retail Fixed Income Roundtable – Hosted in St. Louis by Wells Fargo Advisors

On May 9th, the BDA held its annual Fixed Income Retail Roundtable in St. Louis, Missouri. The event included a networking reception and dinner at Vin de Set sponsored by DPC Data on the evening of Wednesday, May 8th.

The roundtable was hosted by Wells Fargo Advisors and was attended by over 35 retail fixed-income leaders from middle-market dealers, platforms, and technology vendors. The event was sponsored by Bondwave, Tradeweb Direct, Edward Jones and Build America Mutual.

The key issues discussed during the roundtable included: a global economic forecast, muni market trends, retail fixed income regulations, and the evolving landscape of fixed income market structure issues. A full recap of the issues discussed can be found below, and the agenda can be viewed here.

Roundtable Recap:

Thursday, May 9th
Wells Fargo Advisors
St. Louis, MO

General Forecast and Outlook
Featured Speaker: Paul Christopher, Head of Global Market Strategy, Wells Fargo Investment Institute
The roundtable was kicked off with a discussion on the overall health and direction of the U.S. and global economies. Included in the discussion were potential roadblocks for continued economic growth which included political pressures, tariffs, change in interest rates and Brexit.

Municipal Market Update and Outlook
Featured Speaker: Dorian Jamison, Municipal Analyst ,Wells Fargo Advisors, Advice and Research
This discussion covered the municipal market performace for Q2 of 2019. Since the post tax-reform slump in 2018, the market has increased marginally in the first quarters of the year. Mr. Jamison also discussed tax reform and the removal of advance refundings. The group also discussed the muni bond considerations in Puerto Rico, and other considerations the bond market is looking ahead to – such as the impacts of climate change on municipalities.

Fixed Income Market Issues
Discussion Leader: John Reilly, Wells Fargo Advisors
Mr. Reilly engaged members in a broad overview of marketplace issues. This included the end of LIBOR, new market participants and platforms, changing technologies, and the activities of the SEC's FIMSAC and BDA's own Fixed Income Market Structure Working Group.

Fixed Income Regulatory Issues
Discussion Leader: Don Winton, Crews & Associates
Mr. Winton engaged members in a discussion of the ongoing regulatory priorities influencing member firms. These included FINRA exam issues, FINRA report cards, Rule 4210, retail confirmation mark-up disclosures, and the upcoming SEC rule "Reg BI."

BDA Legislative and Regulatory Update
Discussion Leaders: Kelli McMorrow and Brett Bolton, BDA
BDA staff discussed key regulatory and legislative items that are directly affecting fixed income market and business practices. These included:

- FINRA Rule 4210
- MUMD compliance
- FINRA's TRACE pilot program
- MSRB Rule G-23
- Last Look/"Pennying"
- BDA's Fixed Income Market Structure Working Group
- Capitol Hill update on advance refundings, infrastructure, and GSE reform efforts

Bond Dealers of America

May 13, 2019

GSAM's Barber on Municipal Bond Rally.

Ben Barber, Goldman Sachs Asset Management head of municipal asset management, discusses the rally in municipal bonds on "Bloomberg: The Open."

Watch video.

Bloomberg Markets: The Open

May 15th, 2019, 9:46 AM PDT

Goldman Fund Makes Record Retreat From Muni Junk Bonds Over Risk.

- **High-yield fund boosts investment-grade holdings to record**
- **Flood of cash chasing yields has pushed up junk-bond prices**

Goldman Sachs Group Inc. has shifted money to the sidelines of the municipal junk-bond market, waiting for it to crack.

The company's $7.3 billion High Yield Municipal Fund, the third biggest focused on the riskiest state and local government debt, had about 62 percent of its assets in investment-grade securities by the end of April. It marks the fund's biggest move ever away from the lowest-rated bonds and a wager that the run-up in prices will reverse as speculative projects start to run into distress, said Ben Barber, head of municipal bonds at Goldman Sachs's asset management arm, which oversees $62 billion of the securities.

“What we’re hoping for is there’s a new round of opportunities in the muni market over the course of 2019 or 2020,” he said in an interview. Goldman’s high-yield muni fund beat more than 90 percent of its peers over the last five years.

Continue reading.

Bloomberg Markets

By Amanda Albright

May 16, 2019, 10:34 AM PDT

The Quant Revolution Leads to Muni-Bond ETF of ETFs.

Van Eck’s new fund MAAX brings momentum trading to a traditional buy-and-hold market.

No matter the iffy track record of quantitative investing, it appears there’s no stopping its push into every corner of the financial markets.

Case in point: Van Eck Securities Corp. on Thursday launched the VanEck Vectors Municipal Allocation exchange-traded fund, with the ticker MAAX. That name correctly states that it invests in the $3.8 trillion market for state and local government debt — but that’s very much only part of the story.

MAAX is an “ETF of ETFs,” which for the most part will be divvying up money among five other Van Eck muni funds. The portfolio weights are determined by — you guessed it — a quant model “that uses momentum, along with both duration and credit risk indicators, to tactically allocate,” according to a statement. “For investors looking for both tax-exempt income and enhanced risk-adjusted total returns, MAAX could be a compelling way to approach the municipal bond market.”

Continue reading.

Bloomberg Markets

By Brian Chappatta

May 17, 2019, 4:00 AM PDT

Bond Giant Nuveen Must Face Claim It Bullied Banks.

- **Judge finds Nuveen’s speech rights don’t require tossing suit**
- **Texas-based bond fund says Nuveen seeking to organize boycott**

Preston Hollow Capital LLC can proceed with a defamation lawsuit against municipal bond giant Nuveen LLC, which is accused of running an intimidation campaign designed to decimate its smaller rival.

Preston Hollow presented sufficient allegations to move the case forward, Delaware Chancery Court

Judge Sam Glasscock III said Tuesday. The judge rejected Nuveen's claim that its constitutional rights to freedom of speech allowed it to denigrate Preston Hollow's business practices, saying that argument needed more examination.

Preston Hollow claims Nuveen and its head of municipal-bond investments, John Miller, interfered with the Dallas-based firm's business contacts and disparaged its operations in an effort to pressure other bond players to stop working with it. Nuveen, which oversees more than $140 billion of municipal bonds and manages the biggest U.S. high-yield muni bond fund, generates millions of dollars in revenue for Wall Street trading desks.

Glasscock's ruling clears the way for Preston Hollow officials to gather information from bond-market players such as Goldman Sachs Group Inc. and JPMorgan Chase & Co. about recordings of telephone calls between Miller and other Nuveen officials. The company hopes to uncover new evidence of Nuveen's efforts to damage it.

Miller and his team allegedly called Deutsche Bank AG in December, demanding it unwind more than $400 million in financing deals with Preston Hollow and pressured the bank not to provide future loans.

"Today's ruling was based on the allegations in the complaint, and not on the evaluation of any evidence," Stewart Lewack, a spokesman for Chicago-based Nuveen, said in an email. "We continue to believe the claims are without merit and will vigorously defend ourselves."

Jonathan Morgan, a spokesman for Preston Hollow, declined to comment.

Glasscock didn't rule on Preston Hollow's request that he order Miller and other Nuveen officials to stop denigrating the fund or doing anything to scare off financial institutions — such as Deutsche Bank — from doing business with it.

The judge said he wants further submissions from lawyers to determine whether Nuveen's comments that Preston Hollow charged "excessive rates" on some bond transactions and engaged in "corrupt deals" in others met the test for defamation or amounted to puffery. That will help Glasscock decide whether to order Nuveen to stop what Preston Hollow calls "trash talking."

The case is Preston Hollow Capital LLC v. Nuveen LLC, 2019-0169, Delaware Court of Chancery (Georgetown).

Bloomberg Markets

By Jef Feeley and Martin Z Braun

May 14, 2019, 10:30 AM PDT Updated on May 14, 2019, 1:04 PM PDT

Lenders Scolded for Climate Ignorance in 'Insane' Florida Real Estate Deals.

- **Munis under increasing scrutiny as cities heat up, seas rise**
- **'It's fine to rent in Florida, but it's insane to own or lend'**

Hurricane Michael killed seven people and caused more than $6 billion in damage in Florida in October, a toll compounded by warmer, higher seas and wetter air, the signs of climate change scientists have long warned about.

But investors have yet to pay any kind of meaningful attention, buying up long-dated debt and financing real estate decades into the future. That kind of market neglect means the Florida economy can be expected to "go to hell," warned Spencer Glendon, a senior fellow at the Woods Hole Research Center and a former partner and director of investment research at Wellington Management.

"No one should be lending for 30 years in most of Florida," he said at an investment conference in New York last week. "During that time frame, insurance will disappear and terminal values" — future resale income — "will shrink. I tell my parents that it's fine to rent in Florida, but it's insane to own or to lend."

Florida's economic crash could begin with banks or home-buyers worrying that annual insurance policies in some places will become prohibitively expensive, or disappear completely, Glendon said. That would shake the housing market and hurt property tax revenue, leaving Florida without an obvious way to pay for infrastructure to replace what's literally or figuratively under water.

Inability to replenish infrastructure in a slow-growth economy evokes community decay and economic decline reminiscent of Detroit or Puerto Rico, Glendon said. "I hope this is clear," he said in New York. "Civilization is built on climate stability. We are now accelerating into instability. Do your models reflect that?"

Trends in local municipal-bond and mortgage markets suggest they may not. The risks of climate change have begun to pop up in prospectuses and credit-analysis, to little effect. Ahead of a new debt offering last month, Miami Beach told potential investors that officials are "keenly aware of the risk from hurricanes and sea-level rise."

Miami Beach successfully raised its $162 million, with a 20-year maturity pricing at the same yield as a similar April offering by Charlotte, North Carolina, an inland city with much less climate risk. Both issues had the same call provisions, coupons and ratings from Moody's and S&P.

Comparisons are difficult, but if markets were acknowledging the scale of Florida-specific climate risk, Florida's bonds should sell at a discount, relative to similarly structured bonds sold elsewhere.

"I don't know whether the right price is half-price or 60% or 20%, but if it's at 100%, I know it's the wrong price," Glendon said in an interview.

At the same time, climate risk may be subsumed by other incentives. People who buy property in Florida may value the tax-free income more than they worry about climate risk. When it comes to mortgages, the ultimate buyers of securitized loans are far removed from local officials and residents who know what's happening on the ground.

Similar warnings are starting to reverberate among other financial institutions. BlackRock Inc. last month published a 20-page explanation of how climate-risk has become a necessary assessment in understanding shifting levels of risk and value.

The report concludes that 58% of U.S. metropolitan areas will face climate-related damages amounting to 1% or more of GDP by 2060-2080, and that "a rising share of muni bond issuance over time will likely come from regions facing economic losses from rising average temperatures and related events."

Bloomberg

By Danielle Moran, Katia Porzecanski, and Eric Roston

May 13, 2019, 9:44 AM PDT

[S&P Credit FAQ: Quick Start Guide To S&P Global Ratings' Approach To U.S. State And Local Government Pensions]

S&P Global Ratings’ approach to pensions and other postemployment benefits (OPEBs) focuses on affordability–both current and on a cost trajectory. We analyze funding discipline through assumptions and contribution methods to determine if pension/OPEB costs will lead to budgetary stress. We consider pension/OPEB expenses fixed costs, akin to debt and tailor our analysis to the specific risk factor

Continue Reading

May 13, 2019

Treasury vs. Muni Yield Curves: What Investors Need to Know

Most investors are familiar with interest rates, but it’s important to look beyond the headline rate. By looking at yield curves, investors gain better insights into market sentiment. Normal yield curves suggest a healthy market, but steep yield curves indicate the start of economic expansion and inverted yield curves can be a sign of trouble.

Treasury yield curves are often referred to as the “benchmark curve” since they are backed by the U.S. government. Investors often compare other debt instruments to these benchmarks and calculate “spreads” between them. The spread is an important indicator of market sentiment on its own. Although municipal bonds should theoretically have no spread, that’s not always the case.

Let’s look at the difference between Treasury and municipal bond yield curves, and what investors need to know.

Continue reading.

municipalbonds.com

by Justin Kuepper

May 15, 2019

How to Begin Incorporating ESG, Impact Investing into Portfolios? Try Munis.

You often hear it said that the first step is the hardest. But for investors and financial advisors looking to step onto the path to ESG and Impact investing, the first step can be an easy one—municipal bonds. Municipal bonds serve as a low-risk, tax efficient asset class that can dampen overall portfolio volatility and provide income. In addition to these favorable investment characteristics, when evaluating ESG and Impact opportunities, municipal bonds should be one of the first sectors that springs to mind.

Asset Class Characteristics

Most sectors of the municipal bond market, including tax-backed general obligation (think states, cities and counties) and various revenue-backed sectors (think utilities, hospitals, etc.), are amenable to ESG and value alignment investment approaches. Sectors such as education, healthcare, housing and utilities all have positive impacts, which investors pursuing such strategies will find attractive. The ability to invest directly in communities, in school systems, in renewable energy products, in clean water and in scores of other initiatives financed through the municipal bond market is a strong motivator for those seeking to achieve positive social and environmental outcomes with their investments.

That said, not all municipal bonds are impactful or ESG positive. Bonds financing prisons, detainment centers, fossil fuel power generation, hotels, shopping complexes and the like are also included in the municipal bond market. Even in sectors where a positive impact is possible, it takes a robust data collection and analytical effort to select bonds that achieve exceptional outcomes for the communities they serve. It takes an experienced team to evaluate the opportunities available and find those that are best suited for an ESG and Impact investing strategy. ESG factors that are material and relevant to the credit profile of an investment opportunity are integrated into any strong credit analysis; beyond this, identifying opportunities where financed projects can have a demonstrable positive effect on the surrounding community takes experience.

Investment Performance

One common question we receive around ESG and Impact investing pertains to the amount of performance sacrifice for incorporation. Based on our experience, when managed properly, the answer is none.

ETF TRENDS

by IRIS.XYZ

MAY 18, 2019

Fitch U.S. Water and Sewer Utilities Rating Criteria Revision.

To more clearly communicate credit opinions and facilitate a more forward-looking, predictable approach to ratings, Fitch Ratings has revised its U.S. Water and Sewer Rating Criteria. These revisions will facilitate a more forward-looking, predictable approach to ratings and better highlight differences among credits in the same category.

Anticipated Rating Impact is Limited
Assuming current credit characteristics are maintained, Fitch estimates approximately 10% of the ratings covered by the criteria will be affected, with slightly more upgrades than downgrades anticipated. Criteria-driven rating changes will be dependent on the finalization of criteria after assessing comments received during the exposure draft period.

Experienced Analytical Judgment

Fitch's ratings will continue to be based on the judgment of a team of experienced analysts, rather than on weighted assessments or model-based outcomes.

Subfactor Assessments More Focused
The subfactor assessments relating to the three key rating drivers have been refined to provide an enhanced focus on elements most important in determining credit quality.

Clearer Communication of Credit Opinions
The goal of the revised criteria is to communicate Fitch's credit analysis more clearly, presenting both high-level categorical assessments of key rating drivers along with well-defined opinions about both rating conclusions and the underlying fundamentals.

Rating Changes More Predictable
The revised criteria more clearly define and communicate Fitch's expectations of the range of performance.

New Through-the-Cycle Tool
Known as FAST, this tool highlights how cycles affect utilities differently, and will be publicly available with a select group of issuer data during the criteria comment period.

The Bond Buyer Op-Ed: How Do We Close the Infrastructure Gap? Restoring Advance Refunding Is a Start.

America faces an extraordinary infrastructure deficit. With existing federal infrastructure programs failing to meet current demand, the U.S. is continuing the troubling trend of under-investment in this area and risks substantially adding to the financial burdens of state and local governments.

This will only lead to further delays of investment in and maintenance of critical public projects, including highways, bridges, hospitals, airports, schools, water and sewer systems.

Prior to 2018, one way to help fund capital improvement and infrastructure projects was using tax-exempt advance refunding bonds (or advance refundings). This important financial-management program allowed state and local governments to save billions in interest costs by using proceeds from one bond issuance to essentially pay off another outstanding bond in advance of its call date. Savings were achieved because the new bond was issued at a lower interest rate than the original obligation.

By reducing their debt service expenses through advance refundings, states and localities were able to free up their borrowing capacity for new investments in infrastructure and other important public projects, in turn boosting their local economies with the creation of new jobs and making public services more affordable. This is much like homeowners refinancing mortgages to a lower interest rate.

State and local governments can no longer access cost savings through this valuable financial tool. As most in the industry know, the Tax Cuts and Jobs Act of 2017 eliminated advance refundings. We estimate state and local issuers are currently forgoing about $4 billion of present-value savings annually.

At SIFMA, we believe it is critical to close the infrastructure financing gap and it is imperative to restore and create additional vehicles to assist in resolving this need.

Preserving the tax-exemption, which is the financing mechanism for the clear majority of infrastructure projects that state and local governments undertake, is crucial. Further, as described above, we strongly support restoring the ability of state and local governments to advance refund their securities, which will help them efficiently manage their financial obligations.

But we need to do more.

The challenges of our national infrastructure are so complex that a single solution is not enough.

A comprehensive expansion of federal investment in infrastructure should include the authorization of a new direct-payment bond program and an increase in the volume cap for private activity bonds. An expansion of "bank qualified" tax-exempt bonds would support infrastructure investment in small and rural communities that may have difficulty accessing the capital markets.

Meaningful public-private partnerships (P3) can also be a potential important component, leveraging our capital markets for creative financing options through municipal bonds.

Initiatives for infrastructure finance should recognize the need for a partnership among federal, state and local governments as well as private investors and developers. Tax credits for equity investors and availability of tax-exempt financing for P3 projects as exists for traditional municipal bond-financed initiatives are other useful options.

Simultaneously, we are exploring how we can make existing investment dollars go further. Innovative approaches like design-build enable us to do just that.

The municipal bond market has long been a key component of successful infrastructure project financing. The recent dialogue between Administration and Congress around this issue represents an important step toward bringing our infrastructure into the 21st century.

With the current infrastructure crisis, restoring advance refundings and implementing other tools identified above, we can begin to close the financing gap and restore our nation's infrastructure.

This week, May 13-20, is the seventh annual Infrastructure Week – an opportunity to highlight and continue the important national conversation on the need to revitalize, modernize, and invest in infrastructure. Let's #BuildForTomorrow. Starting now.

BY: Leslie Norwood

DATE: May 17, 2019

Leslie Norwood is a Managing Director & Associate General Counsel and Head of Municipal Securities at SIFMA

Introducing Fitch ESG Relevance Scores for Public Finance and Infrastructure.

ESG factors generally have a low level of direct impact on public finance and infrastructure credit ratings. However, governance is the most influential ESG risk factor across the overall ratings portfolio. This was driven by public finance issuers, which is not surprising given that factors such as political stability, creditor rights, financial transparency, governance structure, government independence and control of corruption are important considerations in our credit rating process.

Download: Our ESG Relevance Scores

Watch Video: Introducing ESG Relevance Scores – An Update for Public Finance and Infrastructure

---

Fitch Ratings: U.S. Infrastructure Needs Federal Funding Commitment

Fitch Ratings-New York-15 May 2019: Any U.S. federal government plan for renewing infrastructure will need to provide for consistent, continued federal funding and more diverse funding sources to fully address the infrastructure deficit, says Fitch Ratings. The April meeting between the President and Democratic Congressional leaders in which they agreed to work toward a $2 trillion infrastructure plan was a first step in addressing infrastructure needs; however, the difficulty of hammering out the details may keep the plan from advancing. The second meeting between these parties, tentatively planned for the week of May 20, may provide more information regarding what level of federal funding the White House would back but ultimately Congress will need to get behind proposed legislation.

Federal funding will be an important factor in any plan's viability, as will private participation. The nation's significant infrastructure needs, encompassing not only transportation but also utilities, housing, and other social infrastructure, will require ongoing funding from various parties. Relying only on states and local governments will not be enough.

That said, with no federal plan currently in place, states have become increasingly proactive in raising necessary infrastructure money for themselves and local governments, primarily for transportation. Since 2013, 31 states raised gas taxes according to the National Conference of State Legislatures, including four in 2019 alone. Highway tolls were also used to pay for infrastructure not directly related to tolled roads and Fitch notes challenges to such policies have been rejected by the courts so far.

However, state and local governments are unable to raise adequate funds to fully address infrastructure needs on their own. State revenue growth since the end of the Great Recession has generally been slow, and coupled with rising costs for items such as pensions, Medicaid, and public education, states' budgets have limited headroom for additional spending on infrastructure. Local governments are similarly constrained with modest revenue growth and rising costs for pensions and other employee benefits, public safety and a varying tolerance for additional debt.

As an additional tool, a number of states, and increasingly municipalities, have turned to public-private partnerships (PPP) to procure a wide variety of projects, including roads and bridges, civic centers, courthouses and even public schools. While PPPs can impose long-term cost burdens for governments similar to traditional public procurements, in certain situations the PPP model can accelerate projects and has the potential to yield long-term savings if risks are appropriately managed. Given broad infrastructure demands, we anticipate continued growth in PPPs using private financing such as private activity bonds.

With details to be worked out, it may be hard to get any plan off the ground if Congress is unable to agree on the source of federal funding. Split control of Congress makes passage of such a large infrastructure bill tenuous. Disagreements exist over gas tax increases, reducing federal tax cuts and increasing the federal deficit. A plan proposed last year by the White House did not result in legislation.

Any infrastructure plan should provide for the renewal and replenishment of the federal highway transportation fund (HTF), which is the primary source of existing federal infrastructure funding and is supported primarily by federal gasoline taxes. The HTF provides around $40 billion in highway spending and $10 billion in transit spending to states annually. Since 2008 the HTF required transfers from the Treasury's general fund to close its revenue gap. The Congressional Budget Office forecasts the HTF will be depleted in 2022 without another infusion of general fund dollars. Putting the HTF on a sustainable fiscal path would serve as a strong indicator of the federal government's commitment to long-term infrastructure investment.

Federal Infrastructure Funding is Good, but Local Governments Want Flexibility Too.

Accessing federal funds for infrastructure projects is much too difficult, county leaders say. With reauthorization of the FAST Act on the table, they want a bigger say in how money can be spent.

Counties own 38% of bridges and 45% of roads across the country, totaling more than 3.1 million miles of pavement that require regular upkeep. That's a big responsibility for local governments that often lack the necessary funding to complete all the projects in their backlog.

"From the moment we leave our front doors, we rely on safe infrastructure to get us to our destinations, and that usually starts with local roads," said Corina Lopez, the vice mayor of San Leandro, California at a Wednesday event hosted by the National Association of Counties and the National League of Cities.

"There's no way we can do this alone at the local level," Lopez continued. "We need the federal government to round out the picture and create more robust infrastructure spending."

Continue reading.

Route Fifty

by Emma Coleman

May 16, 2019

Muni Yields Falling As $120 Billion Debt Set To Mature (Radio)

MUNIS IN FOCUS: Joe Mysak, Editor Bloomberg Brief: Municipal Market, discusses falling muni bond yields, and Puerto Rico cofina bonds. Hosted by Lisa Abramowicz and Paul Sweeney.

Running time 04:24

Play Episode

May 10, 2019 — 9:02 AM PDT

A Boon to $85 Billion Muni Tobacco-Bond Market Seen From FDA.

- **Citigroup says newly approved device could stanch sales drop**
- **'This is going to cannibalize Juul,' says analyst Rai**

One of the most volatile corners of the municipal-bond market is being whipsawed by Washington.

Securities backed by the payments states receive from the 1998 legal settlement with tobacco companies tumbled at the end of April after legislation was introduced in Congress to raise the age for buying cigarettes, a step that threatened to accelerate the steeper-than-anticipated drop in consumption that's weighed on the prices of the bonds.

But there may be a reversal-of-fortune for the $85 billion sector, thanks to the federal government. The U.S. Food and Drug Administration's April 30 approval of a tobacco-heating device could win back consumers that have switched to e-cigarettes, like Juul, and help stanch the decline in annual settlement payouts that finance the securities, according to Citigroup Inc. analysts led by Vikram Rai.

The Philip Morris International device heats a stick of tobacco in a way that produces a traditional cigarette taste without as many toxins. Citigroup's analysts anticipate that the sales from the device — unlike e-cigarettes such as Juul — will be included in the tally of annual cigarette shipments that determine the settlement payments.

"Juul is cannibalizing conventional cigarette sales," said Rai. "This is going to cannibalize Juul."

Tobacco bonds are a volatile part of the $3.8 trillion municipal market because they're heavily traded, making them easy for fund managers to sell whenever customers pull out their cash.

Regulatory decisions in Washington have also played a role in price swings. In November, junk-rated tobacco bonds dropped following reports the FDA was considering restricting menthol in cigarettes, and some of the riskiest securities plummeted 22 percent in 2010 after a 62-cents-a-pack federal tax increase dented sales.

Since states started selling bonds to get an advance on their settlement money, the traditional cigarette business has been in steady decline because of stricter regulation, tax increases and public health campaigns. E-cigarettes that deliver nicotine less harmfully have also cut into sales.

Altria Group Inc., the parent of Philip Morris USA, revised its estimate for the 2019 domestic cigarette industry volume to a decline of 4 to 5 percent, primarily because of increased gas prices and "other factors" it didn't specify.

Such declines helped push junk-rated tobacco bonds to a 0.6 percent decline in April, the sector's worst return since November. They were the only category of high-yield municipal bonds to suffer losses, according to the Bloomberg Barclays Muni High Yield Index. This month, they've pared that drop, returning 0.75 percent, compared with a 0.48 percent for the high-yield index.

Sales of HeatSticks, a heated tobacco unit used with the IQOS device, will contribute to the settlement agreement payments through Altria's Philip Morris USA, which is marketing both of the Philip Morris International products domestically. How much money that could add is hard to calculate, since Altria and the international unit haven't disclosed the terms of their licensing agreement.

The potential success of the device may hinge on the the ability of Philip Morris to convince smokers that the e-vapor system are less risky than cigarettes but more satisfying than rival products, according to Bloomberg Intelligence analysts Kenneth Shea and Gopal Srinivasan. And it will need to comply with the same marketing restrictions imposed on traditional cigarettes, which include bans on television and radio advertising.

Citigroup expects tobacco bonds will perform well even before the product gains ground, in part because of a supply crunch that is affecting the broader municipal market. Those that\ were issued in the early to mid-2000s and have higher coupons and could produce 11 to 12 percent returns this year, Rai said.

"As long as the market doesn't go into a tailspin, as long as inflows continue, by virtue of the high coupon, the returns are pretty good," Rai said.

Bloomberg Business

By Martin Z Braun and Danielle Moran

May 8, 2019, 10:35 AM PDT Updated on May 8, 2019, 1:02 PM PDT

— With assistance by Tiffany Kary

Wall Street's Muni-Bond Trading Giants Are Losing Business to Rivals.

- **Less than 20 percent of trades done by top three, MSRB says**
- **Drop in concentration seen as sign of liquidity, competition**

In the business of trading municipal bonds, the little guys are chipping away at Wall Street's behemoths.

The three biggest securities dealers handled fewer than 20 percent of the trades executed in the state and local debt market in 2018, down from about 24 percent the year before and over 29 percent in 2011, according to a report released Wednesday by the Municipal Securities Rulemaking Board, which didn't identify firms by name.

It found the concentration of trades among the top five and top 10 dealers also declined "significantly," even if the dollar volume of their share increased — reflecting work in handling bigger transactions. The biggest loss of business came from trades of $100,000 or less, the type done on behalf of individual investors instead of customers like mutual funds or insurance companies.

The regulator said it's hard to identify why trading activity has become less consolidated among the biggest dealers, but said the rise of computer-driven trading may have played a role.

"The decrease in concentration in the top five dealers and a greater number of dealers participating in both large and small trades could be a sign of greater overall market liquidity, increased competition for customer business and a sign that customers are not as reliant on a few dealers as before," the regulator wrote in the report.

The shift stands in contrast to the underwriting business, which has become heavily concentrated among the leading banks. Last year, nearly half of all new municipal-bond deals were handled by just three firms — Bank of America Corp., Citigroup Inc. and JPMorgan Chase & Co., according to data compiled by Bloomberg.

Bloomberg Markets

By Martin Z Braun

May 8, 2019, 12:34 PM PDT

Credit FAQ: Has S&P Global Ratings' View On Special Revenue Debt Changed Following The First Circuit Decision?

The U.S. Court of Appeals for the First Circuit decision affirming a lower court's decision that payment of Puerto Rico Highways and Transportation Authority's special revenue secured debt is voluntary, and not required, during bankruptcy, has generated significant market attention. While the decision is technically only binding precedent for cases arising in the First Circuit, its impact is broad…

Continue Reading

May 1, 2019

Bondholders Beware? First Circuit Ruling's Potential Adverse Impact on Puerto Rico's Long-Term Restructuring Prospects.

Having practiced in Puerto Rico for nearly a decade, including being involved heavily in the ongoing Title III PROMESA proceedings, the recent ruling handed down by the First Circuit could prove to be the most impactful for the Island's long term restructuring prospects and its access to the Bond markets. The controversial ruling, which pertains to the treatment of municipal revenue debt, has left investors with questions about the value and significance of a revenue pledge in a municipal bankruptcy. This blog provides some background and potential ramifications.

Background

The original U.S. District Court decision affected the municipal markets in January 2018, when the court ruled that municipal debtors were permitted, but not required, to apply special revenues to pay related bonds. The ruling reversed long-held practice as to the mandatory application of special revenues following municipal bankruptcy.

The controversy involved several series of bonds (the Bonds) issued by the Puerto Rico Highway and Transportation Authority (PRHTA). By statute, the Bonds were secured by a gross lien on revenues derived from certain highway tolls and excise taxes (collectively, the Pledged Special Revenues). The Bonds were also insured by a number of financial insurers (the Insurers), who were subrogated to the bondholders' rights upon payment of a covered default of the Bonds.

In March and April 2017, both the Commonwealth and PRHTA adopted fiscal plans purporting to modify the application of the Pledged Special Revenues. Under the Commonwealth's fiscal plan, certain of the Pledged Special Revenues would be diverted to the Commonwealth for its general revenue purposes, and under the PRHTA fiscal plan, PRHTA would be authorized to apply Pledged Special Revenues to pay operating expenses ahead of debt payments, in contravention of the gross lien granted to holders of the Bonds.

On May 21, 2017, the Financial Oversight and Management Board for Puerto Rico (the Board) began debt adjustment proceedings for the PRHTA under Title III of PROMESA. Shortly thereafter, the trustee for the Bonds was instructed by the Puerto Rico Fiscal Agency and Financial Advisory Authority, on behalf of PRHTA, to cease making scheduled payments, based on the rationale that such payments violated the Bankruptcy Automatic Stay. On July 3, 2017, PRHTA defaulted on a scheduled payment of $219 million.

The Insurers filed suit against the Commonwealth, the PRHTA and the Board, seeking declaratory and injunctive relief. The Insurers asked the court to declare that the Bonds were secured by special revenues exempt from the automatic stay and to grant an injunction requiring PRHTA to resume remittance of the Pledged Special Revenues. The Insurers' arguments hinged on the interpretation of Sections 922(d) and 928 of Chapter 9 of the U.S. Bankruptcy Code, which address the treatment of special revenues in municipal bankruptcy.

The court dismissed the Insurers' claims, holding, in effect, that while Section 928 extended the Bonds' statutory lien to cover post-filing special revenues and Section 922(d) indeed permitted the municipality to apply those special revenues to make the secured payments, neither provision affirmatively required such payments.

The First Circuit heard the Insurers' appeal and, on March 26, 2019, affirmed the lower court ruling, dismissing the Insurers' claims. The First Circuit reasoned that:

"In sum, Sections 928(a) and 922(d) permit, but do not require, continued payment during the pendency of the bankruptcy proceedings. The two provisions stand for the premise that any consensual prepetition lien secured by special revenues will survive the period of municipal bankruptcy, and, accordingly, municipalities can elect to voluntary [sic] continue payment on these debts during the course of the bankruptcy proceedings so as to not fall behind and thus be at risk of being unable to secure financing in the future."

Adverse Effects and Future Outlook

Strong industry concerns have emerged that the ruling will have a broader impact on holders of municipal revenue debt, particularly given the lack of jurisprudence interpreting issues of municipal bankruptcy. The ruling raises concerns about the value of a municipal revenue pledge and creditors' ability to enforce any lien on such revenues post-bankruptcy, or to otherwise protect the revenue stream. This is very pertinent as the market has been closely monitoring the PROMESA proceedings and its potential impact on how future municipality bankruptcies could play out.

It appears that, at least in the short-term, investors may turn to requiring heightened disclosures and modified structures to provide greater protection in future debt issues. Concerns also linger as to the Island's short and long term access to the market, which has provided strong financial backing in the past. There still exists the possibility that this issue will be taken to the United States Supreme Court. In the meanwhile, expect the ramifications to be felt.

by Paul Hammer

May 2 2019

Kane Russell Coleman Logan PC

[Muni Bond Market Heats Up As Fund Inflows Swell.]

Summary

The municipal securities market continues to generate steam, as funds attract further inflows amid light new issuance.

US$1.72bn flowed into municipal bond funds and US$416m into ETFs, according to ICI, while municipal relative value ratios sunk to their lowest level in about a decade.

Holders of some major muni-fueled ETFs have also been enjoying a recent surge in value.

Meanwhile, the University of Pittsburgh Medical Center (UPMC) is set to offer around US$738m worth of revenue bonds through Pennsylvania's Allegheny County Hospital Development Authority.

Other deals on the radar for the week ahead include US$1.5m worth of general revenue bonds from New York's Triborough Bridge and Tunnel Authority, as well as almost US$486m of school district revenue bonds from the Dormitory Authority of the State of New York (DASNY).

The municipal securities market continues to generate steam, as funds attract further inflows amid light new issuance.

Flows into muni bond mutual funds and exchange-traded funds (ETFs) remained positive in the week ending May 1.

According to the Investment Company Institute (ICI), investors in the latest week added US$1.72bn to municipal bond funds and US$416m to ETFs, contributing to a tally of roughly US$35bn to date in 2019.

Holders of some major muni-fueled ETFs have also been enjoying a recent surge in value.

Prices of the iShares National Muni Bond fund (NYSEARCA: MUB) and the Vanguard Tax-Exempt Bond fund (NYSEARCA: VTEB), for example, have soared around 5% to 5.3% since their latest 52-week lows set in early November 2018 of US$106.575 and US$49.855, respectively, according to the IBKR Trader Workstation. MUB and VTEB were last up just north of 0.2% intraday Thursday, each setting new 52-week highs.

Janney Montgomery municipal strategist Alan Schankel recently highlighted that the muni bond market is "on one of the strongest performance streaks we've seen in a while, as light supply and continuing strong demand push relative value indicators, such as municipal-to-Treasury ratios, to cyclical lows." In fact, municipal relative value ratios have sunk to their lowest level in about a decade.

Schankel added that muni 'AAA' benchmark yields finished lower again Wednesday, despite a "poor" U.S. Treasury auction-fueled selloff.

Bloomberg data shows that 10-year state and local debt yields a little more than 72% of Treasuries, compared with just north of 73.5% in the previous session. They had yielded nearly 77.25% a month ago.

UPMC Graces the Fixed-Rate Calendar

Against this backdrop, a handful of issuers have potential new offerings on the fixed-rate calendar in the week ahead, including nearly US$738m worth of University of Pittsburgh Medical Center (UPMC) revenue bonds through Pennsylvania's Allegheny County Hospital Development Authority.

UPMC said it intends to apply the proceeds from the sale towards refunding certain existing outstanding indebtedness, as well as certain debt-related expenses.

The deal, which has serial maturities from July 15, 2020 through 2039, has been rated 'A1' by Moody's Investors Service, and 'A+' by both S&P and Fitch Ratings.

Fitch earlier in May had cut the revenue bond rating one notch to 'A+' from 'AA-' on UPMC's outstanding parity debt issued by UPMC and via other authorities, including the Pennsylvania Higher Educational Facilities Authority, Allegheny County Hospital Development Authority, and the Pennsylvania Economic Development Financing Authority.

Fitch analysts Olga Beck and Eva Thein noted that the credit rating downgrade was mainly due to UPMC's "lower liquidity position, which has historically lagged the 'AA' category and does not compare favorably to the system's higher leverage position."

At fiscal year-end 2018, UPMC's cash to adjusted debt fell to 90%, with investment losses incurred as of December 31, 2018.

Beck and Thein continued that while investment valuations have recovered in the first-quarter of fiscal 2019, the year-end results "highlight the vulnerability of a low cash position in times of market volatility for a system with a higher debt load and historically low cash flow generation."

Fitch added that while it expects UPMC's integrated delivery model, including its "aligned physician base, extensive health plan, and sizeable delivery network," to continue to "significantly shift the market in Western Pennsylvania in UPMC's favor," it also anticipates "no significant changes" in either its profitability or balance sheet metrics in the near to intermediate-term.

UPMC's debt service coverage ratio fell to 2.37x in the trailing twelve-month (TTM) period ended March 31, 2019 from 2.49x in the TTM ended December 31, 2018. Over the same period, its revenues available to service debt shrunk to US$930.5m from US$975.1m, while its debt rose to US$392.7m from US$391m.

Meanwhile, Moody's said its 'A1' reflects its expectations that UPMC will continue to benefit in large part from its "notable scale," with a consolidated revenue base of nearly US$19bn, as well as its leading market share in most of the markets it serves.

However, Moody's analyst Beth Wexler said she expects UPMC's financial profile to "remain stressed" over the intermediate-term. Furthermore, Moody's also attributed its negative outlook on the latest series 2019A deal to "modest" operating cash flow and balance sheet measures, which are likely to provide limited flexibility as UPMC's growth is digested.

In mid-August 2018, UPMC had also sold more than US$943m of tax-exempt muni bonds in four parts, with maturities ranging from 2023 to 2047. Its 10-year tranche had priced to yield 3.18%, a spread of nearly 73.5 basis points more than matched-maturity U.S. government debt.

Its proposed series 2019A debt is expected to be issued as fixed-rate, tax-exempt bonds and sold via negotiation the week of May 13, 2019.

In the meantime, other deals on the radar for the week ahead include US$1.5m worth of general revenue bonds from New York's Triborough Bridge and Tunnel Authority, as well as almost US$486m of school district revenue bonds from the Dormitory Authority of the State of New York (DASNY).

Seeking Alpha

May 12, 2019

Bond ETFs Vs Bond Mutual Funds.

One of the most common questions we get at ETF.com is, what's the difference between an ETF and a mutual fund?

Usually, our answer is some combination of "better tradability + more transparency + lower costs." ETFs trade intraday on exchanges like stocks, they regularly disclose their holdings, and they rely on authorized participants (APs) to create and redeem shares and keep prices in line. That last characteristic helps to lower fund expenses and reduce ETFs' tax burden, and as such, attracts the lion's share of attention from investors.

However, it's easy to overlook how much tradability can matter—especially in the fixed income space, where ETFs have had a profound impact on the way people invest. Bond ETFs have created, quite literally, a fairer and more liquid underlying market—something that benefits everybody, regardless of their preferred investment vehicle.

Continue reading.

ETF.COM

by LARA CRIGGER

May 13, 2019

J.P. Morgan Launches New Digital Bond Ladder Tool.

Helps financial advisors build hypothetical bond ladders tailored to help meet client needs

NEW YORK, May 8, 2019 /PRNewswire/ — J.P. Morgan Asset Management today announced the launch of *Bond Ladder Illustrator*, a new tool for financial advisors to create hypothetical municipal bond ladders based on customizable inputs such as tax rates, credit quality, maturity ranges and interest rate views.

Powered by an engine built in partnership with Asset and Wealth Management's Intelligent Digital Solutions group, the tool provides advisors with the unique opportunity to create hypothetical bond ladders based on actual municipal bonds that have gone through J.P. Morgan's extensive credit review process, rather than generic benchmark interest rate curves.

"Using actual municipal bonds that have made it into J.P. Morgan's portfolios enables the tool's output to be more indicative of what a client would actually get if they choose to build a laddered portfolio with us," said Rick Taormina, Head of Tax Aware Strategies at J.P. Morgan Asset Management.

Some of the tool's key features include a tax rate calculator, customizable portfolio assumptions based on client preferences, and a personalized, end-client ready report that includes key portfolio characteristics, estimated investment returns, income, cash flow and total return metrics.

Bond Ladder Illustrator is the latest addition to J.P. Morgan's suite of digital portfolio construction tools as the firm continues to deliver sophisticated digital capabilities to financial advisors, said Andrea Lisher, Head of the Americas for J.P. Morgan's Global Funds business.

"This is another great example of how we're investing in leading-edge tools to help financial advisors build stronger portfolios for their clients," Lisher said.

"Like our digital Portfolio Analysis and Investment Comparison tools, Bond Ladder Illustrator combines the 'power under the hood' of J.P. Morgan's insight and expertise with 24/7 convenience and an easy-to-use interface that gives advisors what they need in just a few, simple clicks."

Advisors can access the Bond Ladder Illustrator at jpmorgan.com/bondladder.

About J.P. Morgan's Municipal Bond Investing Team

With over $69 billion in municipal bond assets, J.P. Morgan's dedicated investment team and seasoned credit analysts have managed municipal bonds through a range of credit and market cycles for more than 35 years. The firm offers a broad range of municipal bond solutions across the duration and quality spectrums designed to meet an individual's unique circumstances including risk tolerance, cash flow needs, tax status and investment horizon.

About J.P. Morgan Asset Management

J.P. Morgan Asset Management, with assets under management of $1.7 trillion (as of March 31, 2019), is a global leader in investment management. J.P. Morgan Asset Management's clients include institutions, retail investors and high net worth individuals in every major market throughout the world. J.P. Morgan Asset Management offers global investment management in equities, fixed income, real estate, hedge funds, private equity and liquidity. J.P. Morgan Asset Management is the marketing name for the asset management businesses of JPMorgan Chase & Co. (NYSE: JPM), and its affiliates worldwide.

SOURCE J.P. Morgan Asset Management

May 08, 2019, 13:00 ET

Fitch Rtgs: Opioid Lawsuits to Have Small Effect on State, Local Budgets

Fitch Ratings-New York-07 May 2019: States and local governments are taking legal action to recoup costs related to the opioid crisis but potential litigation awards may not fully account for the budgetary outlays, says Fitch Ratings. Lawsuits may be able to recoup some governmental expenditure for treating addiction and the social fallout of addiction but redress as a result of court decisions or legal settlements is not likely to significantly affect government budgets. Compensation will not be as much as provided for in the 1998 tobacco master settlement agreement (MSA), proceeds of which were not sufficient to affect state and local government credit quality.

Direct and indirect economic loss to governments from opioid abuse results from decreased productivity, lost wages, healthcare, substance abuse treatment, social services, and court and correctional expenses. These costs affect state and local governments in two ways: by diverting resources from other expenditures and by depriving governments of economic growth. A study in the journal Medical Care by researchers at Pennsylvania State University (PSU) estimated opioid misuse reduced state tax revenue by $11.8 billion between 2000 and 2016.

In recent court cases, governments alleged drug manufacturers, distributors and pharmacies misled the public on the dangers of opioids, which contributed to opioid overdose deaths, arguing these parties are responsible for abetting the crisis and related fallout. Oklahoma recently settled a lawsuit against Purdue Pharma for $270 million in which the state alleged the company aggressively and deceptively marketed OxyContin. The settlement includes $20 million for treatment drugs and $12 million to Oklahoma cities and towns. The settlement is carved out of any potential bankruptcy filing by Purdue.

Thirty-five other states have sued manufacturers in state courts, in addition to approximately 1,600 independent cases brought by states, counties, cities, tribes and other entities, such as unions and hospitals that have been consolidated in a multidistrict lawsuit in a US district court in Ohio, expected to be heard in October. Lawsuits were also brought by New York, Vermont, and Washington against drug distributers Rochester Drug Cooperative, Cardinal Health (BBB/Stable), McKesson (BBB+/Stable) and AmerisourceBergen (A-/Stable).

Fitch has indicated the outcome of the federal case may be a tobacco-style MSA. However, we expect any settlement would result in a smaller award than the tobacco litigation, which was $200 billion, as opioids are FDA approved prescription medications, and the sale of opioids are a small fraction of tobacco product sales. State costs related to the crisis are believed to be significantly less than the decades of health care expenses incurred by states tied to tobacco usage.

It is unknown how proceeds from any successful litigation will be allocated. Previous opioid settlement awards have been spent in various ways and not always directly for the benefit of those struggling with addiction. This outcome is similar to the MSA, in which the agreement with states did not specify how proceeds should be spent, and indeed, tobacco MSA proceeds have been used for many different purposes.

The US Council of Economic Advisers estimates the economic cost of the opioid crisis was $504 billion in 2015, including fatalities from opioid overdoses. However, the effect on individual states and counties varies widely. The PSU study underscored that estimates of lost tax revenues by state is dependent upon each state's tax rates and population size. The disparate effect on various parties will mean the allocation of any settlement proceeds will be adjudicated based on related effects to the many plaintiffs.

Contact:

Marcy Block
Senior Director, US Public Finance
+ 1 212 908-0239
Fitch Ratings Inc.
33 Whitehall St.
New York, NY 10004

Amy Laskey
Managing Director, US Public Finance
+1 212 908-0568

Sarah Repucci
Senior Director, Fitch Wire
+1 212 908-0726

Media Relations: Sandro Scenga, New York, Tel: +1 212 908 0278, Email: sandro.scenga@thefitchgroup.com

---

Fitch Ratings: Higher Risk Not Translating to Similar Returns for U.S. Pensions

Link to Fitch Ratings' Report(s): U.S. State and Local Pension Investments (Concerns Grow with Riskier Allocations, Lower Returns)

Fitch Ratings-New York-06 May 2019: U.S. state and local pensions have taken on riskier asset allocations in recent years, though the rate of return is paling compared with the higher risk according to Fitch Ratings in a new report.

State and local pension plans have steadily increased their allocations to equities and alternatives such as real estate, private equity, hedge funds and commodities over the last several years. Asset allocation to both equities and alternative investments rose to 77% in 2017 from 67% in 2001. In contrast, asset allocation to fixed income investments and cash fell to 23% in 2017 from 33% in 2001. However, median average returns for major state and local systems were 6.2% between 2008 and 2017 compared with 6.4% between 2001 and 2017.

The falling rate of return is particularly notable for seven states (New Hampshire, Arizona, Rhode Island, Connecticut, Maryland, Hawaii and New Jersey), which showed average underperformance of 2% and higher. This is a performance gap that over time could have a material impact on how some pension plans are funded according to Olu Sonola, Group Credit Officer of U.S. Public Finance at Fitch. 'Persistent shortfalls in investment performance eventually necessitate future increases in employer contributions, which could be especially problematic for states with already elevated pension liabilities,' said Sonola.

Arizona's 86% allocation to equities and alternatives is the highest among U.S. states. Conversely, states like South Dakota (66% allocation to equities and alternatives as of 2017) and Indiana (48% allocation to alternative investments) are clearly making a hard turn away from riskier assets.

These developments will be critical in determining the overall picture of unfunded pension liabilities, which eclipsed $1 trillion two years ago. The increase in unfunded liabilities largely reflects lower than expected investment returns, shortfalls in actuarially determined contributions and steady increases in projected future benefits.

'U.S. State and Local Pensions – The Changing Risk-Return Landscape' is available at 'www.fitchratings.com' or by clicking on the above link.

Contact:

Olu Sonola
Group Credit Officer, U.S. Public Finance
+1-212-908-0583
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Douglas Offerman
Senior Director
+1-212-908-0889

Cory Fitzsimmons
Senior Analyst
+1-212-908-0302

Media Relations: Sandro Scenga, New York, Tel: +1 212 908 0278, Email: sandro.scenga@thefitchgroup.com

Additional information is available on www.fitchratings.com

Pensions Have Tripled Their Investment in High-Risk Assets. Is It Paying Off?

A growing body of evidence shows that "alternative investments" may be lowering returns and costing state and local governments more.

Public pensions are more invested than ever before in high-risk and expensive assets like real estate and hedge funds. Yet research continues to show that this tactic is unlikely to improve their earnings.

According to Fitch Ratings, in the span of a decade, pensions tripled their average investment in these so-called alternative investments. In 2007, they averaged 9 percent of state and local public pension investment portfolios. By 2017, that number had risen to 27 percent.

During that period, median average returns on overall investments were 6.2 percent, according to Fitch. But during the longer period between 2001 and 2017, reflecting a time of less reliance on alternative investments, they were actually slightly better: 6.4 percent.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | MAY 8, 2019 AT 4:00 AM

How Many Local Governments Is Too Many?

See which states, metro areas and counties have the most.

It’s not uncommon for one metropolitan area to be home to dozens of local governments. In lots of those places, mayors and other local officials often lament the difficulties of having to coordinate with so many cities, towns and counties.

There’s no agreed-upon definition for this local government “fragmentation,” but most researchers measure it by the number of governments per capita. We used that measurement, along with the number of governments per square mile, to see which metro areas and counties are the most fragmented.

Our calculations are based on the latest Census of Governments survey, which is conducted every five years and counted 38,779 cities, counties, towns and other general-purpose local governments (excluding special districts).

Continue reading.

GOVERNING.COM

BY MIKE MACIAG | MAY 7, 2019 AT 4:00 AM

Rising Debt Imperils Trump, Dem Hopes on Infrastructure.

President Trump and Democrats are in a crunch as they try to pursue a $2 trillion infrastructure package amid rising concerns in some quarters about the deficit and national debt.

While many support the concept of an infrastructure push, members of Congress and outside groups are worried about how to pay for such a massive haul with national debt topping $22 trillion.

“It’s $200 billion a year, so that’s not an easy pay-for. I don’t know how you’d do it without raising taxes,” said Rep. John Yarmuth (D-Ky.), who chairs the House Budget Committee.

“If we can find a way to pay for it, or pay for a substantial portion of it, I think it’s a great goal to have,” he added.

Trump and congressional Democrats have both frequently named infrastructure as one of their priorities and view the issue as an opportunity for bipartisan legislation in a divided government. Democratic leaders said that in a meeting on Tuesday, they and Trump agreed to pursue a $2 trillion bill. Lawmakers and the White House are expected to meet again in the coming weeks to discuss funding options.

But finding the money is a problem, and Democrats have left it to Trump to suggest a plan for their next meeting.

“We know we can spend the money. People will be delighted to spend the money on roads and bridges and inland waterways and ports and rural broadband, no problem. But the part of the discussion that’s lacking is, how are you going to pay for it?” said Rep. Tom Cole (R-Okla.), an appropriator.

The government will be forced to borrow money for any part of the plan it can’t offset with new revenues or other cuts, and that could spell trouble for the debt.

Even before infrastructure is considered, the country’s debt burden will reach 105 percent of gross domestic product by 2029 if current tax and spending policies are left in place, just a point below the record debt level at the end of World War II, according to a Thursday report from the Congressional Budget Office.

Budget watchers say that the debt path is unsustainable and will eat into the country’s economic well-being if it is not addressed.

“Rebuilding infrastructure can be critical and productive for our economy, but that also means it’s important enough to be paid for. If we can agree it’s necessary, we can agree we should pay for it,” Michael Peterson, CEO of the Peter G. Peterson Foundation, which focuses on addressing fiscal issues, said in a statement to The Hill.

While debt levels are currently high, interest rates are currently low, which could give lawmakers some breathing room to phase in offsets to infrastructure spending over the course of several years.

“Interest rates are still pretty low, so it doesn’t need to be paid for in year one,” said Marc Goldwein, senior vice president and senior policy director of the Committee for a Responsible Federal Budget (CRFB).

But Goldwein said that it’s important for an infrastructure package to eventually be fully paid for. He said that there isn’t evidence that an infrastructure bill would pay for itself and that after the GOP tax law and government spending legislation added to deficits, “we can’t just keep adding $2 trillion at a time.”

The CRFB projected that just the interest costs of the debt are on track to surpass defense spending by 2024.

Kent Smetters, a professor at the University of Pennsylvania’s Wharton School, said that infrastructure is the most pro-growth when it’s not deficit financed and public investments are made without private capital being shifted to public capital.

“That’s where you get the biggest bang for your buck,” he said.

Senate Minority Leader Charles Schumer (D-N.Y.) has expressed interest in rolling back the GOP tax law to pay for an infrastructure package, but that’s a non-starter for Republicans and business groups. Some lawmakers are supportive of gas-tax increases, and Trump has expressed an openness to that idea in the past, but other lawmakers view gas tax hikes as regressive or oppose increasing taxes altogether.

“I’m certainly not in favor of any type of tax increase, no gas tax increase. That would be a bad idea, and $2 trillion is an unbelievable amount of money, particularly when we’ve got a $20 trillion debt,” said Rep. Jim Jordan (R-Ohio), a conservative who often has Trump's ear.

Anti-tax crusader Grover Norquist, president of Americans for Tax Reform, suggested that the federal government's contribution to an infrastructure package could come from selling off loans, and that amount could be supplemented by contributions from state and local governments and the private sector. He pointed to bipartisan legislation that has been introduced in the past to require the Agriculture Department to sell distressed assets.

"We have bipartisan, left-right agreement on using the sale of loans to create the capital to rebuild and fix the various roads and bridges," he said.

Most Democrats want an infrastructure package to mostly consist of direct federal investment, and they said that Trump has criticized his own past proposals that rely heavily on public-private partnerships.

Progressives say that there are plenty of revenue options to cover costs.

"There are so many ways to pay for infrastructure," said Rep. Pramila Jayapal (D-Wash.), co-chair of the Congressional Progressive Caucus (CPC), which included a $2 trillion infrastructure plan in its proposed budget last year.

"From a wealth tax to a financial transactions tax, there's all kinds of specific, documented ways in our CPC budget that we propose paying for that," she said.

The CPC budget outlines a tax code overhaul that would cut a slew of corporate deductions, change capital gains taxes, raise top-level income taxes, including a new bracket for income above $1 million, and broaden estate taxes.

Some progressives, such as Rep. Dan Kildee (D-Mich.), argued that Washington should borrow money and take on more debt to help fund the multitrillion-dollar package.

"I want us to have an honest conversation about what it's going to take to pay for it and not start with the idea that we take debt off the table," said Kildee, who has pushed for a bigger federal response to the Flint water crisis.

"We borrow money to buy a house, but we have the asset of the house so we don't really fret with the amount of debt associated with it. We have to look at infrastructure as an asset."

But the idea of borrowing money to help fund an infrastructure package won't sit well with fiscal hawks in either party.

"I think it should be fully offset," said Rep. Dan Lipinski (D-Ill.), a member of the Blue Dog Coalition of centrist Democrats. "Transportation and infrastructure has always been done by user fees, and I continue to support doing that."

If Trump, who in a recent Gallup poll had a 91 percent approval rating among Republicans, puts his full-throated support behind a tax hike to pay for infrastructure, he may yet be able to win over some members of his party.

"I think enough Republicans could support something like that if the president were for it," said Cole, the appropriator.

But, he added, "I don't know what the president is for. He hasn't told us."

THE HILL

BY NAOMI JAGODA AND NIV ELIS – 05/06/19

Scott Wong contributed.

S&P: Opportunities And Risks Continue To Emerge In Privatized Student Housing

As of April 30, 2019, S&P Global Ratings maintained 62 public ratings on privatized student housing projects in the U.S. While the majority of these projects are secured by a non-recourse pledge of net housing project revenues, a small number benefit from additional financial support from their related underlying institution, whether in the form of a first fill agreement, vacancy guaranty, or univ…

Continue Reading

May 8, 2019

'Classic Conflict of Interest' Kills Stadium Bond Refinancing.

The county could forego $6.4 million in savings on the Talen Energy refinancing if it can't resolve a conflict with its financial advisor.

MEDIA — Delaware County Council failed to move on a $22.8 million refinancing on Talen Energy stadium construction funds after concerns about the financial advisor's "classic conflict of interest" arose, potentially relinquishing $6.4 million in savings.

By a 2-2 vote along party lines with Republican county council Chairman John McBlain abstaining, the motion to refund the 2009 bonds through an issuance of general obligation notes with the Delaware Valley Regional Finance Authority was deadlocked. Republican council members Colleen Morrone and Michael Culp voted in favor of the motion, while Democratic members Kevin Madden and Brian Zidek opposed it.

"Two to two, the motion fails, the savings are not realized," McBlain said immediately after the vote, followed by Madden's surprise at the comment, then his inquiry of county Solicitor Michael Maddren to review options for the county to receive counsel from another financial advisor than the one Delaware County uses — Calhoun Baker Inc.

"From my perspective, I'm concerned that this deal is rife with conflict of interest," Zidek said as he also expressed concern about the county's potential responsibility for termination rates.

With any refinancing, Delaware County is required to have two readings prior to a vote. The first reading of this occurred in March, when Zidek raised his concern that there was a conflict in Lucien B. Calhoun, president of Calhoun Baker Inc. serving as Delaware County's financial advisor and also serving as the program administrator for the Delaware Valley Regional Finance Authority, a position Calhoun has held since 1989.

To address this, Maddren was directed to hire outside counsel from Cozen O'Connor for $7,500 to do a memorandum regarding the situation.

Zidek read from that memo, stating, "Calhoun Baker's dual role as financial advisor to the county and program administrator for the Del Val loan program presents a classic conflict of interest. Calhoun Baker stands to benefit financially by advising the county to participate in the Del Val loan program."

Calhoun Baker is paid about 6.25 points for the gross process of a loan but if one is taken with the Delaware Valley Regional Finance Authority, it gets paid 20 basis points while waiving its 6.25 point fee.

"In terms of conflicts, I think the whole issue has been muddled," Calhoun said at the county council meeting. "Del Val is the conduit issuer. There's not a diversity of interests between Del Val and any participant in the loan program."

He added that the authority has 124 local governments from 12 counties with outstanding loans.

He also quoted an interpretive guidance issued by the Municipal Securities Rulemaking Board, stating, "It was not necessarily a conflict of interest for a municipal advisor to have dual representation of a conduit, an issuer such as Del Val and … the county of Delaware … And the reason for that is there is no diversity."

Madden asked about having a third-party financial advisor look at the figures for the refinancing.

"I think that would be problematic for any other firm to come in and do that," Calhoun said, adding that that advisor would have an inherent conflict of interest because of the potential incentive of getting Delaware County as a client with finding wrongdoing on Calhoun Baker's part.

"This is in no way a personal matter," Madden said. "I trust you as a person but structurally, I don't trust the structure we have here."

Calhoun then said, "I would resign. I would resign."

In addition, Zidek said the Cozen O'Connor memo stated that the advisor would be required by federal securities laws to disclose their conflict to their client in such a situation, as Zidek said he hadn't seen any disclosure.

McBlain said the relationship was apparent in Calhoun Baker's 2014 agreement with the county "They disclose in that agreement that they are the program administrator for Del Val," he said, adding that council had met with Calhoun last year to talk about various financings.

The chairman also noted that obtaining a Delaware Valley authority loan would have approximately $1.5 million in savings due to lower administrative costs, Calhoun Baker's not taking a fee from the county if it goes with the authority and other fees such as bond issuer's.

He added that the authority was specifically created by Chester, Delaware, Montgomery and Bucks counties to assist municipalities to do these types of financings at a lower rate for less cost.

Culp referenced this in his vote for the refinancing.

"I'm not going to risk a $6.4 million savings," he said. "I don't want Mr. (Calhoun) to have to resign … and we lose $6.4 million in savings and we're back up here at square one again … I think my vote is with Mr. Calhoun. He's been nothing but upfront with everything. He's answered every question I've ever had. We've had great business dealings with him in the past. I know he works well with our staff. I don't know how much longer we're going to drag this out and not get the savings for our county residents."

Zidek said, "One method of refinancing would be by doing the Del Val loan … and other ways would be to refinance by taking out bonds … It's not zero or $6.5 million … The face of the matter is there is a structural conflict that exists here that I don't feel comfortable waiving."

By Kathleen E. Carey kcarey@21st-centurymedia.com @dtbusiness on Twitter May 8, 2019

EPA Announces Availability of $2.6 Billion in New Funding to Improve Water Infrastructure Across the United States.

WASHINGTON — The U.S. Environmental Protection Agency (EPA) announced the availability of $2.6 billion in new funds to assist states, tribes and territories with improving drinking water and wastewater infrastructure across the country. This funding advances President Trump's efforts to rebuild the country's aging water infrastructure, create local jobs, and ensure all Americans have safe and clean water.

"EPA is delivering on President Trump's commitment to modernize our nation's water infrastructure and improve public health and environmental protections," said EPA Administrator Andrew Wheeler. "EPA's $2.6 billion contribution to the State Revolving Funds will enable more communities to make the investments needed to ensure Americans have safe water for drinking and recreation. These funds can also be combined with EPA's WIFIA loans to create a powerful, innovative financing solution for major infrastructure projects nationwide."

The State Revolving Funds (SRFs) require state match, loan repayments, and interest that flows back to the funds. With more than 30 years of federal capitalization grants and state contributions, approximately $80 billion has been invested into these programs. According to the agency's estimate of national drinking water and wastewater needs, over $743 billion is needed for water infrastructure improvements. Through loan repayments and investment earnings, the SRFs have leveraged these contributions to provide more than $170 billion in financial assistance to over 39,900 water quality infrastructure projects and 14,500 drinking water projects across the country.

This year, EPA is making available more than $1 billion in new federal grant funding for the Drinking Water State Revolving Fund (DWSRF). This funding can be used for loans that help drinking water systems install controls to treat contaminants such as PFAS and improve distribution systems by removing lead service lines. In addition, more than $50 million in DWSRF grant funding is available to tribes, U.S. territories, and the District of Columbia to use for drinking water system upgrades.

EPA is also providing approximately $1.6 billion in new federal grant funding for the Clean Water State Revolving Fund (CWSRF). This funding is available for a wide range of water infrastructure projects, including modernizing aging wastewater infrastructure, implementing water reuse and recycling, and addressing stormwater. More than $64 million in CWSRF grant funding is available to tribes, certain U.S. territories, and the District of Columbia for infrastructure projects.

Background:

Under the Clean Water and Drinking Water State Revolving Fund programs, EPA provides funding to all 50 states and Puerto Rico to capitalize SRF loan programs. The states and Puerto Rico contribute an additional 20% to match the federal grants. The 51 SRF programs function like infrastructure banks by providing low-interest loans to eligible recipients for drinking water and clean water infrastructure projects. As the loan principal and interest are repaid over time, it allows the state's DWSRF or CWSRF to be recycled or "revolve." As money is returned to the state's revolving loan fund, the state makes new loans to other eligible recipients.

In 2018, the SRFs committed $9.6 billion in drinking water and clean water infrastructure loans and refinancing and disbursed $8.8 billion for drinking water and clean water infrastructure.

For more information, visit https://www.epa.gov/drinkingwatersrf and https://www.epa.gov/cwsrf.

05/08/2019

Bill Would Provide $5.8 Billion Increase in Transportation PABs.

WASHINGTON – Congressional proposals to expand the use of private activity bonds keep growing, with the latest coming from a bipartisan group of House lawmakers who want to raise the federal cap on private activity bonds for surface transportation and freight improvement projects by $5.8 billion.

The current volume cap on PABs issued for highways and freight improvement has just over $2.5 billion remaining that can be authorized by the U.S. Department of Transportation.

A total of $12.45 billion has either been issued or allocated of the $15 billion currently authorized by Congress.

The proposed Building United States Infrastructure and Leveraging Development (BUILD) Act introduced in the House this week is identical to a bipartisan Senate bill introduced in February by Sens. John Cornyn, R-Texas, and Mark Warner, D-Va.

Two House Democrats – Reps. Earl Blumenauer of Oregon and Terri Sewell of Alabama – have teamed up with Republican Reps. Mike Kelly of Pennsylvania and Rodney Davis of Illinois as lead cosponsors.

"Public-Private partnerships are one of a myriad of tools the nation needs to bridge the $2 trillion infrastructure investment gap," Blumenauer said in a press statement announcing the introduction of the bill.

"I am hopeful that this bipartisan legislation will be part of any upcoming effort to rebuild and renew America," he said.

The current $15 billion cap was established in 2005 under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which authorized a new type of tax-exempt private activity bonds that could be issued by state or local governments to finance qualified highway or surface freight transfer facilities.

The 2005 legislation designated DOT as the key agency for allocating these transportation PABs.

The transportation and freight PABs are among 22 eligible PABs that are subject to varying federal rules, according to the nonpartisan Congressional Research Service.

Thirteen of the 22 activities are subject to annual state volume caps. Among them are multifamily housing bonds, single-family mortgage revenue bonds and qualified student loan bonds. Others include small issue bonds, redevelopment bonds, exempt facility bonds such as water and sewage facilities, hazardous waste facilities and other utility facilities.

Among the PABs not subject to volume caps are those financing airports, docks, wharves and projects for 501(c)(3) organizations.

The transportation and freight PABs have been used for 35 projects in a wide range of states from Colorado to Illinois, Indiana and Ohio with another five allocated and not yet issued.

The projects include $460.9 million in PABs used for construction of a new Goethels Bridge between Staten Island in New York City and northern New Jersey, $737 million used for the so-called "Transform 66 Project" to widen Interstate 66 in the Virginia suburbs of Washington and two projects of $400 million and $274 million involving the North Tarrant Expressway in Tarrant County, Texas. Another $750 million for the North Tarrant Expressway has been allocated but not yet issued.

Another notable example of how these PABs have been used is through the Florida Development Finance Corp. to help private investors finance a high speed rail project between Miami and Orlando formerly known as Brightline and recently renamed Virgin Trains USA.

Other bills to expand the use of PABs include the Move America Bonds Act, which would leverage $8 billion in federal investment into $226 billion worth of bond authority over the next 10 years or up to $56 billion over 10 years in tax credits, according to an estimate by the nonpartisan congressional Joint Committee on Taxation.

Move America Bonds could be used for a wide variety of projects, including airports, ports, transit, freight and passenger rail, roads, bridges, flood projects, inland and coastal waterway improvements, wastewater and sewage facilities, and broadband infrastructure.

Another PABs bill is the bipartisan Public Buildings Renewal Act that would authorize $5 billion in private activity bonds for the construction or rehabilitation government-owned buildings.

That bill, which had the support of leading state and local elected officials in the last Congress, would provide an economic boost of more than $8 billion in the first year, according to a 2017 study by the Beacon Hill Institute.

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 05/08/19 02:29 PM EDT

Shelly Sigo contributed to this report.

Court Orders EPA to Implement Landfill Emission Rule.

In *State of California vs. U.S. EPA*, Case No. 18-cv-03237-HSG, California U.S. District Judge Haywood S. Gilliam Jr. held that the U.S. EPA failed to comply with a "nondiscretionary obligation" under the federal Clean Air Act to implement regulations aimed at reducing air pollutants, including greenhouse-gas emissions, from municipal solid waste landfills. EPA promulgated Landfill Emission Guidelines during the Obama Administration that became effective October 28, 2016. States were to submit implementation plans by May 30, 2017. EPA was to approve or disapprove plans by September 30, 2017, and EPA was to issue federal plans for states that either did not submit plans or for non-conforming state plans by November 30, 2017. California, New Mexico, Arizona, Delaware, and West Virginia submitted state plans. EPA has not approved or disapproved any state plans, nor has it promulgated a federal plan. Plaintiffs sued to force EPA to take action.

EPA admitted that it failed to take action on the plans. However, EPA claimed that Plaintiffs lacked standing and that Plaintiffs' deadlines were not feasible. The Court found Plaintiffs had standing under the "special solicitude" standard of *Massachusetts v. EPA*, 549 U.S. 497 (2007). The Court found that states are not normal litigants for purposes of federal jurisdiction and that Congress by statute had granted State Plaintiffs the right to challenge EPA's alleged failure to perform a nondiscretionary duty (finding a procedural right under 42 U.S.C. 7607(b)(1)/7604(a)(2)). EPA alleged that State Plaintiffs lacked standing because they had failed to plead causation, and relatedly, redressability. Thus, EPA alleged that there was an insufficient causal connection between EPA's inaction and the alleged injuries to the States or the requested relief. The Court rejected this argument pointing to indications that solid waste landfills contribute emissions that "contain numerous harmful pollutants." Also, the Court notes that the parties did not dispute that landfills "'are the third-largest source of [domestic] human-related methane emissions' and that methane is the leading greenhouse gas behind carbon dioxide." The Court also pointed to the fact that the EPA Landfill Emission Guidelines themselves detail what it deemed to be a "meaningful contribution of landfill emissions to harmful pollution." The Court similarly rejected the redressability challenge, finding that EPA's challenge on this point was "entirely derivative of its [EPA's] causation challenge."

EPA and the States offered different proposed schedules for further action on the implementation plans. The Court found insufficient justification for the delays requested by EPA. The Court ordered EPA to: (1) approve or disapprove existing state plans no later than September 6, 2019; (2) promulgate regulations setting forth a federal plan non later than November 6, 2019; and (3) file status reports with the Court every 90 days.

by Bernard F. Hawkins, Jr.

May 9 2019

Nelson Mullins Riley & Scarborough LLP

[CAFR Award Winners Announced.]

GFOA established the Certificate of Achievement for Excellence in Financial Reporting Program (CAFR Program) in 1945 to encourage and assist…

More

Bumpers To Basis Points: Technology, Highway Transportation And Muni

[Bonds]

This article is the third in a series of four describing the positive effects of the rise of technology as both an infrastructure sector and credit factor in the municipal bond market (the introductory article is The Rise Of The Technology Infrastructure Sector In The Municipal Bond Market).

Those states, cities, counties and towns applying technology to assess and deliver services more efficiently and effectively are positioning themselves to be future-ready. Internet connectivity is both future-now and future-ready. The second article is From Megabits to Basis Points: Connecting Fiber Optic Broadband and Municipal Credit. This third article delves into the technologies changing highway transportation and the effect on credit in that sector.

Driving Into Traffic

Running late this morning, I missed my commuter train into Boston, and decided (foolishly) to drive instead to “save time.” Why I persist in this delusion in the face of abundant abject experience to the contrary was something I was contemplating while sitting at a dead stop on Interstate 93 North. Part of the “Big Dig” here in Boston about two decades ago, I-93 improvements, including adding lanes, were a solution for a number of transportation ills, not the least of which was to be clearing traffic congestion on this very roadway.

The “adding lanes to solve traffic” solution failed miserably for Robert Moses in New York back in the 1950s and 1960s and isn’t faring much better here in Boston these many years later. Expensive to build and maintain, roads don’t solve transportation problems—they complicate and compound them. More roads only encourages more people to drive, exactly the thing causing the problem in the first place.

Road Technology

Ohio has another approach. With 1,573 miles of highways crossing the state, it is the fourth largest interstate system in the country. Forward-looking as to how technology might address the issues of managing that system, the Governor of Ohio formed DriveOhio in 2018. A collaboration of dozens of public and private entities dedicated to finding tech solutions, Ohio is positioning itself to be a leader in smart mobility.

The long-term goal is nothing short of creating a fully technologically integrated highway system. From DriveOhio’s perspective, transportation infrastructure has to be able to constantly transmit, receive, monitor and respond to signals about road conditions, traffic flow, accidents, bad weather and other driving hazards. That means sensors to capture data, high speed broadband connectivity to transmit the data, and statistical analytics, machine learning and artificial intelligence to develop evidence-based solutions both in real time and over time.

Part of that infrastructure are vehicles and actually driving on the roads. A large component of smart mobility is technologically connected vehicles. This type of vehicle-to-vehicle (V2V) and vehicle-t--infrastructure (V2I) data sharing helps drivers avoid dangerous situations and allows traffic monitors to make better decisions about traffic management.

Sounds very future-techy, but what how does this help drivers behind the wheel in real life? It means, in real time, a driver can be notified when there is an accident, heavy traffic or bad weather with a suggested (or required) alternative route. With this advance notice filling the transportation-information vacuum, drivers can be safer, have less stress, use less gas, lower carbon emissions and make better time.

It also means first-responders can get help in the event of an accident. Accidents are a big issue in Ohio. On those main roads and local ones, there were over 300,000 car accidents in 2018. The overwhelming majority were driver error. Research showed that fully 80 percent of those crashes could have been avoided or mitigated with connected vehicle technologies.

The Case of the Ohio Turnpike and Infrastructure Commission

Stretching across the state, from the Pennsylvania border in the East to Indiana in the West, the 241 miles of the Ohio Turnpike and Infrastructure Commission (Aa2/AA-/AA) has more than 56 million commercial and individual vehicles drive on its six lanes through the state during the year. It is widely acknowledged as a critical corridor in the national highway system. Getting prepared to be future-ready with internet connectivity for whatever the internet of things may bring, it is "fibered" end to end—the full length of the turnpike is run with fiber optic cable.

Corresponding, the Ohio Turnpike is one of the nation's leaders in testing and applying transportation technology. For example, to assure this critical corridor stays open in winter storm conditions—the average snowfall along the Turnpike was about 45 inches last year—it needs a fast response from snow-plows and deicers. So the Ohio Turnpike turned their snow-plows into data-gathering test vehicles. With sensors installed, in addition to vehicle speed, direction and location, there is data on when plows are up or down, when the salt spreaders are on and the rate of salt spread, and ambient temperature. The next step is capturing vehicle traction. That's more than just seeing if the snowplow operator is enjoying a comfortable ride. Lack of traction is an indicator of black ice, suggesting there is water pooling on the road—a physical problem with the highway that will require a civil engineering fix to avoid adding to the accident count.

Bumpers to Basis Points

Traditionally, municipal bond analysts and investors focus on fundamental analysis, looking at income statements and balance sheets that show year-old numbers. In transportation, a "deep-dive" analysis usually means linking those dollars on the page to vehicle counts, tolls collected and fuel tax rates assessed, perhaps even doing some debt service stress-test modeling using these revenue components.

The problem is that this only shows the trend after it happened, meaning any subsequent investment decision occurs after the fact. It's like buying a used car with 500,000 miles on the odometer because that proves the car works. Not to push the vehicle analogy too hard here, but trying to drive forward while looking in the rear view mirror doesn't usually work too well.

That traditional, numbers-focused analysis misses opportunities in municipal borrowers getting future-ready. The indicators here are easy to identify. They are those municipalities and authorities building out technological infrastructure and creating public-private collaborations to test new technologies. These borrowers are more likely to have stable-to-improving financial performance and, by extension, their bonds potentially generating better investment performance.

Municipal bond investors holding debt of communities and agencies not building and applying technology to get future-ready are going to find themselves in the breakdown lane, the performance of others passing them by.

(Sorry. Couldn't resist that last one.)

Forbes

by Barnet Sherman

May 3, 2019

Next In The Series

As advances in technology make delivering municipal services more effective and efficient, public administrators, appointed officials, and elected representatives are getting trained in these new tools. The fourth and final article in this series shows not only how these "next-gen" government leaders are going to use technology, but also how "next-gen" technology is restructuring government overall.

Barnet Sherman is the Director of Municipal Impact Credit Research, Neighborly Investments, an Adjunct Professor of Public Finance at Boston University, and is published in his field.

Issuers Welcome Fallback Language for Libor-Based Floating Rate Notes.

WASHINGTON — Municipal bond issuer officials are welcoming recommendations released last week for contractual fallback language for Libor-denominated floating-rate notes and syndicated loans.

Emily Brock, director of the federal liaison center for the Government Finance Officers Association, said GFOA 100% supports the effort and was among the 60 organizations that submitted comments to the Alternative Reference Rates Committee. The ARRC released the recommended language on Thursday.

"It very clearly defines cessation triggers and the fallbacks," said Brock.

These two fallback recommendations are the first in a series of fallbacks that the ARRC is expected to issue in the coming weeks and months. Future ARRC fallback recommendations will address legacy contracts with Libor, new contracts and consumer product contracts.

ARRC said the recommendations are part of its mandate to address risks in contracts that refer to Libor as part of the larger shift to the Secured Overnight Financing Rate (SOFR).

The phase out of Libor, also known as the London Interbank Offered Rate, will affect municipal finance in not just the bond market but also in some legacy contracts with suppliers where Libor language is used, according to experts.

"It's no longer a question of if "but when" Libor will become unusable, yet most contracts referencing it don?t adequately account for this eventuality," Tom Wipf, chair of the ARRC and vice chairman of institutional securities at Morgan Stanley (MS), said in a statement. "With Libor's possible 2021 expiration date looming, that obviously poses a massive risk to financial stability and market participants."

Wipf described the fallback language as "a critical step."

"We encourage market participants to incorporate this language into new contracts, and when possible, to begin writing contracts using SOFR instead of U.S. dollar Libor," he said.

Floating rate debt is only a small fraction of the municipal bond market.

The Securities Industry and Financial Markets Association listed $76.9 billion in publicly issued municipal bonds from 872 issuances that used FRNs as of Dec. 18, 2018. That’s only 2% of the $3.8 trillion municipal bond market and includes debt that uses the SIFMA index but doesn’t include swaps.

Libor-based municipal debt was an even smaller amount at $47.6 billion or about 1.3% of the overall muni market.

In the bigger picture, the Federal Reserve estimated last year there were roughly $200 trillion of financial securities referencing U.S. dollar Libor.

ARRC said the recommended language for FRNs and syndicates is for voluntary use in new contracts that reference Libor with the goal of reducing the risk of serious market disruption in the event that Libor is no longer usable.

The fallback language may be used in a broad range of floating rate securities issued in the capital markets, including municipal bonds, pass-through securities, convertible debt and other debt issuances.

Municipal issuers rarely participate in syndicates, in which the risk of a large private placement issuance is shared by banks.

Brock said the recommended language is “well organized” with what she described as “clear definitions.”

“For FRNs, it is language that is usable,? Brock said. “It could be used right away by issuers. Of course, GFOA has urged issuers to have a discussion with their municipal advisors and their deal team.”

Historically, most FRNs provided for a fallback waterfall that would, upon Libor not being available, first revert to the average of quotes in the London interbank market obtained by polling banks and then would ultimately fall back to the last published value of Libor if such quotes cannot be obtained, ARRC said.

“Because most observers now believe that banks would be unable or unwilling to provide the quotes implementing the first stage of this waterfall, it would appear that most FRNs would effectively convert to fixed rate instruments paying the last published value of Libor upon a cessation of Libor,” ARRC said.

The ARRC said its recommended language is meant to provide a more robust waterfall that would allow for a conversion to SOFR-based rates in the initial stages of the waterfall

The fallback language for FRNs defines the trigger events that start the transition away from Libor and outline a “waterfall” approach to determine the SOFR-based successor rate and the spread adjustment that would apply to the successor rate.

For syndicated loans, there are two separate approaches to fallback language. One is a hardwired approach that clearly specifies the SOFR-based successor rate and the spread adjustment. The other is an amendment approach that offers a streamlined amendment mechanism for negotiating a benchmark replacement and standard language.

According to AARC, “Some market participants may be initially more comfortable with the amendment approach because it does not make references to rates or spread adjustments that do not yet exist.”

By Brian Tumulty

BY SOURCEMEDIA | ECONOMIC | 04/30/19 01:48 PM EDT

Financial Implications of Natural Disasters on Local Governments and Investors.

Whether it's the draughts in California or hurricanes in the southeast parts of the United States, natural disasters can cost hundreds of lives and billions of dollars in damage to the economy. According to the National Center for Environmental Information (NOAA), the past few years have had the record-setting "Billion-Dollar Disaster Events," both in frequency and the total financial detriments to the American economy.

Given the increasing frequency, these events can create an enormous financial and resource burden on both the local and state governments. Most of the financial burden is often shared by local, state and federal governments in their relief and reestablishment programs.

These natural disasters can also severely impact the revenue streams for cities and counties around the United States. In this article, we will take a closer look at how natural disasters can potentially create an unbearable burden on financial operations for local government, ultimately impacting your holding of municipal debt instruments.

Continue reading.

municipalbonds.com

by Jayden Sangha

May 01, 2019

Closed-End Funds: Tax-Exempt Bonds

The funds buying municipal bonds have done well. All but two of the 133 that have been around for at least a decade delivered portfolio returns better than the 5.3% earned by the Vanguard Long-Term Tax-Exempt Fund (Admiral class shares).

Did the closed-ends accomplish this feat with brilliant bond selection? Perhaps a few did. But the explanation for the category's success lies elsewhere. Almost all of these funds use leverage.

Typical leverage in a closed-end muni fund is 35%. The fund buys $1,000 of long-term bonds, using $350 of borrowed money alongside $650 of money from the common shares whose performance is reported here. Funds borrow by issuing floating-rate preferred stock or its equivalent in some more complicated derivative. The preferred pays interest in the form of a tax-exempt dividend.

Continue reading.

Forbes

by William Baldwin
Senior Contributor

May 2, 2019

Easing Inflation Concerns Spur Jump For Longer-Dated Munis.

Summary

- **The Black Belt Energy Gas District has surfaced in the municipal bond pipeline with US$735m worth of gas prepay revenue notes, amid increasing demand for longer-dated debt.**
- **For the week ended April 24, Thomson Reuters/Lipper U.S. Fund Flows reported a net inflow of roughly US$1.28bn into municipal bond funds – contributing to 16 straight weeks of inflows.**
- **The Bond Buyer's 30-day visible supply – at US$8.8bn – is the highest in a month.**

Black Belt Energy Eyes US$735m 30-year Gas Prepay Revenue Bonds

The Black Belt Energy Gas District (BBE) has surfaced in the municipal bond pipeline with US$735m worth of gas prepay revenue notes, amid increasing demand for longer-dated debt.

The Alabama state-based public corporation serves as the natural gas supply arm of the Clarke-Mobile Counties Gas District, and was formed in 2008 for acquiring, managing and funding natural gas supplies for consumers, among other purposes. It is comprised of three municipal members: The City of Jackson, AL, the City of Thomasville, AL and the Town of Grovehill, AL.

The issuer said it aims to peg the proceeds from the sale of the bonds to prepay the acquisition costs of a fixed quantity of natural gas to be delivered over a 30-year period by Morgan Stanley Energy Structuring (MSES), pursuant to a Prepaid Natural Gas Sales Agreement (GSA).

Among the details of the transaction, BBE aims to enter into a commodity swap with BP Energy Co – guaranteed by BP Corporation North America – to mitigate any difference between the fixed payments owed to bondholders and the variable gas sales revenues received from its project participants.

BBE will also enter into an interest swap arrangement with MSES for the fixed payments it receives, with Morgan Stanley guarantying MSES's payments.

The issuance's series 2019A-1 bonds will be sold with a fixed interest rate, while the 2019A-2, 2019A-3, and 2019A-4 notes will be issued with variable rates.

The deal, rated 'A3' by Moody's Investors Service and 'A' by Fitch Ratings, is being lead-managed by Morgan Stanley, which is also serving as guarantor for payment obligations under the GSA.

Analysts at Fitch highlighted that by "virtue of the sales, hedging and investment agreements," the project is structured to "ensure that monthly net payments to BBE are sufficient to pay scheduled debt service, regardless of changes in natural gas prices, the physical delivery of gas, or the acceptanceof delivered gas."

Both Moody’s and Fitch base their credit ratings, in large part, on the credit quality of Morgan Stanley.

BBE’s bonds are expected to price in May 2019. If successful, it would mark the issuer’s fourth debt transaction.

At the start to March 2018, BBE had issued close to US$687m worth of gas supply revenue bonds to finance an upfront prepayment for the 30-year supply of natural gas under an agreement with commodities broker J. Aron.

Alabama’s Natural Gas Profile

According to the U.S. Energy Information Administration, Alabama’s natural gas production meets about one-fourth of the state’s demand.

The EIA notes that the state’s consumers receive the commodity via interstate pipelines, mainly from Mississippi and the Gulf Coast, but a growing share of supplies is also shipped south through Tennessee from Pennsylvania natural gas fields in the Marcellus and Utica shales. More than four-fifths of the natural gas entering Alabama continues through the state, mainly on to markets in Georgia, Florida, and Mississippi.

In terms of BBE’s proposed bond issuance, the district will enter into Gas Supply Contracts with one public gas system; the City of Greenwood; as well as two gas and electric joint action agencies, Florida Gas Utility and the Public Energy Authority of Kentucky, which will resell its gas to Philadelphia Gas Works.

The EIA continued that an increasing amount of the natural gas delivered to Alabama customers goes to the electric power sector to fuel electricity generation, and since 2007, that sector has been “the largest natural gas-consuming sector” in the state.

The energy agency added that while the industrial sector consumes the second-largest amount, about 3 out of every 10 households use natural gas for heating. The residential sector typically uses only about 5% of the natural gas delivered to customers, mainly due to the state’s mild winters.

In fact, Alabama, which produces natural gas both onshore and offshore in state waters, has seen its annual natural gas production steadily decline from its height in 1996, and currently contributes less than 1% of the nation’s total natural gas output.

Rising Muni Demand Continues

Meanwhile, BBE’s pipeline bond deal comes amid a surge of investor demand in longer-dated municipal debt.

At 90.9% of comparable U.S. Treasuries Friday, the 30-year AAA municipal bond yield rose to its most expensive in nearly three years, according to data compiled by Bloomberg. The ratio – a key level of relative value – fell to its lowest since late June 2016.

Also, for the week ended April 24, Thomson Reuters/Lipper U.S. Fund Flows reported a net inflow of roughly US$1.28bn into municipal bond funds – not including ETFs such as the iShares National Muni Bond fund (NYSEARCA: MUB) and the Vanguard Tax-Exempt Bond fund (NYSEARCA: VTEB).

The most recent positive flows contributed to 16 consecutive weeks of inflows, with long-term municipal funds having received more than US$2bn.

Analysts at Janney Montgomery noted that as “inflation worries recede, longer maturity bonds are attracting increased investor interest.”

They also said that while the Bond Buyer 30-day visible supply – at US$8.8bn – is the highest in a month, this week’s primary calendar of US$5bn is “quite manageable, especially in the high demand environment we’ve occupied this year with record inflows to municipal mutual funds fueling municipal sector outperformance.”

Other deals on the radar for the week ahead include issuance from the cities of Philadelphia, Dallas, and Milwaukee.

In the meantime, prices of MUB and VTEB have soared more than 4.5% to 4.8% since their latest 52-week lows set in early November 2018 of US$106.575 and US$49.855, respectively, according to the IBKR Trader Workstation.

Seeking Alpha

May 1, 2019

Muni Market Dynamics Driven By Strong Demand And Weak Supply.

Summary

- **Demand for municipal bonds appears to have recently exceeded the pace of new supply, amid consistently positive fund flows.**
- **Holdings of muni bonds have notched up by more than US$17.5bn year-over-year in the fourth quarter of 2018 to a total of nearly US$3.7trn, according to SIFMA/Thomson Reuters.**
- **Against this backdrop, and among the deals in the pipeline, the Commonwealth of Massachusetts is poised to offer US$400m worth of Government Obligation Bonds.**
- **The proposed GO bond issuance is slated to be sold through competitive, electronic bidding via PARITY on May 7.**

US$400m of Long-dated Mass GO Bonds Hit Radar

Issuance in the primary U.S. municipal debt market has generally resided at low levels, while increased interest from mutual funds and insurance companies has helped the asset class to outperform.

Demand for municipal bonds appears to have recently exceeded the pace of new supply, amid consistently positive fund flows.

For the week ended April 24, Thomson Reuters/Lipper U.S. Fund Flows reported a net inflow of roughly US$1.28bn into municipal bond funds – not including ETFs such as the iShares National Muni Bond fund (NYSEARCA: MUB) and the Vanguard Tax-Exempt Bond fund (NYSEARCA: VTEB).

Holdings of muni bonds have notched up by more than US$17.5bn year-over-year in the fourth quarter of 2018 to a total of nearly US$3.7trn, according to SIFMA researchers and data sourced by Thomson Reuters.

Accounting for most of the uptick, mutual funds and insurance companies have upped their take by 2.42% and 3.67%, respectively, while banking institutions shed close to 13.1% from the prior year to almost US$526bn.

The most recent fund flows data marked the 16th straight week of inflows, with long-term municipal funds having received more than US$2bn.

Analysts at Janney Montgomery noted that recent muni outperformance has been "especially evident on the long end of the curve," with the 30-year Muni-Treasury ratio falling to 90%, the lowest in more than six years.

They observed that weak supply and strong demand underlies the strength in the municipal market, and the trend seems "likely to continue as investors continue to pour cash into municipal funds and ETFs (US$32.bn in 2019)," while new issue issuance languishes.

April's supply volume is expected to come in at around US$22.5bn, the lowest level to date in 2019.

Janney Montgomery added that while the Bond Buyer 30-day visible supply – at US$8.8bn – is the highest in a month, this week's primary calendar of US$5bn is "quite manageable, especially in the high demand environment we've occupied this year."

MASS GO

Against this backdrop, and among the deals in the pipeline, the Commonwealth of Massachusetts is poised to offer US$400m worth of GOs (Consolidated Loan of 2019, Series C) alongside three additional US$100m GO tranches (Series D, E and F).

Most of the Series C issuance comprises longer-dated notes, with serial maturities beginning in 2039 and extending to 2049, with proceeds to be applied towards the financing of certain capital projects aligned with the state's 2019 investment plan.

The proposed GO bond issuance is slated to be sold through competitive, electronic bidding via PARITY on May 7, with Public Financial Management (NASDAQ:PFM) serving as the municipal advisor on the 'AA'-rated deal.

Moody's Investors Service attributed its investment-grade 'Aa1' credit rating on the transaction to Massachusetts' "continually growing economy, anchored by education, healthcare and technology sectors."

Moody's analyst Genevieve Nolan noted that the commonwealth's "strong economy, combined with close monitoring of revenues and ample executive authority to make mid-year cuts, have resulted in balanced budgets.

"Strong year-over-year tax revenue growth, along with prudent planning, have afforded the commonwealth the opportunity to build up reserves."

She added that while debt and pension liabilities are among the highest in the country, "these figures include borrowing and benefits for local governments."

As of June 30, 2018, Massachusetts' net pension liability in governmental activities totaled a little more than US$31.3bn, with total long-term debt obligations up nearly US$162m year-over-year to roughly US$6bn.

Indeed, concerns about public pensions continue to plague muni market participants.

According to the 2019 Smith's Research & Gradings Annual Municipal Bond Analyst Survey, conducted by Tom Kozlik, public pensions remains the number one issue/trend facing the municipal bond market. This finding was derived from 85% of the 155 analysts who responded.

At 55%, issuers' level of fiscal preparedness for the next recession was the second most concerning, which Smith's Research & Gradings highlighted as "notable because this topic was not even included in our 2108 survey."

Mass revenue collection beat the March benchmark

Meanwhile, Massachusetts Department of Revenue Commissioner Christopher Harding said earlier in April that preliminary revenue collections for March totaled US$2.67bn, US$316m, or 13.4%, above the revised monthly benchmark, and US$427m, or 19.0%, more than the actual collections in the same year-ago month.

The original benchmark for fiscal year 2019 was around US$28.4bn, however as part of the fiscal year 2020 Consensus Revenue process, it was adjusted to almost US$28.6bn on December 31, 2018.

Harding continued that corporate and business revenue, as well as the non-withholding income tax, which are "generally volatile, were the primary contributors to the above-benchmark performance for the month."

He added that withholding and sales and use tax, the two largest revenue categories – also associated with overall economic conditions in the state – showed continued growth over the prior year.

While Massachusetts' economy remains diversified, the state's government touts its knowledge–based technology and service industries as its strongest components, which compels it to rely heavily on a highly educated workforce.

Overall, the state's economy, with its concentration of higher education institutions, life sciences and medical industries and high technology companies has outperformed the broader national economy during and immediately following the most recent recession. It also maintains an unemployment rate about average for the New England region and below the nation's 3.8% March 2019 pace.

Seeking Alpha

May 1, 2019

Puerto Rico's Move To Claw Back Bonds Shocks Muni World (Radio)

MUNIS IN FOCUS: Joe Mysak, Editor Bloomberg Brief: Municipal Market, discusses Puerto Rico's oversight board suing banks and bondholders to claw back more than $1 billion in fees and interest payments. Hosted by Lisa Abramowicz and Paul Sweeney.

Running time 05:35

Play Episode

May 3, 2019

Disappearance of $117 Billion of Muni Debt to Fuel Bond Hunt.

- **Market set to contract as more bonds are paid off than sold**
- **Scarcity has helped propel best start to a year since 2014**

A cash tidal wave is about to wash over the muni-bond market.

State and local governments are set to pay off $117 billion of debt from June through August, promising to add tailwinds to a market that's already off to its strongest start since 2014 as billions of dollars flows into mutual funds, according to data compiled by Bloomberg. The amount of bonds that will be paid off each month over the summer — when the lion's share of municipal debt matures — will far exceed the average $26 billion of new securities that have been issued each month so far this year.

The scarcity of new municipal-bond issues comes just as some investors are seeking out the securities as a way to drive down tax bills that were increased by the cap on state and local tax deductions. Mutual funds focused on municipal bonds have seen cash flow in every week since early January, leaving them picking up more in the first four months of 2019 than they usually do in a year, according to the Investment Company Institute's figures.

At the same time, the market has been contracting. Governments paid off debt last year at a faster pace than they sold it for the first time since 2014, according to Federal Reserve Board figures. The phenomena has continued this year, when about $111 billion of debt matured or was paid off early. Only $104 billion of new bonds have been sold.

"I don't believe that is going to turn around in the next couple of quarters," said Debra Crovicz, a managing director at Chilton Trust Co. who handles municipal-bond investments. "You have a lot of summer calls and coupon reinvestment and money going back into funds from maturities."

Bloomberg Markets

By Danielle Moran

May 1, 2019, 10:32 AM PDT

— With assistance by Sowjana Sivaloganathan

Deutsche Bank Lent to Firm Alleging 'Intimidation' by Nuveen.

- **Preston Hollow claims Nuveen pressured lender over business**
- **Delaware judge says courts are reluctant to restrain speech**

Deutsche Bank AG was the primary lender to Preston Hollow Capital, the Dallas-based public finance company that's suing the head of state and local debt investments at Nuveen LLC for allegedly engaging in "a campaign of intimidation" aimed at blocking banks from doing business with its smaller competitor.

The German bank’s ties to the upstart company, which extends loans for speculative projects that may otherwise borrow in the public market, was disclosed Tuesday at a Delaware Chancery Court hearing over whether Preston Hollow’s defamation lawsuit should be thrown out.

Preston Hollow accuses Nuveen’s John Miller of “trash talking” it and using hardball tactics to land low-rated bond deals for his Chicago-based company — one of the biggest investors in junk-grade municipal securities. Such bonds are frequently in short supply, making Preston Hollow’s lending business a potential rival for debt issues.

Miller and his team allegedly called Deutsche Bank in December, demanding that it unwind more than $400 million in financing deals with Preston Hollow and pressuring the bank not to provide future loans, according to the initial complaint, which didn’t identify the lender.

Miller made good on the threat by moving $500 million of tender-option bond financing and the revenues associated with it to another bank, according to the complaint. Such programs finance the purchase of higher-yielding long-term municipal bonds by selling tax-exempt floating-rate securities to money-market funds.

Preston Hollow claims Miller and his subordinates targeted its ability to compete with Nuveen, a financial powerhouse that oversees more than $140 billion of municipal assets and is one of the largest investors in the $3.8 trillion U.S. state and local debt market. Preston Hollow has extended about $2 billion in loans.

Nuveen is urging Judge Sam Glasscock III to throw out the case, arguing that it’s allowed to push its bank partners to share investment opportunities and not support rivals.

There’s nothing improper about a larger competitor exercising its free-speech rights about a smaller rival’s operations, Peter Walsh, a lawyer for Nuveen, told the judge. “We are all competitors in the municipal bond market,” he said.

But Preston Hollow contends Miller is leaning on bankers and broker-dealers to “boycott” the bond firm, hoping to drive it out of business.

The case amounts to “a life and death struggle” for Preston Hollow, David Wollmuth, one of the company’s lawyers, told Glasscock. Financing from institutions such as Deutsche Bank is the firm’s “oxygen” and Nuveen is trying to smother it, the attorney said.

Wollmuth asked Glasscock to let the suit proceed so Preston Hollow can get access to tapes of Miller’s calls to enlist broker-dealers in the boycott. The details of Miller’s “trash talking” may open up new claims in the suit, the lawyer said.

Preston Hollow has subpoenaed tapes of Miller’s calls with traders at Goldman Sachs Group Inc. and JPMorgan Chase & Co., along with those of Deutsche Bank officials, according to court filings. Troy Gravitt, a Deutsche Bank spokesman, declined to comment.

Glasscock said he’d decide by next week whether Preston Hollow’s suit will move forward, but warned Wollmuth he couldn’t envision issuing an order stopping Nuveen’s criticism of the bond fund’s operations that would stand up on appeal. Delaware courts are loathe to put a “prior restraint on speech,” the judge said.

The case is Preston Hollow Capital LLC v. Nuveen LLC, 2019-0169, Delaware Court of Chancery (Georgetown).

Bloomberg Markets

By Jef Feeley and Martin Z Braun

April 30, 2019, 10:31 AM PDT Updated on April 30, 2019, 12:10 PM PDT

When The Cycle Turns: Health Care Subsectors Ranked By Vulnerability To Economic Downturn

Health care is a defensive industry. Still. Demand for health care products and services is largely inelastic. However, we believe issuer credit ratings in the for-profit health care sector are more vulnerable to a cyclical downturn than in previous recessions. Credit quality markedly declined in the decade since the last recession.

Continue Reading

Apr. 29, 2019

Robo-Trading Electrifies Sleepy Municipal Bond Market.

Electronic trading has surged in municipal-bond trading, leveling the playing field for small investors

Every morning, money manager Brian Dixon puts 75 to 100 municipal bonds up for sale to about 80 Wall Street brokers. But his biggest buyer is TMC Bonds, one of the electronic-trading systems that is transforming the municipal-bond market and leveling the playing field for individual investors.

The share of municipal-bond trading on electronic "alternative-trading systems" like TMC, which connects hundreds of buyers and sellers anonymously in the $4 trillion municipal-bond market, has jumped to 9% this year from about 6% in 2017, according to data from exchange operator Intercontinental Exchange Inc . , or ICE. Total electronic trading, which includes anonymous and disclosed transactions, account for 12% to 15% of the market, according to research by Greenwich Associates Inc.

That means more trading partners and faster trade execution for portfolio managers like the Naples, Fla.-based Mr. Dixon, who invests mostly on behalf of individuals. For individual investors, who are big buyers of municipal bonds due to the tax-exempt income they offer, this increases the chances they will get a higher price on sales and a lower price on purchases.

Continue reading.

The Wall Street Journal

By Matt Wirz

May 6, 2019 8:00 a.m. ET

What to Make of the White House Infrastructure Meeting?

And just like that, federal infrastructure policy is back in the news.

Democratic Party leadership were all smiles after a White House meeting yesterday to discuss future infrastructure policy. President Trump appeared to agree to their high-level terms: $2 trillion in new federal spending that would cover transportation, water, broadband, and energy grid investments. President Trump even pledged the administration would take responsibility—three weeks from now—to present ideas for new funding sources.

But crafting and passing major infrastructure legislation has been challenging for a reason, and there's little reason to believe this time will be different. I see three distinct challenges that could quickly turn optimism into disillusionment.

Continue reading.

The Brookings Institute

by Adie Tomer

May 1, 2019

Dems Want Climate Change, Tax Hikes in Infrastructure Deal.

The top two Democratic leaders on Monday told President Trump that any bipartisan infrastructure package needs to take into consideration climate change and include "substantial, new and real revenue" — a preview of the coming fight over tax hikes.

Trump will host Speaker Nancy Pelosi (D-Calif.) and Senate Minority Leader Charles Schumer (D-N.Y.) at the White House on Tuesday for discussions on a major infrastructure bill, one of the few policy areas that could see action amid divided government and as the 2020 race heats up.

Democrats want the measure for roads, bridges, waterways and other projects to be paid for with tax increases, and with a final price tag of at least $1 trillion over 10 years. Trump's fiscal 2020 budget calls for $200 billion in federal spending on infrastructure, which White House officials say will leverage an additional $800 billion in investment through public-private partnerships over the next decade.

"America's unmet infrastructure needs are massive, and a bipartisan infrastructure package must meet those needs with substantial, new and real revenue," Pelosi and Schumer wrote in a letter to Trump on Monday. "We look forward to hearing your ideas on how to pay for this package to ensure that it is big and bold enough to meet our country's needs."

The leaders laid out other Democratic priorities: Any deal must extend beyond traditional infrastructure projects, take into account climate change, include "Buy America" provisions and provide jobs for a broad swath of workers.

"A big and bold infrastructure package must be comprehensive and include clean energy and resiliency priorities," Pelosi and Schumer wrote. "To truly be a gamechanger for the American people, we should go beyond transportation and into broadband, water, energy, schools, housing and other initiatives. We must also invest in resiliency and risk mitigation of our current infrastructure to deal with climate change."

"A big and bold infrastructure plan must have strong Buy America, labor, and women, veteran and minority-owned business protections in any package," they added. "This bill can and should be a major jobs and ownership boost for the American people – manufacturers, labor contractors, and women, veteran and minority-owned businesses."

Pelosi told reporters earlier this month that an infrastructure package "has to be at least $1 trillion. I'd like it to be closer to $2 trillion."

Trump last year reportedly told lawmakers and senior White House officials that he was in favor of a 25-cent gas tax hike to help pay for an infrastructure overhaul. The gas tax, which supports the Highway Trust Fund and pays for road projects, has not been raised in more than two decades.

But on Monday, a source familiar with Schumer's thinking said the senator would not entertain any gas-tax proposal unless Trump also rolled back some tax cuts from his 2017 landmark tax law.

"Unless President Trump considers undoing some of the 2017 tax cuts for the wealthy, Schumer won't even consider a proposal from the president to raise the gas tax, of which the poor and working people would bear the brunt," the Democratic source said.

Tuesday's gathering marks the first meeting between Trump and the top Democratic leaders since the report from special counsel Robert Mueller was made public. It comes as multiple Democratic-led committees in the House have launched investigations into Trump, his administration, his business dealings and whether he obstructed justice.

A handful of other House Democrats will be attending Tuesday's meeting: Majority Leader Steny Hoyer (Md.), Majority Whip Jim Clyburn (S.C.), Assistant Speaker Ben Ray Luján (N.M.), Ways and Means Committee Chairman Richard Neal (Mass.) and Transportation and Infrastructure Committee Chairman Peter DeFazio (Ore.).

On the Senate side, Democratic attendees will include Minority Whip Dick Durbin (Ill.), Assistant Democratic Leader Patty Murray (Wash.), Democratic Policy Committee Chairwoman Debbie Stabenow (Mich.), and Sens. Ron Wyden (Ore.) and Tom Carper (Del.), the ranking members of the Finance and Environment and Public Works committees, respectively.

THE HILL

BY SCOTT WONG – 04/29/19

Short on Financial Knowledge, Some School Districts Get Bad Deals on Bonds.

Districts can fall prey to financial firms that put their own interests first

The state audit of the Fox C-6 School District in the small town of Arnold, Missouri, was brutal.

It revealed a slew of financial missteps: The superintendent and administrators had been giving themselves raises and using school district credit cards to purchase personal items such as shampoo, engraved watches, gift cards and wedding favors. But most costly of all, it argued, were mistakes the school district had made with bonds.

From 2007 to 2013 the district's taxpayers had approved several bonds, totaling more than $46.6 million, to help the district afford new technology, renovations to school buildings and new school buses. [The audit] alleged that the school district got a bad deal — one that may ultimately cost it $5.6 million in unnecessary interest payments.

"What happened in our district should not have happened, but it did," said John Brazeal, who joined the district as its chief financial officer in 2014. "It's not going to happen again on my watch."

John Brazeal, chief financial officer, Fox C-6 School District, Arnold, Missouri

In order to finance large projects, such as the construction of new school buildings or major renovations, school districts generally issue bonds and pay them back, with interest, over several years or decades. To help structure these deals, district administrators and school boards typically turn to outside financial advisers, lawyers and bond underwriters. But that can put school districts in a vulnerable position: They can easily be taken advantage of — urged to issue needless or poorly structured bonds, pushed to accept high interest rates or duped into paying hundreds of thousands in unreasonable fees. State officials and financial experts across the country warn that taxpayers ultimately end up paying millions more each year than necessary, which can lead to new tax hikes or result in less money for classrooms.

Because most bonds are so large, districts face big financial consequences if they don't get the best deal possible, said Mark Robbins, a professor of public policy at the University of Connecticut who has studied municipal bonds. "When you're talking about borrowing tens, even hundreds, of millions of dollars, even a one-hundredth of an interest rate point can be the equivalent of a teacher's salary."

A student is assisted down a staircase at Fox Middle School in Arnold, Missouri. The building is not completely ADA accessible. Whitney Curtis for The Hechinger Report

Most school districts don't have a municipal bond expert on staff or on their board, leaving them at the mercy of financial companies to guide them through the bond issuance process. Federal regulations require that these companies treat municipalities fairly, but the incentives built into the bond issuance process can sometimes pit school districts' interests against those of their financial team.

The advisers are typically paid a fee for their services related to the size of the bond or contingent on it being issued — and that can incentivize them to counsel districts to issue larger or more frequent bonds. Districts also work with underwriters, who purchase the bonds from the district and sell them to investors. The higher the interest rate on a bond, the easier it is for underwriters to sell.

Lori Raineri, president of the Sacramento-based independent public consulting company Government Financial Strategies, says she frequently hears from school district leaders who relied on relationships, referrals or marketing to choose their financial team but lack the quantitative expertise to evaluate the advice they get. (To avoid potential conflict of interests, her firm charges districts a fee based on the work it performs, regardless of whether bonds are sold.)

Raineri says it breaks her heart to see school districts in fiscal distress. She said it begs the question: "Who's benefiting here?"

When they get a bad deal, school districts can find themselves on the hook for unnecessarily high payments in a variety of ways. Some districts, like Missouri's Fox C-6, are stuck paying interest rates that are well above market rate. In one extreme case, a California district agreed to pay 12 percent interest on a $16.7 million bond issued in 2005. By the time all the debt is paid off, the district will have spent $34.3 million — almost a million more on interest than on the principal.

The fees that districts pay to financial firms also sometimes reach eyebrow-raising amounts. A study by the Haas Institute for a Fair and Inclusive Society (University of California, Berkeley), identified six California districts that paid more than 8.5 percent of their bond principal in fees, significantly greater than the 1 percent average costs the study found. In a separate case, Kansas City-based George K. Baum & Company, the same financial firm that underwrote the Fox C-6 bonds, was sanctioned by the Financial Industry Regulatory Authority for overcharging a school district in 2011. The company charged $43 per $1,000 bonds issued — far above the typical $7 to $9 for such an offering — for a total fee of $416,173, according to the regulatory authority.

In a memo to the district superintendent, George K. Baum said the fee it charged was appropriate because it had originally anticipated underwriting a larger bond, which failed at the ballot box. The regulator disagreed, noting that the firm "failed to deal fairly with the school district."

George K. Baum accepted the findings without admitting or denying them, and consented to a censure and fine of $100,000. Jon Baum, the company's CEO, did not respond to a request for comment.

Lack of competition

Researchers and financial experts, meanwhile, say that school districts also bear some of the responsibility for bad bond deals. Too often, districts don't shop around for the most favorable deal even though opening the process to competitive bidding can help drive down costs. When schools buy supplies like paper, for instance, they typically request bids and take the best offer they receive. But when it comes to bonds, noncompetitive sales — in which an issuer such as a school district unilaterally chooses an underwriter without comparing multiple options — are common. These negotiated sales make up the bulk of money in municipal bond sales, according to data from the Securities Industry and Financial Markets Association, a trade group for broker-dealers and investment bankers.

There are some circumstances in which a noncompetitive sale is the better option: when a district has a low credit rating and is unlikely to attract any bidders, for example, or when the bond deal is complex. Yet experts say those cases are exceptions.

Mike Parnell, an associate executive director at the Missouri School Board Association, said that noncompetitive sales often make sense because they allow school districts to retain local control of the bond-issuing process rather than leaving it up to the market. "If you're able to negotiate a more favorable rate for the district, that's going to be a good thing," he said. "If you just have to take whatever is out there that day, that may not be in the district's best interest."

But Robbins, the University of Connecticut professor, takes a different view: It's a matter of convenience for school districts that don't want to put in the time and effort to seek out comparisons. Among researchers who study competitive bidding, there's widespread agreement that a bidding process yields the best deal, he said: "It is not controversial."

Some states require that school districts go through a competitive bidding process under at least some circumstances when issuing a bond. But at least 25 states do not.

School districts that forgo competitive bids often make their decisions based on relationships — which financial firms will go to great lengths to forge. The firms will sponsor school board or leadership conferences and take school leaders out to dinner.

Some firms have gotten in trouble for going even further. In 2013, the Financial Industry Regulatory Authority fined a Missouri-based underwriting firm $200,000 for "improperly gifting" more than 2,000 tickets to sporting events. About half the tickets went to school superintendents and one-third to school board members who stopped by its booth at the annual Missouri School Boards' Association conference and filled out a piece of paper with their contact information.

The association said it was unaware of that incident. "The only giveaways we sanction at our conference are random drawings," the association said in an email. "We expect vendors in our exhibit hall to comply with all laws and industry standards."

Community outrage

In the Fox C-6 School district, which serves over 11,000 students in a tight-knit community near the Mississippi River, the state audit led to an outcry against school leaders. In the 109-page report, the school board was singled out for special scorn for allegations that it failed in its duty to vet the district's spending. After the audit and the resulting public backlash, top administrators left the district. The superintendent took a buyout but admitted no wrongdoing.

In the report, the state also faulted the school district for failing to solicit competitive bids for its bonds, as recommended by state auditors. Brazeal, the Fox C-6 chief financial officer, said he doesn't agree completely with the auditors' recommendations on competitive bidding. He sees some downsides to a competitive bid process, and he believes the district owed most of its financial troubles to a different culprit: the terms of the debt.

The bond deal had an interest rate of 4 to 5 percent, at a time when the market rate was closer to 3 percent, according to the audit. Also, the debt was structured so that the district was making interest-only payments until 2026, increasing the overall cost of the loan.

Why the district made these decisions is unclear — curiously, no documentation of the advice that led to these actions could be located by state auditors. The auditors noted that the district failed to seek advice from someone who didn't stand to make money from the transaction.

"The lack of independent financial advice could result in the Board not being adequately informed of debt issuance options or being unable to adequately evaluate debt proposals," the state auditors wrote. "The underwriter does not have a fiduciary responsibility to the district." (The state auditor did not respond to requests for comment for this story.)

A 2013 report from the Missouri state auditor found that the vast majority of the state's districts and municipalities did not use an independent financial adviser and, therefore received all their financial advice from their underwriting firm. The report estimated that school districts and local governments could have saved up to $43 million between 2008 and 2011 had they gotten more favorable interest rates.

A bill introduced in the Missouri House of Representatives in 2017 and backed by the state auditing agency would have required school districts and other municipal agencies to use an independent financial adviser or go through a competitive bid process when issuing bonds. But the bill died in committee after push back from financial firms and from groups that represent municipal agencies.

The groups said that a competitive bidding process would add bureaucracy and time and wouldn't end up saving taxpayers money. “We didn’t see any upside to that at all,” said Dirk Burke, executive director of the Missouri Association of Counties, an advocacy group that represents county governments.

But a narrower bill introduced in the state Senate did pass later that year. Under the legislation, Missouri school districts with good credit ratings must hire an independent adviser or sell their bonds competitively when issuing bonds worth more than $12 million.

Parnell, of the state school board association, says that most Missouri school districts still prefer to use negotiated sales for their bonds.

Bad financial decisions can breed distrust in communities, forcing district leaders to spend time and money repairing their reputations and making it more difficult for them to raise money for new projects. This year, for example, the Fox C-6 School District asked voters to approve a $70 million bond to upgrade aging school buildings.

Ahead of the vote, the district’s top administrators — none of whom worked in the district during the previous bond deal — distributed a question-and-answer sheet to residents designed to head off concerns. It addressed comments such as: “How do we know they are going to do what they say with the $70 million?” and “I am not supporting the district because they did not prosecute the former superintendent.”

Brazeal said he felt that the school district had done everything it could to repair the community’s trust.

“It’s sad when money is not benefiting students” he said. “For those of us that are here to carry on, we do what we can to keep it from happening again.”

But the efforts at rebuilding trust seem to have fallen flat. On April 2, voters rejected the district’s plan to issue $70 million in new bonds for building renovation and upkeep. Meanwhile, district staff continue to grapple with buildings in disrepair: Pipes leak sewage, basement classrooms have broken floor tiles and schools are not fully accessible to people with disabilities.

THE HECHINGER REPORT

by SARAH BUTRYMOWICZ and NICHOLE DOBO

April 22, 2019

S&P General Obligation Medians For Counties: Update As Of April 3, 2019

S&P Global Ratings derives the general obligation (GO) county medians from rating reviews completed under its GO criteria (“Local Government GO Ratings Methodology And Assumptions,” published Sept. 12, 2013). We derive the county medians from the 1,054 counties we rated as of April 3, 2019.

Continue Reading

Apr. 25, 2019

[S&P General Obligation Medians For Municipalities: Update As Of April 3, 2019]

S&P Global Ratings derives the general obligation (GO) municipal medians from rating reviews completed under its GO criteria (Local Government GO Ratings Methodology And Assumptions, published Sept. 12, 2013). S&P Global Ratings derives the municipal medians from the 3,877 municipalities it rated as of April 3, 2019.

Continue Reading

Apr. 25, 2019

S&P U.S. Higher Education Rating Actions, First-Quarter 2019.

The following table summarizes S&P Global Ratings' quarterly bond rating actions for its U.S. non-profit colleges and universities. All credit rating actions are based on our Methodology: Not-Fo--Profit Public And Private Colleges and Universities.

Continue Reading

Apr. 23, 2019

State and Municipal Budget Issues.

Annually Truth In Accounting releases a Comprehensive Annual Financial Report which is a set of U.S, government financial statements comprising the financial report of a state, municipal or other governmental entity that complies with accounting requirements promulgated by the Governmental Accounting Standards Board.

Read the full article on: Committee to Promote Private Infrastructure Investment

April 26, 2019

Municipal Bond Defaults Shake Up a Once-Sedate Market.

Municipal bond issuers have been in the news in recent years for all the wrong reasons, starting with places like Jefferson County, Ala., and Stockton, Calif., defaulting on their municipal bonds. Then Detroit filed for bankruptcy, with $18 billion in debt on its books.

And there's Puerto Rico, which is struggling to make its bond payments — or decide which of its $72 billion in municipal bonds to default on.

Still, money has continued to flow into municipal bonds, a market dominated by individual investors. There have been 27 straight weeks of inflows into municipal bond funds, according to Dan Heckman, senior fixed income strategist with U.S. Bank wealth management.

The main reason for municipal bonds' continued strength is that the interest paid on municipal bonds is free of federal and state taxes, which can exceed 50 percent for top earners in states like New York and California. Those savings give the bonds a substantial advantage over Treasury bonds with similar yields and even higher-yielding corporate bonds.

Still, selecting municipal bonds is not as simple as it was before the spate of defaults changed what was generally a stodgy asset class.

"The municipal bond market has transformed from what used to be a rates market like Treasuries to a true credit market like the corporate world," said John Bonnell, a portfolio manager at USAA.

"It used to be a given that if the issuers had the ability to pay their debt, they would," he said. "Now, it's their willingness to pay that's become more of a focus. Some of these issuers end up with budget situations where they have to pick and choose who's going to get paid what."

Before the financial crisis of 2008 and several high-profile defaults, municipal bond investors relied more on the rating of the bonds, something that an issuer could improve by buying insurance on them.

"What mattered was underlying credit quality and the issuer, but it got obscured for a long time by municipal bond insurance," said John Bussel, chief investment officer of Hewins Financial Advisors, which manages $4 billion for wealthy investors.

"Shakier issuers would buy municipal bond insurance to get them a AAA rating," Mr. Bussel said. "When people were buying muni bonds from a broker, he would say they're AAA insured."

When the crisis came, the solvency of municipal bond insurers was tested, since they had also branched out into insuring the bonds created out of mortgages. While about 55 percent of municipal bonds had insurance in 2008, that number is around 6 percent today. And the number of insurers has dwindled to three from seven.

Mr. Bonnell at USAA said he would rather have no bond insurance, "because we're doing the work," adding, "I'd prefer the issuers didn't pay for the insurance and I'd have the extra yield."

At the moment, shorter-duration municipal bonds are more in favor than longer-duration bonds, even when they pay a quarter of what the longer ones do, because interest rates are expected to rise and the shorter term all but guarantees investors will be paid back.

"Six months to one-year munis have become a bigger part of the market," said Kimberly Foss, founder of Empyrion Wealth Management. "Today, it's about high-quality municipalities that will be able to pay the duration of the bond and give people the income they need. What's left in their pocket after taxes is the most important thing for them."

With longer-duration municipal bonds, the concern is that an increase in interest rates will erode the value of the investment.

"The biggest risk is with long bonds," said Todd M. Morgan, chairman of Bel Air Investment Advisors, which manages $3 billion in municipal bonds. "Interest rates are unpredictable. They go up 100 basis points," or 1 percentage point, "and you could lose 20 to 30 percent of your investment."

As to determining which municipalities will not be able to make their payments for longer-dated bonds, investors can look to the recent past for a lesson — few of the problems cropped up overnight.

“You may get into fiscal difficulties like a Detroit or a Puerto Rico, but those things had a long tail and were running out,” Mr. Heckman of U.S. Bank said. “It shouldn’t have come as any surprise that Detroit ran into financial problems.”

Mr. Bonnell said that investors also needed to bear in mind political changes in the municipalities themselves.

“When it comes to the willingness to pay part, the officials you bought that bond from might be totally different 10 years from now,” he said. “It’s hard to predict with a 30-year bond.”

He added, “If it looks like things are deteriorating and they’re going to have to prioritize, hopefully if you’ve done your work correctly, you’ll be out of it by then.”

The long time horizon shows the value of having someone watch the municipalities, which is something that bond managers do but is also a role played by municipal bond insurers for individual investors.

Natalie R. Cohen, the head of municipal research at Wells Fargo, said that even though the remaining insurers are writing policies on a small number of new bonds, they play a role in negotiations for existing issues “with high-powered legal help in distressed situations, such as Detroit, helping to battle for bondholder recoveries.”

Bill Fallon, chief executive of National Public Finance Guarantee Corporation, a municipal bond insurer, said his firm was doing just that on general obligation bonds from Detroit. He said the holders of the city’s bonds continued to receive interest and principal payments.

While these insurers still have a marketing problem from the financial crisis, Mr. Fallon said that their coverage continued to be needed by smaller municipalities or those that do not regularly sell municipal bonds.

“If a large A-rated municipality is issuing $300 million, institutional buyers will know the issuer and put the resources toward it,” Mr. Fallon said. “Put that against an Iowa school issuance and it’s for $17 million, it’s unlikely you’ll have a large institutional manager putting the staff behind it.”

Brenda Wenning, who manages $22 million in fixed income for 30 clients, said that if her clients bought municipal bonds with insurance, it was generally for longer-dated bonds and for municipalities where they lacked the time or knowledge to do the analysis.

“Buying insured bonds removes having to understand each bond’s creditworthiness and allows the client to sleep at night,” she said.

For people buying municipal bonds on the secondary market, the more general risk comes from the lack of transparency on what the dealers paid for a bond and what they are selling it for.

“Most of the transactions in the secondary market are conducted through a broker or a discount broker, and the individual investor doesn’t have the horsepower or tools for price discovery,” Mr. Heckman said.

The Municipal Securities Rulemaking Board has started a website, called Electronic Municipal

Market Access, to help investors track the buy and sell prices on municipal bonds.

But in the end, what matters now is understanding the bond issuers more deeply. “Credit analysis is important,” said Mr. Bussel at Hewins Financial Advisors, “and it’s hard to do credit analysis on muni bonds.”

The New York Times

By Paul Sullivan

April 22, 2016

[Philadelphia Hands Bond Deal to Banks It Says Have Fleeced the City.]

- **Barclays, Wells Fargo among those Philadelphia sued in Feb.**
- **City alleges industry-wide conspiracy to push up yields**

Philadelphia alleges that Barclays Plc is one of seven banks that fleeced taxpayers by conspiring to inflate the yields on floating-rate municipal bonds. But the city hired the company to work on a new bond deal, anyway.

The London-based bank will serve as senior manager on Philadelphia’s upcoming $190 million bond offering — a job that requires the bank to gauge demand and price the securities accordingly. Giving the bank that role seems at odds with Philadelphia’s assertions in a lawsuit it filed against Barclays and six competitors, alleging that they worked together to set the yields on floating-rate bonds artificially high to make it easier to sell them, potentially costing governments billions of dollars.

Also named in the suit was Wells Fargo & Co., which will be a co-manager on Philadelphia’s upcoming bond sale, according to the city.

Barclays spokesman Andrew Smith and AnnMarie McDonald, a spokeswoman for Wells Fargo, declined to comment. Mike Dunn, a spokesman for the city, said in February that it didn’t plan to cut business ties with the banks it’s suing. A selection committee felt the companies provided “thoughtful credit and marketing ideas” for the general-obligation bond sale, Dunn said in an email Friday.

The lawsuit centers around so-called remarketing agents that set the interest-rates and line up buyers for variable-rate bonds, which investors have the option to sell back to those banks frequently. If the banks can’t find buyers, they hold the securities in their own inventory, giving them an incentive to raise the rates if they don’t want their money tied up. Both Barclays and Wells Fargo worked as remarketing agents for Philadelphia.

The city’s lawsuit follows others filed in state court by a financial adviser whose analysis of publicly available data led him to believe that the rates were being manipulated. Banks have disputed that assertion.

Bloomberg Markets

By Amanda Albright

April 26, 2019

S&P U.S. Charter Schools Rating Actions, First-Quarter 2019.

The following tables summarize S&P Global Ratings' quarterly bond rating actions, outlook revisions, and affirmations for its U.S. charter schools. All credit rating actions, outlook revisions, and affirmations are based on our criteria, U.S. Public finance Charter Schools: Methodology and Assumptions.

Continue Reading

Apr. 18, 2019

It's a Great Time For Muni Issuers As Investors Flow In (Radio)

MUNIS IN FOCUS: Joe Mysak, Editor Bloomberg Brief: Municipal Market, discusses the continued flow of money into munis. flows Hosted by Lisa Abramowicz and Paul Sweeney.

Running time 05:59

Play Episode

Bloomberg Radio

April 26, 2019 — 10:04 AM PDT

A Muni Moment for One Little-Known ETF.

Bloomberg's Eric Balchunas and Taylor Riggs break down the XTrackers Municipal Infrastructure Revenue Bond ETF (ticker: RVNU) with Fiona Bassett, global co-head of passive asset management and global co-head of product at DWS Group. They discuss how 'RVNU' stacks up against its bigger competitor, and the leaders in the ESG ETFs sector.

Watch video

Bloomberg ETF IQTV Shows

April 24th, 2019, 4:16 PM PDT

'Boom, Another Billion': Muni Funds Land a Year's Worth of Cash in Four Months

- **Funds have already seen $30 billion inflow, analyst says**
- **Bid to drive down tax bills pushes munis to pricey levels**

It's only four months into 2019, and already mutual funds that invest in state and local-government debt have raked in more cash than they usually do in a year.

Investors added $1.1 billion to such funds in the week ended April 17, the fifteenth straight weekly influx, the Investment Company Institute reported Wednesday. That bumped the total to about $30 billion since January, more than they've drawn during any full year since 2012, according to an analysis of the data by CreditSights.

"It is just really, really impressive," said Patrick Luby, a municipal strategist at CreditSights. "It's not unusual to see the year start out with inflows as people rebalance their portfolios. But it's been consistent. You see a dip one week, think it may start to slow down, but then boom, another billion."

Analysts say the cash flood has been driven by individuals in high-cost states such as California and New York who saw their tax bills rise as a result of the $10,000 limit on state and local tax deductions, which was first felt when they filed their returns this year. That has enhanced interest in tax-free bonds as a way to drive down what they'll owe.

The demand has helped drive municipal bonds to a 2.8 percent gain this year, twice the return on Treasuries, even before the tax breaks are factored in, according to Bloomberg Barclays indexes. And the yields on 10-year municipal bonds have dropped to around 76 percent of those on federal government debt, the lowest since at least 2001, indicating that the state and local securities have grown historically pricey in comparison.

Matthew Gastall, executive director at Morgan Stanley Wealth Management, said the market is gradually accepting the possibility that the deduction cap won't be changed anytime soon, if at all. As a result, he said munis have "rarely traded as strongly," he wrote.

Bloomberg Markets

By Danielle Moran

April 24, 2019, 10:30 AM PDT

Bonds to Save the Planet.

Eco-friendly fixed-income funds can help create a stronger market for securities that back environmental projects.

Green bonds could be a key tool to finance the fight against climate change. But good luck getting your hands on one, or figuring out exactly what it's worth.

The securities are just like regular bonds, except their proceeds are earmarked to fund projects that have positive benefits for the environment or climate. Countries including Poland and France have issued them to support renewable energy. Companies may use bond proceeds on projects that reduce emissions or enable funding for electric vehicles. Municipalities are also big issuers of green bonds. More than $600 billion in green bonds have been issued worldwide in the past decade, according to BloombergNEF.

The bonds have something of a built-in customer base of socially conscious investors including pensions and nonprofits. These investors tend to snap them up—most new green bond issues are oversubscribed—and hold them until they come due. This has put the market in a somewhat awkward spot: The bonds are clearly popular, but since they don't trade much, it's hard to get a precise view of their market value at any given moment. That could be keeping companies from issuing more of them.

Green bond issuance might grow faster if companies could see environmentally friendly bonds commanding a premium price on the secondary market, according to Daniel Shurey, head of green finance at BNEF. Since higher bond prices imply lower financing costs for issuers, that could "incentivize reluctant first-time issuers," Shurey says. Selling a green bond typically brings higher costs because issuers have to certify their projects are green, but that could be offset if issuers get to pay a lower rate. In other words, green bonds might be an even bigger deal if they traded more often—but to do that, they'll need to find a bigger audience.

They may be about to get one. Big asset management firms have been introducing green bond funds aimed at making the market more accessible to average investors. About 20 mutual funds and exchange-traded funds currently say they focus on green bonds, representing about $2.8 billion in assets combined, according to data compiled by Bloomberg. Roughly half of those have come on line in the past two years.

"Green bonds are something retail investors wouldn't necessarily have access to by themselves," says Stephen Liberatore, co-manager of the TIAA-CREF Green Bond Fund, which launched late last year. Mutual funds have to buy and sell green bonds more frequently than, say, a pension fund would to meet inflows and outflows from investors, he says, "though that should be manageable as long as we keep seeing continued expansion of the investable universe." BlackRock Inc., the world's largest asset manager, also started a green bond ETF in November.

Trading will also be helped as companies and governments sell more green bonds. The average size of a green bond deal has more than doubled, from about $120 million in 2015 to $261 billion in 2018, and there are more billion-dollar green bonds on the market. "More deals that are green bonds are larger and index-eligible, so they'll trade more frequently," Liberatore says.

Still, the market is far from mature. Most green bond funds have to buy additional bonds that meet sustainability criteria—but aren't specifically green—because those are easier to trade and use to meet redemption requests. Green bonds represent just a little more than 1 percent of the $53 trillion global bond market. But to meet the goal of limiting global warming to 2C (3.6F), about $90 trillion of investment is needed by 2030, according to the Climate Bonds Initiative. That leaves plenty of room for green bonds to grow.

Bloomberg BusinessWeek

By Emily Chasan

April 23, 2019, 3:00 AM PDT

[Commentary: U.S. Taxable Municipal Bonds – An Often Overlooked Late-Cycle Asset Class.]

U.S. retail investors have long dominated the U.S. municipal bond market, but over the last decade, institutional interest in the sector has soared, particularly outside the U.S. and specifically in taxable municipal bonds.

So far, these non-traditional investors, including pension funds, insurance companies and family offices, have been rewarded. Over the last 10 years, taxable U.S. municipal bond returns have topped all but one major bond sector, U.S. high yield.

For example, the sector's 6.9% annualized total return for the period handily outperformed the 4.6% return on U.S. corporate investment-grade bonds, a staple in most institutional portfolios.

Continue reading.

PENSIONS & INVESTMENTS

BY SCOTT SPRAUER AND ROBERT BURKE · APRIL 23, 2019 12:00 PM

School Districts Are Going Into Debt To Keep Up With Technology.

In Silicon Valley, cash-strapped schools are selling bonds to buy student laptops

SAN JOSE, Calif. — At James Lick High School the slate-gray Chromebooks are ubiquitous. Rolling cabinets stocked with dozens of the laptops sit in classrooms where teachers assign them to students for everything from researching hereditary DNA to writing essays. In this majority-Latino school of 1,100 students, 84 percent of whom qualify for free or reduced-price lunch, a federal measure of poverty, school principal David Porter says making the devices readily available is a significant part of an effort to develop digital literacy for students who might otherwise be left behind.

Nationwide, one out of four teenagers from low-income households lacks access to a home computer and, overall, Latino students have less access than their black and white peers, according to a 2018 survey by the Pew Research Center. "We're doing a disservice if we're not teaching the next generation how to use technology. Students being able to access it is critical," Porter says.

Using computers and online resources in the classroom is part of a growing trend in education. What's unusual about James Lick's Chromebook program isn't the laptops themselves, but how they were paid for. In this school on the eastern edge of Silicon Valley, just a 20-minute drive from Google's Mountain View headquarters, the district has put these laptops into students' hands by going into debt, authorizing a $16.2 million sale of general-obligation bonds intended almost exclusively for the laptop purchases.

Continue reading.

THE HECHINGER REPORT

by AMADOU DIALLO

April 22, 2019

When No News Isn't Good News: What the Decline of Newspapers Means for Government

About one in five Americans now lack regular access to local media coverage. Studies show

this is bad for politics, municipal debt — and even the environment.

Last month, after years of layoffs, the Cleveland Plain Dealer announced it was cutting even more jobs. A newspaper that had a unionized staff of 340 at the dawn of the century will drop down to 33.

What happened at the Plain Dealer isn't unusual.

Around the country, major regional newspapers — including the Charlotte Observer, The Wichita Eagle, The Denver Post and The San Jose Mercury News — have shed 80 to 90 percent of their reporting and editing staffs. Between 2008 and 2017, newsroom employment dropped by 23 percent, according to the Pew Research Center. Already this year, more than 2,000 media jobs have been lost.

That's bad news for journalists. It's also bad for politics, government — and even the environment.

Continue reading.

GOVERNING.COM

BY ALAN GREENBLATT | APRIL 24, 2019 AT 4:00 AM

Not Just Toll Roads Anymore: Governments Find New Uses for P3s

State and local officials are striking long-term deals with private companies to upgrade airports, college campuses and prisons.

The biggest news in the world of public-private partnerships (P3s) last year had nothing to do with toll roads — the most visible way governments team up companies. Instead, the most expensive infrastructure deals were projects to build a car-rental facility and a small tram at Los Angeles International Airport.

Other significant P3s struck last year centered around student housing at Purdue University, a courthouse in Maryland and a replacement for a 155-year-old prison in Kansas, according to Inframation, a news and analysis service.

The only highway P3 in the mix last year, in fact, did not involve toll roads. The Michigan transportation department turned to a private consortium to design, build, finance and maintain a 5.5-mile stretch of Interstate 75 just outside of Detroit. As a result of the P3 and other innovations, the improved highway will be ready a decade earlier than previously planned.

Continue reading.

GOVERNING.COM

BY DANIEL C. VOCK | APRIL 23, 2019 AT 4:00 AM

$25B In Government Funds Deliver Critical Dollars For Water Infrastructure

In 2018.

The federal government's role in rehabilitating water utility infrastructure in the U.S. is taking on even greater importance as municipalities are challenged to keep pace with the aging of more than 70,000 water & wastewater treatment systems and three million miles of underground pipe networks, nationwide.

With overall public spending — local, state, and federal — on water utilities declining year-over-year in five of the last ten years, core federal programs are proving to be more critical in addressing investment needs in urban and rural treatment systems and networks, according to Bluefield Research, a market research firm focused exclusively on water.

The nation's infrastructure investment needs are evident in Bluefield's ongoing analysis of municipal utility capital improvement plans (CIP) and annual State Revolving Funding (SRF) requests. In 2018, analysis of utility planning documents resulted in as much as $68B in capital needs for water & wastewater infrastructure, annually, over the next decade. At the same time, $82B was requested from state administered SRF programs for clean (wastewater) and drinking water projects, up from $64B in the prior year. With only $15.2B awarded though SRF, the gap between utilities' investment needs and available spend is clearly widening.

"SRF loans and grants, which make up 60% of government allocations this past year, are more important than ever as the financial burden falls increasingly on local communities", says Erin Bonney Casey, Research Director for Bluefield. "Some states like Ohio are more proactive in supporting requests, while surprisingly, other state funds in Arizona and Tennessee, for example, are underutilized. Navigating these processes can be a challenge and, in fact, technology and equipment vendors are now recognizing the opportunity to support utilities in the application process to make a sale."

Bluefield Research's new report, Funding U.S. Water & Wastewater Infrastructure: Analyzing Government Sources for Project Development, examines $25.3B of loans and grants distributed in 2018 through four federal programs: EPA State Revolving Funds (SRF): USDA Loan & Grant Programs, Water Infrastructure Finance and Innovation Act (WIFIA), and U.S. Bureau of Reclamation programs.

Overview of Government Funding for Water Infrastructure

These funding sources, which address varying geographic needs and project sizes, typically receive bipartisan support and are expected to remain as water infrastructure mainstays in the absence of a more wide sweeping infrastructure act. In fact, 2018 saw a spike in the amount made available by these programs, with WIFIA expanding to over $4.8B in its second year, and the USDA dedicating over $5B to its water and waste program in a push to invest in rural communities.

Select cities and states are also becoming more creative and using innovative mechanisms to fund their water infrastructure improvements. Traditionally, rate increases have been a way to pay for improvements, which is not sustainable, particularly with water & wastewater rates increasing by as much as 30% since 2012, outpacing inflation and median household income growth. Because of its own affordability struggles, Philadelphia has moved to implement a new water pricing model to address the 40% of customers falling behind on bill payments at any given time.

Atlanta and Washington D.C. are leveraging environmental impact bonds as an alternative means of financing infrastructure improvements. At the core of this approach, also known as “pay for success”, are project-specific performance metrics that can be measured at baseline and monitored thereafter across the life-cycle of the bond.

“There is no one-stop shop for water infrastructure funding. Therefore, utilities and municipalities are being forced to find alternative ways to leverage existing funding sources and financing tools,” according to Bonney Casey.

About Bluefield Research
Bluefield Research provides data, analysis and insights on global water markets. Executives rely on our water experts to validate their assumptions, address critical questions, and strengthen strategic planning processes. Bluefield works with key decision-makers at municipal utilities, engineering, procurement, & construction firms, technology and equipment suppliers, and investment firms. For more information, visit www.bluefieldresearch.com.

Water Online

April 24, 2019

[Investors Underpricing Impact of Climate-Related Risks, Says BlackRock.]()

Investors must rethink their assessment of climate-risk vulnerabilities

Asset manager behemoth BlackRock warns that investors are underpricing the impact of climate-related risks and need to rethink their assessment of asset vulnerabilities.

The group, in a major piece of on-going analysis, asserts that while the physical manifestations of climate change are clear, including rising sea levels, and more intense hurricanes, wildfires and droughts, how investors incorporate these risks into their analysis is not.

The research indicates many US markets – particularly electricity utilities, commercial real estate, and municipal bonds – are consistently underpricing physical climate change risks to their business.

‘Our early findings suggest investors must rethink their assessment of vulnerabilities,’ the BlackRock report states. ‘Weather events such as hurricanes and wildfires are underpriced in financial assets, including US utility equities.

‘A rising share of municipal bond issuance is set to come from regions facing climate-related economic losses. And many high-risk commercial properties are outside official flood zones.’

Highlighting recent extreme weather events such as wildfires and hurricanes in the US and heatwaves in Europe, as well as rapid technological, social and regulatory change, BlackRock warns climate change poses ‘tangible risks to investment portfolios today, not just years in the future’.

‘The trend of rising average temperatures is boosting the frequency at which extreme weather events occur, as well as their intensity. These changes are affecting our economy today,’ states the report. ‘Investors who are not thinking about climate-related risks, or who view them as issues far off in the future, may need to recalibrate their expectations.’

BlackRock says recent beneficial developments in climate and data science have made it easier to analyze climate data effectively.

Brian Deese, global head of sustainable investing at BlackRock says: 'The combination of advances in data sciences, including geolocation data and climate modeling, have allowed us to more precisely assess the investment implications of climate-related risks.

'Many of our clients are long-term investors and, as a fiduciary, we are working to help them integrate ESG factors across an entire portfolio to enhance long-term risk adjusted returns with built-in resilience.'

And climate-related risks pose a threat to the economies – and creditworthiness – of many US state and local issuers, warns BlackRock.

Within a decade, more than 15 percent of the current S&P National Municipal Bond Index by market value would come from metropolitan statistical areas (MSAs) suffering likely average annualized economic losses from climate change of up to 0.5 percent to 1 percent of GDP.

Furthermore, 58 percent of US MSAs will likely suffer annualized GDP losses of 1 percent or more by 2060-2080 under a 'no climate action' scenario.

Florida would be hardest hit, with several towns and cities potentially incurring annual losses of more than 15 percent driven by coastal storms, BlackRock notes. Miami's current annual GDP losses due to extreme weather already account for more than 1 percent.

The report also warns that hurricanes and flooding are key risks to commercial real estate, with nearly 80 percent of commercial properties in Miami and Houston tied to mortgages outside official flood zones, which means they lack insurance.

Other organizations have also been highlighting the issue: The World Economic Forum has cited extreme weather as the most pressing threat facing the global economy in 2019 and the UN has warned of major risks to food security.

APR 10, 2019

The World's Largest Investor Says a $3.8 Trillion Market Faces Growing Climate-Change Risk.

- **Climate change threatens an increasingly large part of the $3.8 trillion US municipal bond market, the asset manager BlackRock warned.**
- **The firm analyzed the economic impact that climate-change-related risks — like flooding and hurricane-force winds — could have at a local level in the coming years.**

BlackRock, the world's largest asset manager, is doubling down on its view that investors in the US don't yet fully appreciate the just how disastrous an economic impact climate change could have at a time when environmental, social, and corporate governance investing is garnering mainstream attention.

"Climate-related risks already threaten portfolios today, and are set to grow, we find," strategists at the BlackRock Investment Institute wrote in a report this week, homing in on threats the massive US municipal bond market could face as the planet warms.

“A rising share of issuance in the $3.8 trillion market is set to come from regions facing climate-related economic losses,” the strategists said of the municipal bond market’s creditworthiness.

Continue reading.

Markets Insider

Rebecca Ungarino

Apr. 19, 2019, 08:00 AM

Climate Change: The Next Great Risk to Munis Is Already Here

- **Miami Beach wants bond buyers to know it takes risk seriously**
- **BlackRock says climate change will hit more and more issuers**

When Miami Beach borrowed $162 million from Wall Street this week, it wanted investors to know rising seas and extreme weather are a real risk to the city and that it’s doing something about it.

An increasing number of states and local governments are including climate change in their list of risks investors should consider before buying their bonds. There’s good reason. BlackRock Inc., the world’s largest asset manager, says that within a decade, more than 15 percent of debt in the S&P National Municipal Bond Index will come from regions that could suffer losses from climate change adding up to as much as 1 percent of gross domestic product annually.

“Climate is becoming a bigger and bigger part of calculating risk in our market,” said Eric Glass, a portfolio manager for fixed income impact strategies at AllianceBernstein. “We have to take these things into consideration as we build out our portfolios.”

Miami Beach, which sits on a barrier island off the southeastern coast of Florida, devotes more than two pages in its official bond offering document to climate change, saying city officials are “keenly aware of the risks from hurricanes and sea level rise.”

History Lesson

That warning is warranted. The picturesque beach destination along with Sarasota on the state’s western coast, are among the most exposed cities to climate change in the country, according to an analysis last year by advisory firm Four Twenty Seven.

Recent history has investors concerned:

- Puerto Rico was decimated by Hurricane Maria in 2017, a disaster that all but destroyed the already-bankrupt island’s electricity grid and set back efforts to settle with bond holders and to emerge from bankruptcy court.
- Superstorm Sandy caused some $70 billion in damages when it slammed into the Eastern seaboard in 2012, flooding half of Hoboken and parts of lower Manhattan and Wall Street and inundating subways.
- California wildfires, which have intensified in severity because of climate change, in part sent PG&E Corp., the state’s largest power company, into bankruptcy amid mounting liability costs.

BlackRock developed a model which uses climate data to analyze the physical risks and probabilities of flooding and hurricane force winds on a granular level across the U.S. The company's research found that Coastal Florida, the Gulf Coast region — which was recently battered by Hurricane Harvey — and Arizona because of extreme heat, are most susceptible to economic losses from climate change.

"Our early findings suggest investors must rethink their assessment of vulnerabilities," BlackRock's Global Chief Investment Strategist Richard Turnill wrote in a research note this week. "Climate-related risks already threaten portfolios today, and are set to grow."

Paying Attention

Miami Beach asked voters last year to approve $439 million in general obligation bonds, a fourth of which would be used to directly address the effects of climate change. The measure passed overwhelmingly. A portion of the latest sale will be used for infrastructure and capital improvements, including storm-water, flooding and mitigation efforts. The bonds priced with spreads ranging from 3 basis points for debt maturing in 2020 to 82 basis points on debt with a 3.25 percent coupon maturing in 2049, according to data collected by Bloomberg.

San Francisco voters passed a referendum for a revitalized sea wall and Harris County, Texas — home to 4.65 million people — approved flood bonds a year after Harvey dumped a record amount of water on the region in 2017. New York Mayor Bill de Blasio last month proposed a $10 billion plan to push out the lower Manhattan coastline as much as 500 feet, or two city blocks, to protect from flooding that's expected to become more frequent as global temperatures rise.

In the meantime, investors are mindful that municipalities can borrow money for 30 years out and a lot of catastrophic weather can happen in that time. All five of the costliest hurricanes on record — Katrina, Harvey, Maria, Sandy and Irma– hit in the last 15 years, according to the National Oceanic and Atmospheric Administration.

"Does Miami Beach look like what we know Miami Beach to look like in 25 or 30 years?" Glass said.

Bloomberg

By Danielle Moran

April 18, 2019, 4:00 AM PDT

Muni Issues Prepare For Climate Change In New Bonds (Radio).

MUNIS IN FOCUS: Joe Mysak, Editor Bloomberg Brief: Municipal Market, discusses climate change influencing muni issuers. Hosted by Lisa Abramowicz and Paul Sweeney.

Running time 04:40

Play Episode

April 12, 2019 — 8:58 AM PDT

S&P Health Care Washington Watch: Which Government Proposals May Affect Ratings?

There are several U.S. Department of Health and Human Services (HHS) proposals as well as possible congressional legislation that could affect the creditworthiness of companies within the health care sector.

Continue Reading

Apr. 18, 2019

Muni Market Awaits Fallback Language for Libor Phaseout.

WASHINGTON — Municipal and corporate bond issuers are awaiting the release of standardized fallback language for the eventual phaseout of Libor, market participants told a Securities and Exchange Commission's Fixed Income Market Structure Advisory Committee on Monday.

The phaseout of Libor, also known as the London Interbank Offered Rate, will affect municipal finance in not just the bond market but also in some legacy contracts with suppliers where Libor language is used, experts said. Fallback language is expected to be released before year-end by both the Alternative Reference Rates Committee (ARRC) convened by the Federal Reserve and the International Swaps and Derivatives Association (ISDA).

Pat McCoy, past president of the Government Finance Officers Association and finance director of the New York Metropolitan Transportation Authority, said ISDA's work "is going to be a critical piece of the work that ARRC undertakes."

"It will make more clear to the issuer community what they need to focus on with their existing legacy agreements and, obviously to the extent that they want to do new derivative agreements, what is available to them," McCoy told The Bond Buyer.

McCoy said the GFOA is encouraging municipal governments to consult with their municipal advisor and their counsel before deciding how to proceed.

Tom Deas of the National Association of Corporate Treasurers said at Monday's meeting that Libor language is contained in many supplier contracts.

McCoy said it's likely not as prevalent in municipal contracts, but it does occur.

"There's typically a fallback language in the documents," he said. "Obviously with derivatives there's fallbacks in that as well. That affects the municipal market as well as the corporate market."

There are about $1.8 trillion in outstanding floating-rate corporate and municipal bonds tied to Libor, the Fixed Income Market Structure Advisory Committee was told Monday.

Tom Wipf, who was named last week as the new chairman of ARRC and is vice chairman of municipal securities at Morgan Stanley (MS), told the panel that Libor is being phased out because "the underlying cash transactions that support Libor had really stopped taking place."

"Post the financial crisis, interbank lending pretty much grounded to a halt," Wipf said. "The 19 banks who report into the Libor panel really had no observable transactions to look at so they used what we call expert judgment."

The successor to Libor in the United States, the Secured Overnight Financing Rate known as SOFR, is based on the overnight Treasury repo, which has from $750 billion to $1 trillion in daily activity.

But Libor has a term component and a credit component while SOFR has neither of them.

Wipf said the ARRC is working on a way to bridge that. He described 2019 as "deep in the second act of a three act play" with the official phaseout of Libor coming in 2022.

He described standardized fallbacks and protocols as a "first step in risk management in putting us in a better position than we are today, but by no means are they the answer to all issues."

Julian Potenza, a fixed income portfolio manager for Fidelity Management & Research Co., said he's encouraged that the ARRC will soon publish recommended fallback language.

"We are hopeful that the publication of that language will give the buy side a common set of principles to rally around as we negotiate for terms that are friendly to investors in Libor-linked issuance," Potenza said.

In terms of "legacy securities," Potenza said his understanding is that it's "unlikely that there is any regulatory Big Bang solution."

"On the new-issue front, our preference is for the development of clear, consistent and investor-friendly fallback language across markets," Potenza said. The investor-friendly components should include clear Libor succession triggers, minimal agent or issuer discretion and value neutral spread adjustments so there are no winners or losers, he said.

McCoy, in his presentation of the Fixed Income Market Structure Advisory Committee, said the New York MTA will have about eight transactions this year that will need to remarket using either SIFMA-based, Libor-based or SOFR-based floating-rate note or, alternatively, fixed-rate financing.

"While different market participants are coming together to make this as painless as possible, we know that it will be disruptive," McCoy told the panel. "I think one of the keys to avoiding that disruption is early planning and early adoption to the degree that an entity can do that."

By Brian Tumulty

BY SOURCEMEDIA | ECONOMIC | 04/16/19 12:08 PM EDT

The Past, Present and Future of Community Development Financial Institutions.

It takes money to get money — this rule of thumb shapes so much of our financial system. If you have a couple thousand dollars saved up in a bank, it's easy to use that as collateral to get a secured personal loan up to the same amount. It works that way for businesses, too; the more money a business can set aside and leave in the bank as cash reserves, the more banks or other investors are willing to open up their coffers and invest in that business.

That same basic principle lies at the heart of the Community Development Financial Institutions Fund, or CDFI Fund, an arm of the U.S. Treasury created to support financial institutions that serve low- and moderate-income areas, rural areas, and native lands. The fund was created under the Clinton Administration, but its roots are much deeper than that.

No one knows those roots better than Clifford Rosenthal, who recently completed "Democratizing Finance: Origins of the Community Development Financial Institutions Movement," a 556-page history of mission-driven lending and investing in the United States.

"What is totally unique about the CDFI Fund in policy history is that it provides capital — not loans, but discretionary capital — to build your balance sheet," says Rosenthal.

In other words, the CDFI Fund is the only federal program that distributes money to organizations who don't have to go out and spend it. They can choose to leave it on their balance sheets, then they can use those dollars to go out and attract more capital from others.

It's never been very big — since its inception in 1994, the CDFI Fund has awarded only $3 billion to CDFIs in this way.

But still, if that sounds like a program rife with opportunities for corruption and waste, you'd be right — which is partly why the application process is remarkably onerous, to a fault, many would say. It involves user accounts created at three separate federal websites, and at least 17 application components, including some with multiple documents and steps under each component. There are four different deadlines across two months, some with multiple components due that day. This year's application process is currently underway, to conclude in June.

And that's just the application process. There's also a separate process to become certified as a CDFI and therefore eligible to apply at all. Then there's the annual data reporting back to the CDFI Fund for a typical period of three years after being awarded dollars from the fund's main financial assistance program. Current regulations require CDFIs to show at least 60 percent of their lending going to low- and moderate-income census tracts.

While the need to protect the program from corruption and waste is important, in some ways the onerous process has kept out the institutions Rosenthal hoped would benefit most from the CDFI Fund — the tiny credit unions and community banks like the one he helped found on Manhattan's Lower East Side in the mid-1980s. Nonprofits simply turned out to be a better fit for the program, with their professional grant writers and experience seeking funding from government agencies.

"The charts I developed show 80 cents out of every dollar the CDFI Fund put out in capital over its first 20 years went to nonprofit loan funds, while less than 20 percent went to banks and credit unions," Rosenthal says.

The loan funds — although some of them have gone on to do striking things like raising capital from Wall Street investors to bring back to Main Street — don't quite fulfill the vision Rosenthal sees for CDFIs.

"It's done a lot in terms of building the CDFI field, but it has not transformed banking, and for my particular bias, what it has not done is empowered the people in those communities in the same way," Rosenthal says. In other words, the loan funds are doing for communities, but not always with them, with leadership and at least some dollars from those communities.

In recent years, the CDFI Fund has made efforts to reduce barriers for credit unions, including Puerto Rico's 100-year old network of state-insured credit unions known as the 'cooperativas.'

Still, Rosenthal sees it as a success that there are now more than a thousand organizations certified as a CDFI. There are CDFIs in every state as well as Puerto Rico and Guam. Collectively, these organizations account for more than $136 billion in assets — though that's still just a rounding error compared to the $17 trillion in assets held by commercial banks or the $22 trillion in assets managed by U.S.-registered investment companies.

But the growth in numbers and asset size, especially over the past decade, has not been matched by similarly rapid growth in size for the CDFI Fund. Its $250 million budget proposed by Congress for FY2019 is the highest it's ever been, but the Trump administration has repeatedly requested to zero out the CDFI Fund budget, and only bipartisan support in Congress for CDFIs has kept it at $250 million a year.

The growth of CDFIs in conjunction with stagnant funding has meant more and more applications being turned away. More and more communities are learning how to form CDFIs and access the fund, but the fund isn't growing in response. Last year, 538 applications came from 485 organizations across the country, requesting a total of $504.5 million. The fund awarded just 265 organizations a total of only $188 million from its main program.

One criticism of CDFIs has been that politicians on both sides of the aisle have used their support for them as a distraction or excuse to do little else to make the economy work better for people at the bottom of the economic ladder — as generations of politicians have used black banking as a distraction from needed structural change to deconstruct the overlapping legacies of slavery, Jim Crow, redlining and mass incarceration.

The transformative potential for CDFI Fund is in how it can complement the organizing work in communities like the Lower East Side, whose residents and organizers Rosenthal worked alongside to found the Lower East Side People's Federal Credit Union in 1986, taking over what had been the last bank branch operating in the neighborhood.

"This was the first wave of banks leaving those neighborhoods," says Rosenthal. "Branches generally were unprofitable, they were leaving these neighborhoods, poor neighborhoods, and I was saying the next wave should be credit unions."

For 30 years, Rosenthal also served as president of the National Federation of Community Development Credit Unions (which recently changed its name to Inclusiv), where he wrote the white paper that was eventually used as an early template for the legislation to create the CDFI Fund. He envisioned the fund as helping to overcome a key regulatory challenge for credit unions as well as community banks — the need to meet capital requirements as regulated depository institutions.

For every $100 in loans, regulators typically require banks and credit unions to hold around $8 of capital in reserve. For banks, those funds typically come from shareholders or profits; for credit unions they usually come from members, net income, or philanthropic contributions. Rosenthal wanted the CDFI Fund to help credit unions like those in his federation raise capital to meet their regulatory requirements.

Today, Rosenthal feels a sense of camaraderie with community organizers in the Black Lives Matter movement who are interested in moving deposits into community-owned, community-led financial institutions, especially credit unions.

"The lack of diversity in the CDFI field in terms of the leadership has been striking," Rosenthal says as we sit in a coffee shop just a few blocks from where the Lower East Side People's Federal Credit Union's headquarters still stand today.

He brings up the folks behind Village Financial Cooperative, a credit union forming in Minneapolis as a direct response to the police killing of Philando Castile, as an example of the racial justice work he hopes to see grow as part of the CDFI Fund's portfolio. He wants the federal government, so long after breaking its promise to former enslaved persons after the Civil War, to stand behind such communities in the work they are already doing.

"I would love to see the CDFI Fund as a source of start-up capital for that," he says. "It's the kind of story that I think that gives me hope of its relevance in a new era, that it could still matter."

NEXT CITY

by OSCAR PERRY ABELLO

APRIL 18, 2019

Inflow Into Municipal Bonds Have Topped $20 Billion in 2019 as Taxpayers Seek Safe Haven.

Municipal bonds are a specific corner of the bond market that has its own nuances to be wary of, such as costs and tracking errors, but this pair of ETFs eliminates the guess work involved–the Vanguard Tax-Exempt Bond ETF (NYSEArca: VTEB) and iShares National Muni Bond ETF (NYSEArca: MUB).

With bond market mavens warning investors of headwinds in the fixed income space like the possibility of an inverted yield curve, rising rates and BBB debt sliding out of investment-grade, investors need to be keen on where to look for opportunities.

One area is within the municipal bond space, which may have gotten a boost following last November's midterm elections. In particular, with respect to infrastructure spending—it's one of the few things, if any, that Democrats and Republicans can agree on, but with the newly-divided Congress, this could fuel municipal bond ETFs.

Still, investors need to be aware of the costs associated with investing in this fixed income space, as well as certain tracking errors that could arise with respect to their prices.

In the video below, inflows of municipals bonds in 2019 have topped $20 billion, the highest in 13 years. Analysts say taxpayers who face higher taxes because of the new cap on state and local tax deductions are pouring into municipal bonds as tax shelters. CNBC's Frank Roberts reports.

by ETF TRENDS on APRIL 16, 2019

Fed Should Buy Muni Bonds to Fight the Next Recession.

There's a strong case for letting the U.S. central bank help states weather an economic downturn.

Almost 10 years after the Great Recession ended, the growing threat of a new economic slowdown raises a troubling question: When the next recession strikes, what can the world's central banks do?

With interest rates low and their balance sheets still loaded with assets bought to fight the 2008 crisis, do they have the tools to respond? This column is one of five looking at that question.

U.S. state governments suffered major damage from the last recession 10 years ago. During the second quarter of 2009, the final months of the downturn, personal income taxes tumbled 27 percent from a year earlier. At the same time, expenses grew as enrollment for Medicaid and state unemployment insurance soared, while crumbling asset prices suddenly left public pension systems with massive shortfalls relative to their liabilities. In statehouses across the country, money was tight, to say the least. California went so far as to issue IOUs.

Over the past decade, the slow-but-steady economic expansion has covered up these issues, but hasn't erased them. State government employment remains below its pre-financial crisis peak. Public pension plans are still largely in a sea of red ink, with an overall shortfall of $1.4 trillion at the state level, and even those with an acceptable level of assets are just one bear market away from the brink. And it's no secret that the U.S. has fallen terribly behind in funding its roads, bridges, airports and public transit systems. The American Society of Civil Engineers estimates the money needed to get infrastructure into an overall "state of good repair" will fall short by $2 trillion over the next several years.

Continue reading.

Bloomberg Politics

By Brian Chappatta

April 18, 2019, 4:30 AM PDT

Preston Hollow Subpoenas Goldman Sachs, JPMorgan in Nuveen Case.

- **Firm says threats made to cut off business with broker-dealers**
- **Biggest high-yield muni fund manager accused of intimidation**

Preston Hollow Capital LLC subpoenaed Deutsche Bank AG, Goldman Sachs Group Inc. and JPMorgan Chase & Co. for telephone recordings and communications with Nuveen LLC related to the Dallas-based municipal lender, according to filings in Delaware Chancery Court.

Preston Hollow has sued rival Nuveen, accusing head of municipal bond investments John Miller of threatening and intimidating broker-dealers to cut off business with Preston Hollow. The companies compete in the market for high-yield municipal bonds, which are in scarce supply as investors reaching for yield have flooded into the market.

Preston Hollow asked Deutsche Bank to turn over all documents and communications with Miller and five other Nuveen employees concerning the bank's tender-option bonds and funding arrangements with Nuveen, as well as all other communications related to Preston Hollow. The company also subpoenaed Goldman Sachs and JPMorgan for communications and documents about whether they considered serving as underwriters or placement agents on bond deals involving Preston Hollow, Howard University and Roosevelt University.

'Economic Pressure'

Preston Hollow, which lends directly to municipal projects that banks won't finance because they're too risky, has accused Nuveen of moving $500 million of tender option bond financing and the revenues associated with it from one bank to another as part of its pressure campaign. Nuveen and other firms use tender option bonds for leverage. Such programs finance the purchase of higher-yielding long-term municipal bonds by selling tax-exempt floating-rate securities to money-market funds.

Miller and his team allegedly made threats to dealers following Preston Hollow's exclusive purchase of Howard University and Roosevelt University bonds. The bonds were underwritten by Bank of America Corp. and Wells Fargo & Co., respectively. Preston Hollow alleges that three broker-dealers have refused to do business with the firm in the aftermath.

Chicago-based Nuveen, which oversees more than $140 billion of municipal bonds and manages the biggest U.S. high-yield municipal bond fund, generates millions of dollars in revenue for Wall Street municipal bond trading desks. By contrast, Preston Hollow has extended about $2 billion in loans to municipal projects.

Nuveen has moved to dismiss the case, arguing that it can urge its counterparties to share investment opportunities and not support a competitor in the design and execution of exclusive investments.

"The ability to choose with whom to do business is a fundamental economic right, which includes the right to select business partners based on whether they work with competitors and to use economic pressure to persuade third parties," lawyers for Nuveen wrote in an April 10 brief in support of a motion to dismiss the case.

"Just because plaintiff does not like that conduct does not make it wrongful, even if negatively impacted plaintiff's business."

Nuveen sent banks letters on Feb. 22 saying they were free to do business with anyone, including Preston Hollow. Preston Hollow hasn't identified any contract or investments it may lose, and so can't show tortious interference with a contract, Nuveen's lawyers wrote.

The case is Preston Hollow Capital LLC v. Nuveen LLC. Docket Number: 2019-0169 in Delaware Court of Chancery.

Bloomberg Markets

By Martin Z Braun

April 15, 2019, 10:48 AM PDT

NCPPP Service Project Award Winner: State of Wisconsin – Hill Farms State Office Building, Madison, Wisconsin.

The new Hill Farms State Office Building created a more efficient use of shared space by allowing the State of Wisconsin to consolidate seven State of Wisconsin agencies, including anchor tenant, the Department of Transportation (WisDOT), into one state owned property in lieu of scattered smaller leased spaces. This over 5-year process, which started with the development of a Custom Proposal and P3 Development Agreement, was the result of a double joint venture in both the developer — Gilbane Development Company and Summit Smith Development and contractor roles –Gilbane Building Company and CD Smith Construction ("Smith Gilbane").

Through the combination of a purchase and sale agreement and design-build-finance arrangement that leverages the state's existing asset (land) and the market's potential (growing demand base), Smith Gilbane:

1. Delivered WisDOT's new facility and a 1,700-space parking garage on a turn-key basis, below budget and ahead of schedule, saving the WisDOT and the tax payers of Wisconsin millions of dollars in capitalized interest alone; and
2. Will deliver a vibrant $300MM mixed use development consisting of 450 residential units, up to 450,000 SF of office and medical office space, a 200-room hotel, up to 200,000 SF of retail including a 50,000 SF Grocer, Restaurants and Other Destination Services and 2,600 parking spaces over 2 phases.

Working with HGA as architect, Smith Gilbane and WisDOT's facility incorporates concepts that merge "form and function" to engage visitors, enhance productivity of the building's occupants and meet the public's expectation for a government office facility that streamlines services while reducing operating expenses.

In addition to the direct social and economic impact realized by delivering WisDOT's new facility, Smith Gilbane expects to have an even greater impact as it delivers Madison Yards, the $300MM mixed-use place-making component of the project.

Overall, the project was completed 3 months ahead of schedule and on budget in January 2018, allowing reduced Capital Interest Expenses to the State of Wisconsin.

Hill Farms State Office Building/Madison Yards is an industry leading example of how the public and private sectors can forge a strategic relationship to leverage each party's respective strengths, jointly overcomes obstacles and create "place-making" developments, while delivering value to the internal/external stakeholders, end-user and investors alike.

APRIL 8, 2019

What Municipal-Bond Investors Should Do Now.

Changes to the U.S. tax code have been good for the state and local government debt market—possibly too good.

Individual investors have been putting cash into municipal bonds at a near-record pace this year, in search of tax-exempt interest income to offset larger tax bills. For fund managers, a flood of cash into a market is normally a reason to celebrate. But they have a problem: State and local governments haven't been issuing enough new debt to match the increase in demand.

In effect, the new tax law has kicked off a competition among investors to finance state and municipal spending. That has reduced borrowing costs for states, but made it tougher for muni-bond investors to find deals.

"I get that taxes stink, and we all hate paying them, and we hate them even more every April because that's when it's the most real for us," says Nick Venditti, managing director at Thornburg

Investment Management. “But we’ve managed to drive up valuations to levels that are probably unsustainable.”

The U.S. Tax Cuts and Jobs Act capped the amount of state and local taxes that Americans can deduct from their federal tax bills. Investors in high-tax states have been loading up on municipal debt to offset their higher state and local tax bills.

While that demand would push muni yields lower—and prices higher—on its own, another tax-law change has made it more difficult for state and local governments to take advantage of those lower rates by refinancing their existing bonds.

Until recently, local governments could refinance debt well ahead of its maturity or call date in a process called “advance refunding.” But the new tax law imposes taxes on the interest paid to holders of advance-refunding municipal bonds, which has essentially killed that part of the market, strategists say.

Now, by at least one measure, muni bonds are more expensive than they have been in over a decade. On April 16, 10-year benchmark muni bonds yielded 1.965%, while 10-year Treasuries yielded 2.6%. That is the widest gap since at least 2009, according to Bloomberg data.

Because the law raises tax bills most for the residents of high-tax states, demand for bonds issued by those states—California and New York, in particular—has climbed especially far.

Consider a $306 million bond recently issued by California’s Department of Water Resources, which manages the state’s dams and aqueducts. Its 10-year bonds sold at a yield of 1.73%, well below even the 10-year benchmark rate.

For investors who already own muni bonds and plan to hold them to maturity or their call date, there are worse fates than a nearly 2% tax-free coupon and paper losses.

But those looking to put cash into cheaper corners of the market may want to consider taxable muni bonds, says Robert DiMella, co-head and senior portfolio manager at MacKay Municipal Managers. That category includes securities like pension bonds, industrial development bonds, some hospital bonds, and Build America Bonds.

“The need for income is strong, and a lot of people are starting to worry about the corporate debt market,” says DiMella, and that makes taxable munis attractive.

Another option is to invest in closed-end mutual funds that hold municipal bonds. Many of them trade at a healthy discount, even though the Federal Reserve isn’t expected to raise interest rates for most of this year. The BlackRock Municipal 2030 Target Term Trust (ticker: BTT), a previous *Barron’s* recommendation, still offers a 9% discount.

Thornburg’s Venditti recommends that investors keep their cash in short-term high-quality municipal debt or floating-rate short-term securities called variable-rate demand obligations, or VRDOs.

“The best place for investors to be is shorter duration, higher-quality credit, so when opportunities present themselves, they have the flexibility to take them,” he says. “You can’t really set it and forget it.”

Barron’s

By Alexandra Scaggs

April 19, 2019 7:30 a.m. ET

Morgan Stanley Launches Plastic Waste Resolution Project.

Financial Services firm Morgan Stanley sees a way to both make some money and do some good when it comes to plastic waste.

The company is launching a multi-pronged effort through its Morgan Stanley Institute for Sustainable Investing to tackle the issue.

Morgan Stanley will work from what the company is calling the Plastic Waste Resolution "to engage all relevant stakeholders to collaborate in designing, innovating, financing and deploying effective scalable solutions."

The goal is to "retain the beneficial qualities of plastics while reducing the negative effects of plastic waste," the company said.

Initial commitments by Morgan Stanley include underwriting bonds to fund reduction of plastic waste and exploration of financial products "that aim to consider and help address the plastic waste challenge" as well as "consider the risks and opportunities from plastic waste, across both public and private market funds."

The company's public finance unit will work with local governments and public agencies, schools, hospitals and non-profits to provide funding for improved collection, recycling and disposal systems.

Morgan Stanley also will work with investors to help them consider plastic waste reduction and the "new plastics economy" for their strategies.

The firm will partner with the University of Michigan in Ann Arbor, Mich., to create a Plastic Waste Reduction Fellowship in the School for Environment and Sustainability to study systemic approaches and solutions for plastic waste.

An existing program at the financial firm's Multicultural Innovation Lab will seek proposals for plastic waste reduction innovations. The lab supports women and multicultural entrepreneurs working on early stage technology and technology-enabled startups.

"At Morgan Stanley, we are committed to leveraging our best thinking; our broad capital markets reach; our relationships with innovators, entrepreneurs, corporations and governments; and our ongoing commitment to our communities to address this daunting challenge at a systemic level," Vice Chairman Tom Nides said in a statement.

By JIM JOHNSON

April 16, 2019

PLASTICS NEWS

[Recent Ruling Against Puerto Rico Revenue Bondholders Causes Waves in U.S.: Holland & Knight]

HIGHLIGHTS:

- The U.S. Court of Appeals for the First Circuit has upheld a controversial ruling by a U.S. District Court in a case involving special revenue bonds issued by the Puerto Rico Highway Transportation Authority (PRHTA).
- The District Court ruled in January 2018 that the Authority was *permitted, but not required*, by the U.S. Bankruptcy Code to apply special revenues to pay the bonds during adjustment proceedings under the Puerto Rico Oversight, Management and Economic Stability Act of 2016 (PROMESA).
- The District Court's ruling contradicted long-held conventional wisdom regarding a municipal debtor's obligation to apply special revenues after commencing a bankruptcy proceeding.

The First Circuit's affirmation may have widespread impact on the municipal revenue bond market. The U.S. Court of Appeals for the First Circuit has affirmed a controversial ruling regarding the treatment of municipal revenue debt, leaving investors with lingering questions about the value and significance of a revenue pledge in a municipal bankruptcy.

The original U.S. District Court decision roiled the municipal markets in January 2018, when Judge Laura Taylor Swain, the judge overseeing Puerto Rico's debt restructuring, ruled that municipal debtors were permitted, but not required, to apply special revenues to pay related bonds. Judge Swain's ruling reversed long-held conventional wisdom regarding the mandatory application of special revenues following municipal bankruptcy.

Background and District Court Decision

The case involved several series of bonds (the Bonds) issued by the Puerto Rico Highway and Transportation Authority (PRHTA), a public corporation of the Commonwealth of Puerto Rico. By statute, the Bonds were secured by a gross lien on revenues derived from certain highway tolls and excise taxes (collectively, the Pledged Special Revenues). The Bonds were also insured by a number of financial insurers (the Insurers), who were subrogated to the bondholders' rights upon payment of a covered default of the Bonds.

In March and April 2017, each of the Commonwealth and PRHTA adopted fiscal plans purporting to modify the application of the Pledged Special Revenues. Under the Commonwealth's fiscal plan, certain of the Pledged Special Revenues would be diverted to the Commonwealth for its general revenue purposes, and under the PRHTA fiscal plan, PRHTA would be authorized to apply Pledged Special Revenues to pay operating expenses ahead of debt payments, in contravention of the gross lien granted to holders of the Bonds.

On May 21, 2017, the Financial Oversight and Management Board for Puerto Rico (the Board) commenced debt adjustment proceedings for the PRHTA under Title III of the Puerto Rico Oversight, Management and Economic Stability Act of 2016 (PROMESA), which under Section 301 thereof incorporates and makes applicable to it portions of the U.S. Bankruptcy Code. Shortly thereafter, the trustee for the Bonds was instructed by the Puerto Rico Fiscal Agency and Financial Advisory Authority, on behalf of PRHTA, to cease making scheduled payments, based on the rationale that such payments violated the automatic stay under Section 362(a) of the U.S. Bankruptcy Code (as incorporated into PROMESA by Section 301 thereof). On July 3, 2017, PRHTA defaulted on a scheduled payment of $219 million.

The Insurers filed suit against the Commonwealth, the PRHTA, the Board and various other entities and individuals, seeking declaratory and injunctive relief. The Insurers asked the court to declare, among other things, that the Bonds were secured by special revenues exempt from the automatic stay and to grant an injunction requiring PRHTA to resume remittance of the Pledged Special Revenues. The Insurers' arguments hinged on the interpretation of Sections 922(d)[1] and 928[2] of Chapter 9 of the U.S. Bankruptcy Code (each incorporated into PROMESA by Section 301 thereof), which address the treatment of special revenues in municipal bankruptcy.

Judge Swain granted the defendants' motion to dismiss the Insurers' claims, holding, in effect, that while Section 928 extended the Bonds' statutory lien to cover post-filing special revenues and Section 922(d) indeed *permitted* the municipality to apply those special revenues to make the secured payments, *neither Bankruptcy Code section affirmatively required such payments.*

Many commentators expressed surprise at Judge Swain's ruling, which upset the widely held view in the municipal market that the protections afforded special revenues in municipal bankruptcy were, in fact, intended to provide bondholders with the certainty of payment during the adjustment proceeding, resulting from not only the continuing lien on special revenues, but a statutory obligation to apply those special revenues to pay the secured debt notwithstanding the automatic stay. Fitch Ratings, in a statement issued following Judge Swain's original ruling, warned that "If the ruling is upheld on appeal, credit ratings that could be negatively affected include utility, transportation and tax revenue bonds rated higher than a municipality's Issuer Default Rating," echoing the sentiment of others in the market.

First Circuit Decision and Potential Effects

The First Circuit heard the Insurers' appeal and, on March 26, 2019, affirmed Judge Swain's ruling, dismissing the Insurers' claims. In its opinion, written by Judge Juan Torruella, the First Circuit found that "In sum, Sections 928(a) and 922(d) permit, but do not require, continued payment during the pendency of the bankruptcy proceedings. The two provisions stand for the premise that any consensual prepetition lien secured by special revenues will survive the period of municipal bankruptcy, and, accordingly, municipalities can elect to voluntary [sic] continue payment on these debts during the course of the bankruptcy proceedings so as to not fall behind and thus be at risk of being unable to secure financing in the future."

Although the First Circuit's ruling covers only Maine, Massachusetts, New Hampshire, Puerto Rico and Rhode Island, commentators and rating agencies have expressed concern that the ruling will have a broader impact on holders of municipal revenue debt, particularly given the relative scarcity of case law interpreting issues of municipal bankruptcy. The First Circuit's affirmation raises serious concerns about the value of a municipal revenue pledge and creditors' ability to enforce any lien on such revenues post-bankruptcy or to otherwise protect the revenue stream.

As the First Circuit noted, like its analog in Section 904 of the U.S. Bankruptcy Code that applies in Chapter 9 municipal bankruptcies, Section 305 of PROMESA denies the court presiding over the Commonwealth and the PRHTA's debt adjustment proceedings the power and jurisdiction to "interfere with … any of the property or revenues of the debtor; or … the use or enjoyment by the debtor of any income-producing property." Thus, in a situation where some portion of the pledged revenues is being expressly diverted away from the issuer and the remainder of the pledged revenues are being applied, on an ongoing basis, to operating expenses in violation of the applicable bond documents, the courts' dismissal of the Insurers' claims appears to leave bondholders exposed as the stream of revenues continues to be depleted, without any recourse in the adjustment proceeding itself. If this is the case, it appears that the Insurers' only remedy, then, would be to persuade the court to grant relief from the automatic stay imposed by PROMESA on the grounds that the property interest embodied by the lien was not being adequately protected, and seek a remedy from some other competent court of more general jurisdiction to enforce their contractual and statutory rights (although the First Circuit's opinion does not comment on this).

Because the First Circuit's decision rests entirely upon the interpretation of provisions of Chapter 9 that are incorporated into (but not otherwise modified by) PROMESA, the court's ruling could be viewed as equally applicable to all special revenues in municipal bankruptcies. Accordingly, while the First Circuit's decision stands, municipal revenue bond ratings may be negatively impacted by the weakened bondholder protections; Fitch Ratings has already indicated that it will continue to monitor the case to determine whether ratings action is warranted. As a function of perceived credit risk, the price and valuation of new and existing municipal revenue debt may also be impacted, regardless of whether the rating agencies take action. Issuers of revenue bonds may consider taking additional steps to assure the market that they intend to honor their obligations, although the relative value of such an assurance may also be negatively impacted by the First Circuit's decision. In addition, new debt issues may benefit from structures that provide greater protection for pledged revenue streams. Market participants will need to consider whether new disclosure is warranted in light of the ruling's reversal of long-established market views regarding special revenues.

Assured Guaranty, one of the Insurers, has indicated that it is considering its legal options, including an appeal to the U.S. Supreme Court, or a challenge that the effective destruction of the lien constitutes an unconstitutional taking. Assured had previously been unsuccessful in its attempt to lift the automatic stay. In light of the facts surrounding the diversion of the pledged revenues and the subsequent actual default, however, perhaps another attempt will be better received, giving Assured another opportunity to seek protection of its lien. Regardless of the actions to be taken by Assured and the other Insurers, the market will continue to watch this case closely, considering its potentially wide-ranging ramifications.

by Douglas I. Youngman, Peter Baumgaertner and Phillip W. Nelson

April 9 2019

Holland & Knight LLP

First Circuit Finds Chapter 9 Special Revenue Provisions Permit Voluntary Payment, But Do Not Require Them: King & Spalding

On March 26, 2019, the First Circuit Court of Appeals, affirming a decision by the District Court emanating out of the Puerto Rico Title III bankruptcy cases, found that Sections 928(a) and 922(d) of the Bankruptcy Code "***permit, but do not require***, continued payment during the pendency of the bankruptcy proceedings."[i] The First Circuit found that these provisions provide that (i) liens granted prior to bankruptcy that are secured by special revenues will survive while the municipal debtor is in bankruptcy, (ii) the debtor may elect, on a ***voluntary basis***, to continue making payments on these debts during the bankruptcy case, but that (iii) the debtor is ***not required*** to make such payments during the pendency of the case.[ii] While the Opinion was issued in the Puerto Rico Title III case, the Opinion will have implications in municipal bankruptcy cases generally.[iii] And, this Opinion has important implications for holders of bonds secured by special revenues, as it may conflict with a prior decision suggesting that municipal debtors must continue to remit those pledged special revenues during the pendency of a Chapter 9 bankruptcy case.

Background

This dispute concerned bonds issued by the Puerto Rico Highway and Transportation Authority ("Authority") that were secured by toll revenues ("Tolls") and excise taxes ("Taxes," and collectively with the Tolls, collectively, the "Revenues"). According to the Appellants (who are the insurers of the secured bonds), the Puerto Rico Secretary of Treasury is required by statute to transfer, monthly, the Taxes to the Authority for the benefit of bondholders. Appellants also argued that the Revenues were their property and must be transferred to the fiscal agent to replenish funds ("Reserve Accounts") held in trust by the trustee ("Trustee") for the benefit of bondholders.

In March 2017, after the enactment of the Puerto Rico bankruptcy law and the appointment of the Financial Oversight and Management Board ("Board"), the Board established a financial plan whereby the Tolls and Taxes would be transferred into Puerto Rico's general revenues and not transferred to the Reserve Accounts benefitting the bondholders. In May 2017, after the Authority commenced its bankruptcy case, the Trustee was instructed to cease making monthly payments from the Reserve Accounts because "making such payments would constitute an act 'to exercise control' over [the Authority's] property in violation of the automatic stay" provisions of the Bankruptcy Code.[iv] Thereafter, the Authority defaulted on scheduled bond payments. Appellants then commenced an adversary proceeding asserting, among other things, that the transfer of the Tolls and Taxes was exempt from the automatic stay, that failure to remit them was a violation of Sections 922(d) and 928 the Bankruptcy Code, and that the funds held in the Reserve Accounts were the property of the bondholders.[v] The debtors moved to dismiss the complaint, arguing that the Authority was not required to remit payment during the pendency of the bankruptcy case.[vi] The District Court agreed with the debtors and dismissed the case.

First Circuit's Decision

The First Circuit noted that the Bankruptcy Code establishes generally that property acquired by the debtor after the commencement of the case is not subject to any security agreement entered into by the debtor before the commencement of the case.[vii] However, Section 928 of the Bankruptcy Code exempts liens on "special revenues" from application of that general rule. The First Circuit found that while those liens on special revenues will remain in place during the bankruptcy case, the statute does not mandate any action on the part of the debtor.[viii] Accordingly, the First Circuit held that the Bankruptcy Code does not mandate the ongoing transfer of the Tolls and Taxes to the Trustee, nor does it mandate payment on the Authority's Bonds, during the pendency of the bankruptcy case.[ix]

Appellant bond insurers also argued that Section 922(d) of the Bankruptcy Code requires the continued transfer of Tolls and Taxes that secure the bonds and exempts bondholder enforcement actions from the Bankruptcy Code's automatic stay provisions. The First Circuit ruled that the automatic stay provisions do not prohibit the application of pledged special revenues to payment of debt secured by such revenues.[x] Nonetheless, while agreeing that the Bankruptcy Code ***permits*** a debtor to pay creditors ***voluntarily*** during the pendency of the bankruptcy case, and allows a secured party to apply special revenues in its possession to bond payments without violating the automatic stays, the First Circuit found that "[n]othing in the statute's plain language . . . addresses actions to enforce liens on special revenues . . . or allows for the compelling of debtors . . . to apply special revenues to outstanding obligations."[xi]

Conclusion

The First Circuit Opinion may be at odds with a decision issued in the chapter 9 bankruptcy case of Jefferson County, Alabama.[xii] That case presented a similar dispute—whether bondholders could compel the transfer of pledged revenues from accounts held by the municipal debtor to accounts held by the bond trustee. There, the court found that the Bankruptcy Code required payment of the special revenues held by the County as of the petition date to the bond trustee, even if the payment occurs after the bankruptcy filing.[xiii] The First Circuit (and the lower court) tried to distinguish Jefferson County on the ground that it did not specifically address whether those payments by the municipal debtor were voluntary or mandatory.[xiv] Clearly, the First Circuit ruling has now created uncertainty as to what legal principles would apply in cases outside of the First Circuit. If the First Circuit holding becomes the commonly-accepted view of the law, that result could impact the pricing and ratings for bonds secured by special revenues, and the willingness of bond insurers to stand behind special revenue bonds in the future.

---

[i] *In re Financial Oversight and Management Board of Puerto Rico*, Nos. 18-1165, 18-1166, 2019 WL 1349223, at *7 (1st Cir. March 26, 2019) (emphasis added). Section 928 of the Bankruptcy Code provides: "Notwithstanding section 552(a) of this title and subject to subsection (b) of this section, special revenues acquired by the debtor after the commencement of the case shall remain subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case." Section 922(d) of the Bankruptcy Code provides: "Notwithstanding section 362 of this title and subsection (a) of this section, a petition filed under this chapter does not operate as a stay of application of pledged special revenues in a manner consistent with section 927 of this title to payment of indebtedness secured by such revenues."

[ii] *Financial Oversight and Management Board of Puerto Rico*, 2019 WL 1349223, at *7.

[iii] While the Opinion concerns Title III of the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA"), "PROMESA is largely modeled on municipal debt reorganization principles set forth in Chapter 9 of the Bankruptcy Code." *Financial Oversight and Management Board of Puerto Rico*, 2019 WL 1349223, at *1. Accordingly, as noted, the First Circuit's rulings will have application in municipal debtor bankruptcy cases commenced under Chapter 9 of the Bankruptcy Code.

[iv] *Financial Oversight and Management Board of Puerto Rico*, 2019 WL 1349223, at *1-*2.

[v] *Id*. at *2.

[vi] The District Court also found that the bondholders did not have a property interest in the funds being held in the Reserve Accounts. The First Circuit noted that it need not address this issue as Appellants failed to develop any argument on appeal going to the "property right" issue. *Id*. at *3 n.5.

[vii] *Id*. (quoting 11 U.S.C. § 552(a)).

[viii] *Id*.

[ix] *Id.* While the Appellants sought to rely on legislative history, because the First Circuit found that the statute was unambiguous, it was unnecessary to review the legislative history. Id. at *5.

[x] *Id.* at *5.

[xi] *Id.* at *6.

[xii] *See In re Jefferson County, Alabama*, 474 B.R. 228 (Bankr. N.D. Ala. 2012).

[xiii] *Id.* at 271. The bankruptcy court in *Jefferson County* also stated that Section 928's inclusion in the Bankruptcy Code "demonstrates that Congress wanted to ensure no delay occurred in payment to creditors secured by special revenues received by a municipal debtor post petition." *Id*. at 269.

[xiv] *Financial Oversight and Management Board of Puerto Rico*, 2019 WL 1349223, at *7.

by Arthur J. Steinberg, Floyd C Newton III, William A Holby (Bill) and Scott Davidson

April 1 2019

King & Spalding LLP

Puerto Rico Ruling Sends Shock Through $3.8 Trillion Muni Market.

- **Puerto Rico ruling may have big implications for muni market**
- **Decision could trigger credit downgrades, debt repricing**

A haven for American investors is looking less bulletproof.

A federal court decision in Puerto Rico's record bankruptcy that departs from past precedent in the $3.8 trillion municipal-bond market is threatening to upend the secure reputation for some types of debt. The legal fight could go all the way up to the U.S. Supreme Court, with the potential to erode the value of billions of dollars in bonds and ripple through a niche that finances roadways, airports and water systems.

That 2018 ruling was upheld by an appeals court last month and lets Puerto Rico's highway agency raid tolls and other fee revenue dedicated to bondholders until the case is settled. It has dashed hopes that the island's bankruptcy case would have little spillover into the U.S. mainland, because the ruling throws into doubt the belief that revenue bondholders will keep getting paid even when a government seeks to cut its debts in court.

"This is a backbone item of the muni market — understanding what your pledge is," said Gabe Diederich, a senior portfolio manager at Wells Fargo Asset Management. "The biggest question is, What is the knock-on effect to confidence in different security pledges?"

The decision from U.S. District Court Judge Laura Taylor Swain contrasts with how special revenue bonds have been treated in all past municipal bankruptcies under Chapter 9 of the U.S. bankruptcy code, said James Spiotto, who specializes in that kind of restructuring as managing director at Chapman Strategic Advisors.

Spiotto was involved in crafting a 1988 Congressional amendment to the bankruptcy code that said revenue bondholders would have an "unimpaired" right to the project revenue pledged to them. He said the latest ruling is inconsistent with that amendment and would have big implications for future municipal bankruptcy cases if it's upheld. "We can all imagine some bankruptcy lawyer from a debtor's perspective saying, 'Here in Puerto Rico, they didn't have to. Why are you shorting your taxpayers?'"

Precedent Setting Collapses

Municipal bankruptcies are so rare that each of them has the ability to set precedents that reshape how investor protections are viewed, and the Puerto Rico decision that casts doubt on revenue bonds marks a shift from the last big case. As part of Detroit's bankruptcy in 2013, some general-obligation bondholders took losses while debt backed by water and sewer revenues emerged unscathed, leading analysts and buyers to favor deals backed by specific revenue streams because of that extra protection.

Now, the pendulum could swing in the other direction. Debt sold for city utilities or airports could be considered at risk of getting sucked into cases of government distress, said Howard Cure, director of municipal bond research at Evercore Wealth Management.

"It's worrisome and potentially a game-changer in how you analyze special revenue bonds — bonds that you thought were separately secured and somewhat immune from the travails of problem cities," Cure said.

Fitch Ratings warned on Thursday that it may cut the credit rating of seven different municipal-bond issues if the ruling is upheld. Chicago water revenue bonds that have a much higher rating than the cash-strapped city are among those that could be downgraded. The ratings company said it believes the decision, if upheld, will be influential in future municipal bankruptcies.

Breckinridge Capital Advisors estimated last year that there is $1.2 trillion in outstanding special revenue bonds, which includes dedicated tax, water and sewer, transportation and tax-increment financing bonds. But the firm noted that "very few" special revenue bond investors are at risk of seeing their revenue raided if related governments face financial distress, particularly because some states, including Illinois, don't allow localities to file for Chapter 9.

The Battle

The U.S. Court of Appeals for the First Circuit in March upheld Swain's ruling, prompting bond insurer Assured Guaranty Ltd. to request that the court re-hear the case. The issue is of "exceptional importance for municipal bankruptcy law and the municipal bond markets," the April 9 court filing says. If that effort is unsuccessful, then the ruling could be appealed to the Supreme Court, though the high court rarely intervenes in such petitions.

The National Federation of Municipal Analysts, a trade group, expects that if it stands the prices of some revenue bonds would need to be cut to account for the risk that investors won't' be repaid during a bankruptcy.

The group emphasized in a May 2018 court filing that the ruling could hurt localities' ability to finance infrastructure projects, given that revenue bonds pay for water, energy and transportation systems. That could add anywhere from 5 to 50 basis points in yield on revenue bonds for infrastructure projects, the group said. Even a five-basis point bump in interest rates for infrastructure revenue bonds would translate to $2 billion in increased costs over the next decade, according to the estimate.

In the aftermath of Detroit, cash-strapped localities like the junk-rated city of Chicago began selling bonds that securitized some fees and taxes as a way to separate the revenue stream from the troubled local government, which helped earn them higher credit ratings and lower costs of financing.

But investors have become more skeptical of the protections they may have in a bankruptcy. S&P Global Ratings last year began changing the credit ratings of issuers to account for the risk of a distressed government raiding the revenue meant for bondholders, causing billions of dollars in debt to be both upgraded and downgraded.

Chicago's Sales Tax Securitization Corp. was downgraded last year by S&P to put it more in line with that of the city's rating. When it sold such bonds in January, investors demanded 1.7 percentage points in extra yield over benchmark securities, up from 0.9 percentage points more a year earlier — showing investors are starting to price in the risk that a bankruptcy court might shatter the securitization protections.

Erin Ortiz, a managing director at Janney Montgomery Scott, said any bankruptcy ruling in the municipal-bond market is "incredibly important." But she noted that Swain's ruling may not be the final decision on the subject.

"In terms of municipal bankruptcy cases, there always remains much uncharted territory," she said.

Bloomberg Markets

By Amanda Albright

April 12, 2019, 7:47 AM PDT

Fitch Rtgs: Rating Sensitivities will Indicate Vulnerability to Special Revenue Bond Ruling

Fitch Ratings-New York-11 April 2019: In response to the March 26, 2019 ruling by the United States Court of Appeals for the First Circuit regarding the bondholder protections provided by special revenue status under Chapter 9 of the U.S. bankruptcy code, Fitch Ratings has developed rating sensitivities corresponding to the likelihood and severity of potential rating changes resulting from a final court ruling upholding the decision. Fitch will consistently incorporate the appropriate sensitivity into each rating action commentary released until the court ruling is finalized.

Ratings for which the sensitivities are relevant are utility and tax-supported ratings that are higher than but within six notches of the related government's Issuer Default Rating (IDR). Fitch has placed ratings more than six notches above the IDR on Rating Watch Negative, indicating the expectation that they would be downgraded if the decision limiting the protections afforded by special revenue status were to stand. For more information, see "Fitch Places Seven USPF credits on Rating Watch Negative Pending Court Decision," dated April 11, 2019.

Fitch's criteria allow for rating bonds secured by pledged special revenues distinct from and higher than the IDR. While special revenues offer substantial protections in the event of a bankruptcy filing, the ruling creates uncertainty about full and timely payment of special revenue obligations during the bankruptcy of the associated government.

The following rating sensitivity will be included in RACs for special revenue ratings between one and three notches above the IDR:

"The rating is unlikely to be affected by a recent ruling by the United States Court of Appeals for the First Circuit regarding the protections provided to holders of bonds secured by pledged special revenues. Fitch believes those protections warrant a distinction in ratings above the IDR regardless of the outcome of the case."

The following rating sensitivity will be included in RACs for special revenue ratings between four and six notches above the IDR:

“The rating may be affected by the recent appeals court ruling regarding the protections provided to holders of bonds secured by pledged special revenues. Fitch believes those protections warrant a distinction in ratings above the IDR regardless of the outcome of the case. However, a final decision consistent with the First Circuit’s ruling may result in security ratings closer to the IDR.”

The following rating sensitivity will be included in RACs for California school districts with ratings above the IDR that are not currently on Rating Watch Negative because of the ruling:

“The rating may be affected by the recent appeals court ruling regarding the protections provided to holders of bonds secured by pledged special revenues. Fitch believes those protections warrant a distinction in ratings above the IDR regardless of the outcome of the case. However, a final decision consistent with the First Circuit’s ruling may result in security ratings closer to the IDR. Given state constitutional and statutory restrictions, Fitch believes potential rating changes would be modest.”

Fitch will not include a rating sensitivity related to the ruling for special revenue ratings that are below or equal to the IDR, or for ratings on stand-alone enterprise systems that are not related to a general government, as those ratings are unaffected.

Fitch believes U.S. airport ratings are unlikely to be affected by the ruling, even if made final, as federal laws specific to airport enterprises provide protections against revenue diversion to the general government. See “Fitch Rtgs: U.S. Airport Debt Shielded from Muni Bankruptcy Risk.” Therefore, no rating sensitivity related to the ruling will be applied to those credits.

Contact:

Amy Laskey
Managing Director
+1-212-908-0568
Fitch Ratings, Inc.
300 West 57th Street
New York, NY 10019

Arlene Bohner
Senior Director
+1-212-908-0554

Media Relations: Sandro Scenga, New York, Tel: +1 212 908 0278, Email: sandro.scenga@thefitchgroup.com

Additional information is available on www.fitchratings.com

The Appellate Court And Puerto Rico: Lessons For Investors.

Puerto Rico’s bankruptcy is a consistent reminder of what really matters when investing in municipal bonds. It’s pretty simple: sound economics, responsible financial management, well-articulated public policy, positive social impacts and essential public service projects.

The most recent reminder comes from a new United States Court of Appeals ruling. The ruling appears to strip away the core legal tenet backing the security provisions investors in municipal bonds backed by a pledge of dedicated revenues rely on: a statutory lien on revenues reserved for debt service is not affected by a bankruptcy filing.

By affirming a previous U.S. District Court decision, the Court rejected that. This latest ruling has "raised broad concerns about the protections provided in Chapter 9 of the U.S. bankruptcy code to holders of bonds secured by pledged special revenues," according to Fitch Ratings.

As with any investment, you should be doing your own research and drawing your own conclusions. Read the ruling, then read the actual law 11 U.S. Code Section 922 and Section 928 on the matter. Read the well-written Amicus Curiae brief submitted by the National Federation of Municipal Bond Analysts for a fair summary of the background and the issues. For an independent legal perspective, read the very tightly crafted memorandum on the ruling's implications by Mintz Levin's Public Finance Counsel Leonard Weiser-Varon.

The overall lesson municipal bond investors, both current and prospective, should take from reading these legal proceedings is that all the covenants in an OS, or all laws on the books, will not protect you if any or all of those initial five simple but critical components mentioned in the first paragraph are not present. Of course, covenants and legal protections are factors in the investment decision process: if done properly, they can be structured to create early warnings and some semblance of enforcement capability. But no investor should rely solely on the covenants and enforcement of legal protections to bail them out of trouble. No amount of legalese ever generated a dollar of debt service coverage.

As bondholders in the various debts of Puerto Rico as well as investors in other bankruptcy proceedings have experienced–and having gone through three municipal bond bankruptcies, including testifying in Federal Bankruptcy Court, I have had that experience–there is logic, then there is the law. Or perhaps more to the point, to quote Mr. Bumble, "the law is an ass." No one relies on an ass to protect their financial interests.

Forbes

by Barnet Sherman

Apr 10, 2019

Barnet Sherman is the Director of Municipal Impact Credit Research, Neighborly Investments, an Adjunct Professor of Public Finance at Boston University, and is published in his field.

Fitch Places Seven USPF Special Revenue Ratings on Negative Watch Pending Court Decision.

Fitch Ratings-New York-11 April 2019: Fitch Ratings has placed the seven U.S. Public Finance ratings that are more than six notches higher than the Issuer Default Rating (IDR) for the associated local government on Rating Watch Negative. This action is in response to the March 26, 2019 ruling by the United States Court of Appeals for the First Circuit regarding the bondholder protections provided by special revenue status under Chapter 9 of the U.S. bankruptcy code.

KEY RATING DRIVERS
RATINGS MOST AFFECTED: The ratings placed on Rating Watch Negative have the highest ratings relative to their associated governments' IDRs. Ratings on special revenue bonds that are closer to the associated government's IDR are less likely to be affected by a re-evaluation of special revenue

protections. While special revenues offer substantial protections in the event of a bankruptcy filing, the ruling creates uncertainty about full and timely payment of special revenue obligations during the bankruptcy of the associated government. The potential impact of the ruling on such ratings will be reflected through tailored sensitivities.

RULING AFFIRMS DISTRICT COURT DECISION: In the ruling, the circuit court agrees with a 2018 district court opinion concerning Puerto Rico Highways and Transportation Authority (PRHTA) bonds that section 922(d) of Chapter 9 grants permission to, but does not require, a municipality to continue paying special revenue obligations during a bankruptcy proceeding. By stating such payments are optional, the ruling creates uncertainty about full and timely repayment of special revenue obligations during bankruptcy of the related municipality.

INCONSISTENT WITH HISTORICAL TREATMENT: The decision affirming the 2018 district court ruling was inconsistent with Fitch's and market participants' general understanding of the meaning of section 922(d) and the treatment of special revenue obligations in bankruptcy since the code was amended in 1988. Nevertheless, with an appeals court validation Fitch believes its impact on ratings must be evaluated.

INFLUENTIAL NATIONWIDE: While the ruling only directly affects districts in the First Circuit (Maine, Massachusetts, New Hampshire, Puerto Rico and Rhode Island), Fitch believes that this decision would be influential in future municipal bankruptcy cases nationwide.

TIMING UNCERTAIN: The plaintiffs in the PRHTA case have multiple avenues of appeal. Fitch will monitor any court proceedings as they occur and incorporate the results into any affected ratings.

RATING SENSITIVITIES

FINAL RESOLUTION: A final ruling consistent with the March 26, 2019 Court of Appeals ruling would result in downgrades to the affected ratings to a level closer to the IDR.

FULL LIST OF RATING ACTIONS

Fitch has placed the following ratings on Rating Watch Negative:

Chicago (IDR BBB-/Stable)
–Senior lien water revenue bonds 'AA'

Chicago Board of Education (IDR BB-/Positive)
–Limited ad valorem tax revenues 'A'

Maricopa County Special Healthcare District (IDR BBB/Stable)
–Limited tax general obligation 'AAA'

Oakland Unified School District (IDR BBB+/Stable)
–General obligation – unlimited tax – dedicated Tax 'AAA'

Palomar Health (IDR BB+/Positive)
–General obligation – unlimited tax – dedicated Tax 'AAA'

Sacramento City Unified School District (IDR BBB/Negative)
–General obligation – unlimited tax – dedicated Tax 'AAA'

Sweetwater Union High School District (IDR BBB+/Negative)

–General obligation – unlimited tax – dedicated Tax 'AAA'

Contact:

Primary Analyst
Amy Laskey
Managing Director
+1-212-908-0568
Fitch Ratings, Inc.
300 West 57th Street
New York, NY 10019

Secondary Analyst
Arlene Bohner
Senior Director
+1-212-908-0554

Committee Chairperson
Michael Rinaldi
Senior Director
+1-212-908-0833

Media Relations: Sandro Scenga, New York, Tel: +1 212 908 0278, Email: sandro.scenga@thefitchgroup.com

Additional information is available on www.fitchratings.com

2019 Described as 'Mission Critical' for SOFR Transition.

WASHINGTON — The transition of financial markets to the Secured Overnight Financing Rate known as SOFR continues to make progress but needs to accelerate in the coming year ahead of a planned phase out of the the existing benchmark, members of the Financial Stability Board said Wednesday.

The municipal bond market, meanwhile, has been slow to issue SOFR-based floating rate notes despite the success of two issuances by New York's Metropolitan Transportation Authority in the fourth quarter of 2018.

The problem, according to some market participants, is that buy-side demand for SOFR-based debt has been slow to emerge as the industry moves toward a 2022 deadline for the phase out of the London Interbank Offered Rate, commonly referred to as Libor.

Randal Quarles, chairman of the Financial Stability Board and vice chairman of supervision for the Federal Reserve Board, described SOFR as "robust transaction-based rates."

"This is an important effort across the globe, but nowhere is it of more importance than in the jurisdictions relying on Libor," Quarles said.

Quarles pointed out that "much of the global financial system had come to rely on Libor" at the time of the financial crisis.

“And yet Libor was a very poorly structured rate,” he said. “Contributing banks were asked to submit quotes without any requirement of evidence of transactions or other facts to back them up, which made them susceptible to manipulation.”

Tom Wipf, vice chairman of institutional securities for Morgan Stanley (MS), described 2019 as “a mission critical year for this work.”

Patrick McCoy, director of finance for the MTA and past president of the Government Finance Officers Association, said at Wednesday’s meeting his agency was “very pleased” with its SOFR-based floating rate notes.

The MTA, McCoy told the panel, has a diverse portfolio of about $40 billion in bonds outstanding that include variable rate debt.

“Variable rate debt continues to be a lowcost method of financing as compared to issuing fixed-rate bonds,” McCoy told the group.

McCoy said GFOA has published best practices recommendations for its members that are considering using SOFR.

Privately placed debt at banks by smaller issuers is often based on Libor, so GFOA wants smaller issuers to have the information they need to make the transition, McCoy said.

McCoy declined in an interview after the meeting to speculate on why other muni debt issuers haven’t yet embraced SOFR and of reports of soft interest on the buy side.

“I can only speak for our experience with our issue and we had strong investor interest from a wide swathe of institutional investors who typically buy and hold FRN type obligations,” he said.

The MTA issued the FRNs on behalf of the Triborough Bridge and Tunnel Authority with the first round of TBTA debt for one-year SOFR FRN and a day later for a term of two years.

“The one year was much more desired by the investor community than the two year, and I think that really spoke to the newness of the tax -exempt SOFR-based FRN,” McCoy said.

Floating rate debt is only a small fraction of the municipal bond market.

The Securities Industry and Financial Markets Association listed $76.9 billion of publicly issued municipal bonds from 872 issuances that used floating rate debt as of Dec. 18, 2018. That’s only 2% of the $3.8 trillion municipal bond market and includes debt that uses the SIFMA index but doesn’t include swaps.

Libor-based municipal debt was an even smaller amount at $47.6 billion or about 1.3% of the overall muni market.

In the bigger picture, the Federal Reserve estimated last year there were roughly $200 trillion of financial securities referencing U.S. dollar Libor.

By Brian Tumulty

BY SOURCEMEDIA | ECONOMIC | 04/10/19 04:27 PM EDT

S&P Extra Credit Podcast: U.S. Public Finance Focus On ESG, Utility Rate Affordability, And The Green Bond 2019 Outlook

This week you can hear Kaiti Vartholomaios talk about our recent publication that highlights rating actions over the past two years and the role ESG factors played. Erin Boeke Burke discusses her findings on water and sewer rate affordability and Andrew Bredeson joins the conversation to help cover the 2019 Green Bond outlook.

Listen to Audio

Apr. 8, 2019

S&P U.S. Not-For-Profit Health Care Providers Short-Term Self-Liquidity Ratings As Of April 1, 2019.

&P Global Ratings assigns short-term ratings to the commercial paper (CP) programs and variable-rate demand obligations (VRDOs) of U.S. not-for-profit health care organizations that have elected to support these obligations with their own liquidity sources rather than with a third-party liquidity facility such as a line of credit or standby bond purchase agreement.

Continue Reading

Apr. 12, 2019

How Government Fudge, Fib and Falsify their Budgets.

According to Sheila Weinberg, a CPA, there is so little truth in so many government budgets, that they could be considered works of fiction.

Read the full article on: Illinois Channel

April 11, 2019

Enhancing Your Utility’s Long-Term Financial Sustainability & Resilience through Cash Reserves.

Personal financial advisors often recommend that families should have enough money in an emergency fund to cover at least three to six months of living expenses. Corporations such as Microsoft, General Electric and Home Depot maintain excess operating funds for their own business reasons. Why should water utilities be any different?

Quite frankly, they aren’t different. In fact, emergency funds or utility cash reserves for a water utility are required to meet the operational, maintenance and capital needs of the utility while providing a necessary service 24 hours a day, every day of the year. Here, we'll review operating reserves. Capital reserves, debt service and rate stabilization reserves will be discussed in a future article. It is recommended that water utilities establish either formal or informal financial policies regarding utility cash reserves.

Operating Reserves

Having an adequate level of operating reserves improves a water utility's ability to respond to seasonal fluctuations in revenues brought on by droughts or significant rain events, mitigate potential risks such as major emergency repairs or natural disasters, as well as provide working capital needs. Revenue-backed debt includes bond covenants often requiring a minimum required operating reserve that must be maintained by the utility.

A few of the key considerations are discussed below for setting the appropriate level of operating reserves for your utility. Please bear in mind that some of the considerations listed may not apply if a utility has developed other specific reserves (namely Capital Reserves, Debt Service Reserves, or Rate Stabilization Reserves).

Credit Rating Objectives. Operating reserves that are not restricted are a key consideration that credit rating analysts utilize when determining a utility's bond rating. Each rating agency has its own criteria for credit rating evaluations. Generally speaking, the greater the amount of unrestricted operating reserves for a utility, then the greater the opportunity for a higher credit rating (and thus lower interest costs).

Availability of Other Reserves. Many utilities maintain several specific reserves (Capital, Debt Service and Rate Stabilization) that can be used to mitigate financial challenges. The existence of these other reserves need to be considered when determining the size of your utility's operating reserves.

Non-Utility Resources. The level of operating reserves could be affected by resources available outside your utility in emergency conditions such as general fund cash for publicly-owned water utilities or cash from affiliate entities for investor-owned utilities.

Bond Requirements. Bond covenants often require minimum levels of operating reserves that must be maintained in addition to debt service reserves.

Insurance Requirements. Insurance policies often require that reserves be held by the utility, and these reduce the level of operating reserves needed as a result of emergencies.

Rate Structure. The use of conservation rates (revenues generated by higher usage blocks are at risk of not materializing) and pass-through rates (recovery of raw water costs) affect the level of needed operating reserves. In addition, the more revenue generated from volumetric rates as opposed to fixed components affects the level of operating reserves needed.

Customer Usage Variability/Seasonal Cash Flow. Changes in customer usage brought on by weather, conservation, and economic factors affect the level of operating reserves for the utility.

Billing Frequency. Utilities utilizing a lower frequency of billing (bi-monthly or quarterly versus monthly billing cycles) should consider higher levels of operating reserves since expense incurrence leads revenue collection by greater dollar amounts.

Strength of Bill Collection Policies. A utility with stronger collection policies would need a lower level of Operating Reserves due to lower levels of receivables and past due accounts.

System Size. Financial risk and economic changes have a more dramatic effect on smaller utilities so they would need a higher relative level of operating reserves.

Age of System and Customer Concentration. Older utility systems have a greater likelihood of unplanned emergency repairs and those with an increased customer concentration (a small number of customers that generate a majority of the revenues) cause the utility to have a higher level of risk (and thus higher levels of operating reserves needed) than newer systems and utilities with less customer concentration.

Use of Contingencies. Utilities that budget for contingencies may affect the level of operating reserves needed.

Metrics for Evaluating Operating Reserves

The metrics commonly used by utilities for evaluating the level of operating reserves are: Days (or months) of operating expenses, a specific dollar amount, or a percentage of revenues. Each utility selects the best metric for its given circumstances.

The following are the minimum recommendations for utilities cited from several organizations:

- **Water Environment Federation (WEF):** One to three months of operating costs depending on instability of revenues and expenses.
- **International City/County Management Association (ICMA):** One to two months of expenses depending on size, challenges faced, and the availability of special reserves.
- **Government Finance Officers Association (GFOA):** No less than 45 days of annual operating expenses including depreciation expense.

Each utility is unique and operates under a special set of circumstances that must be considered when selecting the type of cash reserves and the corresponding policies to best meet the utility's objectives and requirements. A utility should consider adopting a formal reserve policy to help guide and govern the decision maker's actions while providing greater clarity to the investment community. Having a formal policy must always be weighed against informal policies as there are benefits from greater flexibility with an informal policy.

Water Finance & Management

By Andy McCartney

February 19, 2019

---

*Editor's Note:

This article provides a summary of the recent AWWA Rates & Charges Committee report, "Cash Reserve Policy Guidelines," and the Journal AWWA article titled Utility Cash Reserves from April 2018. The "Cash Reserve Policy Guidelines" report provides a more comprehensive review of reserve policy considerations, as well as case studies providing examples of various reserve policies from utilities across the United States. Click here for more information.

Other contributing authors to the above-referenced AWWA report are Andrew Burnham, Stantec; Christine DeMaster, Trilogy Consulting, LLC; Robert P. Ryall, Arcadis; and John Mastracchio, Raftelis.

Cash Reserves Pt. 2: Capital Reserves, Debt Service & Rate Stabilization Reserves

Editor's Note: This is the second article in a two-part series on cash reserves for water utilities. As mentioned in the first article on operating reserves, cash reserves are required to meet the operational, maintenance and capital needs of the utility while providing a necessary service 24 hours a day – every day of the year. This article will specifically review capital reserves, debt service and rate stabilization reserves. It is recommended that water utilities establish either formal or informal financial policies regarding utility cash reserves.

Part 1: Enhancing Your Utility's Long-Term Financial Sustainability through Cash Reserves

Capital Reserves

Utilities are able to develop the amounts and timing of future capital project costs to replace and rehabilitate their infrastructure systems with good record-keeping, long-range planning, and regular inspections. Capital reserves are established by utilities to serve one or more purposes as indicated below.

Rehabilitation and Replacement Reserves

Rehabilitation and replacement reserves fund unplanned or accelerated infrastructure rehabilitation or replacement needs when assets wear out before the end of their expected useful life or when the utility wants to accumulate funds for future rehabilitation and replacement needs. These reserves also may be used as a source of cash funding for the utility's Capital Improvement Program (CIP) Plan or to set aside funds for intermediate to long-term future replacement of major assets not included in the CIP Plan.

Equipment Replacement Reserves

An equipment replacement fund can be established to pay for the periodic replacement of assets with relatively short useful lives. Assets defined as equipment include vehicles, pumps, computer & office equipment, mechanical equipment, laboratory equipment, and similar equipment with an expected life in the range from three to 20 years.

Emergency Capital Reserves

Emergency capital reserves are utilized to fund replacement of critical infrastructure damaged by catastrophic events such as natural disasters. The following factors should be considered when determining the amount of emergency capital reserves.

- **Risk Factors** – Types of natural disasters, extreme weather conditions, or other force majeure events that the utility could face and the extent of damage that could result.
- **Critical Facilities** – Specific facilities (including replacement costs and condition) that are identified as being critical to utility system operations and could be vulnerable to potential threats.
- **Availability of Other Funds** – Quick access to other funds in the event of an emergency such as a line of credit, transfer from the municipal general fund, or funds from related affiliates for investor-owned utilities.

Special Purpose Capital Funds

Utilities often impose special assessments, system development charges (impact fees), or other charges to fund system expansion or the replacement of specific facilities. These assessments or charges have specific purposes defined by state statutes and local ordinances or resolutions. Often, a segregated account or fund must be established and maintained for the revenues from such fees. Even if not legally required, it is often prudent to establish a segregated account fund to ensure that these types of funds are held and used for the intended purpose and are not comingled with other utility funds.

Debt Service Reserves

Utilities utilize debt service reserves to pay debt service if revenues are not sufficient to satisfy their annual principal and interest requirements on debt. Debt service reserves are commonly established as a legal covenant of a debt issuance and is used in whole or in part to pay debt service in the event of a revenue shortfall. Revenue bond issues commonly require a Debt Service Reserve Fund (DSRF), but may be required (or voluntarily established by the utility) for other types of subordinate indebtedness. Typically, a DSRF requirement is specified as a fixed percentage of the average or maximum annual debt service on the bonds. The DSRF can be funded entirely with bond proceeds at the time of issuance, funded over time through revenue accumulation, funded with a surety or other type of guaranty policy, or funded only upon the occurrence of a special event.

Rate Stabilization Reserves

Rate stabilization reserves are cash reserves that can mitigate the effects of occasional shortfalls in revenue. Revenue shortfalls result from a number of events such as weather factors (wet weather or drought events and natural disasters), increased water conservation, and poor regional economic conditions. Rate stabilization reserves assist in smoothing out revenue variability resulting from these factors and ensure that adequate resources are available during such times that might otherwise require large rate increases.

Revenue and expenditure volatility often drive the decision to establish and maintain Rate stabilization reserves. Smaller utilities may be more prone to such volatility relative to the size of the overall budget as compared with utilities with larger customer bases. In addition, the decision may also depend on whether established reserves are adequate to address the utilities exposure to revenue volatility.

Each utility is unique and operates under a special set of circumstances that must be considered when selecting the type of cash reserves and the corresponding policies to best meet the utility's objectives and requirements. A utility should consider adopting a formal reserve policy to help guide and govern the decision maker's actions while providing greater clarity to the investment community. Having a formal policy must always be weighed against informal policies as there are benefits from greater flexibility with an informal policy.

Water Finance & Management

By Andy McCartney

April 8, 2019

---

*Editor's Note:

This article provides a summary of the recent AWWA Rates & Charges Committee Report, "Cash

Reserve Policy Guidelines," and the Journal AWWA article titled Utility Cash Reserves from April 2018. The "Cash Reserve Policy Guidelines" provides a more comprehensive review of reserve policy considerations, as well as case studies providing examples of various reserve policies from utilities across the United States.

Other contributing authors to the above referenced AWWA publications are: Andrew Burnham, Stantec; Christine DeMaster, Trilogy Consulting, LLC; Robert P. Ryall, Arcadis; and John Mastracchio, Raftelis.

Changing Dynamics And New Opportunities In Municipal Bonds.

Summary

- As tax season is upon us, we wanted to again highlight why many investors find municipal bonds a valuable addition to their portfolios.
- As individuals work through their 2018 tax return filing process, many may be shocked to find they have a tax bill to pay for 2018 when they may not have in the past.
- In addition to the expected pick-up in demand for munis, we also continue to see a decrease in supply in the market.

Many investors flock to municipal bonds because of potential tax advantages. While this year's taxes are probably already done and dusted, Franklin Templeton's municipal bond team felt it was an appropriate time to revisit the opportunities and risks that recent US tax reform poses for the space. Sheila Amoroso and Christopher Sperry discuss how constrained supply is impacting the market.

Continue reading.

By Sheila Amoroso, Senior Vice President, Director, Municipal Bond Department, Franklin Templeton Fixed Income Group®; Christopher Sperry, CFA, Vice President, Portfolio Manager, Franklin Templeton Fixed Income Group®

Apr. 12, 2019

Fed Policy Boosts Bond Funds in the First Quarter.

Heading into 2019, the Federal Open Market Committee (FOMC) adopted a more dovish stance than some market participants had expected. In December, the committee held the federal-funds target rate within the 2.25%-2.50% range after it had previously signaled the likelihood of more increases, and it maintained that position in March. The majority of FOMC members expect rates to remain unchanged the rest of 2019. This was the first quarter without a rate hike since the third quarter of 2017.

In March, the Fed also announced a plan for ending its balance-sheet unwinding process by September 2019, not the end of the year as investors previously expected. This accelerated timeline implies that the Fed will maintain a larger balance sheet than initially signaled, which should provide additional liquidity to the market.

Overall, bond market participants reacted positively to the Fed's more dovish tone, as U.S. Treasury yields fell and credit spreads tightened throughout the first quarter. The Bloomberg Barclays U.S. Aggregate Bond Index, a proxy for the U.S. investment-grade market, gained 2.9% during the quarter–a strong start after a seesawing 2018 in which the index ended the year roughly flat. The index's main sectors–agency mortgages, investment-grade corporates, and U.S. Treasuries–all experienced gains. Investment-grade corporate credit was the index's key driver for the period, returning 5.1%, while agency mortgages and U.S. Treasuries each gained just over 2%.

The Yield Curve Inverts

U.S. Treasury yields have remained low in 2019, and the yield curve inverted at the end of the quarter. The three-month U.S. Treasury yield, which is heavily influenced by the federal-funds target rate, remained roughly stable, ending the quarter at 2.4%. Meanwhile, the 10-year U.S. Treasury note's yield declined to 2.4% from 2.7%, slightly lower than the six-month yield. That modest yield-curve inversion temporarily spooked the markets, as pundits were quick to point out that inverted yield curves have often preceded recessions. But the market ultimately shrugged off these concerns.

Credit Rallies Following a Tough Fourth Quarter
Following a credit sell-off in late 2018, corporate credit was buoyed in early 2019 as credit spreads tightened, supported by the Fed's dovish stance. Risk-taking generally rewarded strategies that had larger stakes in lower-quality credit over their more conservative peers. Energy-related debt, in particular, benefited as the West Texas Intermediate crude-oil price rose to just over $60 per barrel from $45 to start the year, representing one of the largest quarterly increases in recent years. Energy's large presence in the high-yield bond space fueled gains.

Within the high-yield bond Morningstar Category, Fidelity Advisor High Income Advantage (FAHCX), one of the more aggressive strategies in the peer group, generated a 10.3% gain for the first quarter. This fund, which has a Morningstar Analyst Rating of Silver, benefited from its flexible mandate that can carry up to 20% in common stock, as the S&P 500 rose 13.6% during the period. More-conservative high-yield strategies, such as Bronze-rated Diamond Hill Corporate Credit (DHSTX) (up 5.6%), still performed well in absolute terms, even if they didn't rise to the top of their peer group rankings.

Convertible securities, which combine corporate bonds and an equity call option, also posted strong returns for the period.

Strong Technicals Fuel Munis

Municipal-bond market technicals remained supportive throughout the first three months of 2019, as demand outstripped supply. Tax reform that passed in late 2017 continued to impact the muni landscape. With a lower corporate tax rate, many traditional long-term municipal buyers such as insurance companies and banks have shifted away from the sector, propping up the long end of the muni yield curve. The muni curve's upward slope and relatively high yields added to the sector's attractiveness versus U.S. Treasuries.

While the distribution of returns in muni categories was narrow during the quarter, strategies with longer durations generally outperformed their shorter peers, and funds holding lower-rated issues also benefited from the market's risk-on mentality. For example, Silver-rated BlackRock National Municipal (MANLX) delivered a 3.0% gain, beating more than three fourths of its muni-national intermediate category peers, thanks to its longer duration and allocation to lower-quality issuers–notably Illinois, Puerto Rico, and tobacco bonds. The more conservative Bronze-rated Franklin Federal Intermediate-Term Tax-Free Income (FITZX), which focuses primarily on AA rated issues and avoids junk-rated bonds, gained 1.9%, trailing the majority of its competitors.

Puerto Rican credit got a boost from a federal-court-approved deal between the commonwealth and creditors. Puerto Rico's Cofina bonds, which are backed by the territory's sales tax, were exchanged for new non-investment-grade Cofina debt.

Going Global

Similar themes played out in fixed-income markets outside the United States. Hard-currency emerging-markets debt, which comes with credit risk, rallied almost as much as U.S. high-yield, with indexes gaining nearly 7.0%. Yields on developed-markets government debt dropped during the quarter, resulting in a 2.2% gain for the U.S.-dollar-hedged Bloomberg Barclays Global Aggregate Bond Index. As a result, the total of negative-yielding debt globally grew above $10 trillion during the quarter.

Exchange-rate fluctuations versus the U.S. dollar–for both developed-markets and emerging-markets currencies–were mixed in early 2019. The dollar appreciated versus the euro and yen, which created a modest headwind for unhedged world-bond category funds. But despite Brexit uncertainty, the British pound appreciated against the dollar during the quarter. After recovering somewhat in the second half of 2018, the Argentine peso depreciated sharply versus the dollar in 2019's first quarter, a position that continued to cause indigestion for a number of actively managed funds over the past year.

But overall, credit risk and emerging-markets exposure was likely a bigger differentiator for world-bond funds. Bronze-rated Dodge & Cox Global Bond (DODLX), which has a sizable corporate and emerging-markets debt stake, returned just under 5.0%, while the higher-quality Hartford World Bond (HWDIX) (also Bronze rated) gained 1.4%.

Morningstar

by Zachary Patzik, CFA

09 Apr 2019

Zachary Patzik, CFA does not own shares in any of the securities mentioned above. Find out about Morningstar's editorial policies.

[Municipal CUSIP Request Volume Climbs for Third Straight Month.]

NEW YORK, NY, APRIL11, 2019 – CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for March 2019. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity over the next quarter, found a noteworthy increase in requests for new municipal debt identifiers, while requests for corporate identifiers declined in March.

[Read Report]

CUSIP: Corporate Volume Down in March and for the Year

"Interest rates are holding at historic lows on a global basis and central banks are signaling that they will stay that way for the near term," said Gerard Faulkner, Director of Operations for CUSIP Global Services. "Clearly, that sentiment is weighing on the minds of issuers who are seizing the opportunity to raise new capital, but they are doing so at a fairly measured pace."

Read Press Release.

Fitch Rtgs: Colorado River Basin Drought Plan Will Raise Water Costs

Fitch Ratings-New York-11 April 2019: Fitch Ratings does not anticipate near-term credit effects from a recently negotiated drought contingency framework outlining water cutbacks for states in the lower Colorado River Basin. However, for some wholesale water suppliers and municipal utilities, particularly in Arizona, cuts in allocations could lead to rate increases tied to the rising cost of purchased water and could eventually pressure rate affordability.

The Colorado River Drought Contingency Plan (DCP) received congressional approval on Monday, April 8 after several years of negotiations and despite technically missing various deadlines set by the US Bureau of Reclamation (USBR). The finalization of the DCP comes after years of negotiations between states in the Colorado River Basin hoping to stabilize water levels in Lake Mead following years of drought and over allocation. The DCP will manage water shortages on the Colorado River until 2026.

Based on the terms of the DCP, Arizona would see the greatest impact of the lower basin states, with the largest cuts being absorbed by the Central Arizona Water Conservation District (CAWCD; AA/Stable), which transports water to central and southern Arizona annually through the Central Arizona Project (CAP). However, Fitch believes Arizona water users will absorb the cuts and offset the effects with rate increases. If mandatory cuts in the DCP are triggered, it is expected that rates for overall delivery of CAP water will increase by approximately 13% to 20%.

California allocation reductions per the DCP are not expected to significantly affect supplies, given the manageable near-term demand and additional supply sources, including high water storage levels in Southern California. Although the DCP allocation cuts would not significantly impact California issuers in the near term, the continued drought conditions in Colorado coupled with an uncertain State Water Project supply could stress future supplies.

Nevada would see a smaller annual cut of nearly 3% of its allocation and up to 10% if conditions worsen. Southern Nevada, which comprises more than 70% of the state's population including Las Vegas, receives 90% of its water from the Colorado River. However, the Southern Nevada Water Authority, which treats and delivers water to the region, is able to access lower levels of water in Lake Mead due to an intake that can draw water from below 1,000 feet. As such, effects are expected to be manageable.

The path to finalization of the DPC was not without some impediments. On Jan. 31, 2019, the original deadline set by the USBR, the Arizona legislature approved the state's participation in the DCP but 16 intrastate agreements included as part of legislation were not finalized by the original USBR deadline. The USBR did not consider the state's participation in the DCP complete until all internal agreements were finalized.

In addition, there was a holdout to the California portion of the plan – Imperial Irrigation District (IID) – which had indicated its support of the drought plan was contingent upon funds for Salton Sea restoration. In mid-March the Metropolitan Water District of Southern California (AA+/Stable) intervened and agreed to contribute water stored in Lake Mead through conservation to the DCP in order to complete California's part of the DPC participation, which removed the Salton Sea restoration from the DPC negotiations.

Under federal law, the USBR has the responsibility for managing the water of the Colorado River's upper and lower basins. If the DCP was not in place this year, the USBR would have moved forward independently to reduce the risk of further declines in the water supplies of the Colorado Basin.

Contact:

Teri Wenck, CPA
Director, US Public Finance
+ 1 512 215-3742
Fitch Ratings, Inc.
111 Congress Avenue
Austin, TX 78701

Shannon Groff
Director, US Public Finance
+1 415 732-5628

Sarah Repucci
Senior Director, Fitch Wire
+1 212 908-0726

Media Relations: Sandro Scenga, New York, Tel: +1 212 908 0278, Email: sandro.scenga@thefitchgroup.com

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

[Muni Issues Prepare For Climate Change In New Bonds (Radio).]

MUNIS IN FOCUS: Joe Mysak, Editor Bloomberg Brief: Municipal Market, discusses climate change influencing muni issuers. Hosted by Lisa Abramowicz and Paul Sweeney.

Running time 04:40

[Play Episode]

Bloomberg

April 12, 2019 — 8:58 AM PDT

Muni-Bond Buyers Want Tax Breaks. Saving the Earth? Not Much.

- **States don't get lower borrowing costs from green bonds: study**
- **Wall Street charges about 10 percent more on green bond deals**

There appears to be a good reason why states and cities don't go out of the way to market their bonds to environmentally conscious investors: it doesn't save them any money.

That's the conclusion from a study by Stanford University accounting professor David Larcker and Edward Watts, a doctoral student at the business school there. Instead, they found that governments wind up paying higher fees to bankers when they sell certified green bonds than they do when they forego that brand, based on a review of debt issued for clean water, commuter trains, solar energy and other such projects.

The findings underscore the municipal-bond market's image as a haven for slow-moving investors largely concerned about getting tax-free income. It also explains why such green-certified bonds account for only a small fraction of the $3.8 trillion that's been raised by state and local governments, even though much of the money is used for work — like new public transit systems — that has a positive environmental impact.

"Municipal investors appear entirely unwilling to give up monetary gains to support Green projects," wrote Larcker and Watts, who said underwriting fees are 10 percent higher for green bond issues. "Our results suggest that municipalities actually increase their borrowing costs by issuing Green bonds."

States, cities and transit agencies have sold $3 billion of green bonds this year, accounting for about 3 percent of new debt sales, according to data compiled by Bloomberg. At its peak in 2017, such issuance hit $10 billion.

Some government officials have noticed that the marketing efforts — which arguably could increase demand — did little to drive down their borrowing costs. After the Iowa Finance Authority borrowed for a clean water project this year, the agency found no pricing difference.

"It helps to broaden the investor base and eventually, maybe, they'll be more momentum toward driving our costs lower," said Cindy Harris, the chief financial officer at the Iowa Finance Authority. The agency pays the same underwriting fees on green bonds as non-green securities, she said.

Last week, the Illinois Finance Authority issued $450 million of green bonds for clean water projects. While the agency didn't see any pricing difference, one of the largest buyers was a self-identified "green bonds investor," said director Chris Meister.

"I believe the sale benefited from the green designation -- and that, once closed, this transaction will positively contribute to the development of the green bond market here in the U.S.," Meister said in an email. In January, Illinois Governor J.B. Pritzker joined the U.S. Climate Alliance, whose members commit to implementing policies that advance the goals of the Paris climate agreement.

The lack of impact on pricing may be because the market is just developing. But asset managers have started setting up socially responsible investment funds, while S&P Global Ratings Inc. and Moody's Investors Service created evaluations to assess whether bond issues meet guidelines for being certified as green. Even bond insurer Build America Mutual Assurance created a service, GreenStar Assessment, which is free to municipalities that buy insurance from the company.

"Municipal investors shouldn't have to give up monetary gains to support Green projects. All of our infrastructure investments should be going to create a low carbon economy," said Eric Glass, who manages AllianceBernstein LP's municipal-impact portfolio in an email.

"I, for one, do NOT care whether a deal is officially certified 'green,' 'chartreuse,' or 'indigo.' What's essential is that the utility (municipal entity) be transparent and help the investment community document and understand the environmental impact of the original investment in year one and every year thereafter in which there are bonds outstanding."

Larcker and Watts's results are based on a sample of 640 matched pairs of green and non-green bonds issued on the same day, with identical maturity and ratings and issued by the same municipality. In 85 percent of matched cases, there was essentially no yield difference.

Prior studies on whether there's a difference yielded mixed results. One study found that green bonds had 0.08 percentage point higher yields while another found green bond yields are 0.06 percentage point lower.

Bloomberg Markets

By Martin Z Braun

April 11, 2019, 10:46 AM PDT Updated on April 11, 2019, 1:34 PM PDT

— With assistance by Amanda Albright

Benjamin, Brainard, and Biskupski Tout Climate Actions, Want Renewed Funding for the Energy Efficiency and Conservation Block Grant (EECBG).

Conference President Columbia Mayor Steve Benjamin, joined by Carmel Mayor Jim Brainard and Salt Lake City Mayor Jackie Biskupski, discussed their local climate strategies before a key House Subcommittee yesterday afternoon, urging the panel Members and Congress broadly to invest in city and other local government efforts as part of a national response to our changing climate.

The Conference leaders each called for new funding for the Energy Efficiency and Conservation Block Grant (EECBG) Program, a Conference of Mayor-led initiative that received a one-time $2.8 billion commitment as part of the ARRA recovery package, helping further stimulate local action to curb greenhouse gases and move our cities toward a cleaner energy future.

Brainard who serves as the Co-Chair of USCM's Energy Independence and Climate Protection Task Force and Biskupski who serves as the Chair of the USCM's Alliance for a Sustainable Future testified with Benjamin before the House Energy and Commerce Subcommittee on Environment & Climate Change at the hearing, entitled "Learning from Across the Nation: State & Local Action to Combat Climate Change." Congressman Tonko, who chairs this subcommittee, is an energy and climate expert in his own right, having previously directed New York State's well-known energy agency, NYSERDA. As a Congressman, he represents Schenectady Mayor Gary McCarthy and Albany Mayor Kathy Sheehan, both leaders on energy and climate.

In his remarks, Benjamin told the panel that "climate change is the biggest issue we face" and that "climate change is already impacting our infrastructure." Brainard used his remarks to challenge his Republican party colleagues to return to earlier values and leadership on the environment and work with Democrats to address climate protection. Discussing how her region's poor air quality has forged a bipartisan consensus for action, Biskupski explained how this has helped drive a move toward renewable energy and transportation solutions to address air pollution and reduce public health threats to people.

The mayors' statements — Benjamin, Brainard and Biskupski — before the House panel tell the story of continuing mayoral leadership on climate protection. The accumulating local record of accomplishment and innovation has largely defined the national response to our nation's climate challenges in light of federal inaction. Their efforts are part of a larger campaign by the Conference to secure increased federal investment in energy infrastructure and initiatives. Refunding the EECBG Program is one key component of our 5-Point Infrastructure Agenda. Conference Membership Chairman Piscataway Mayor Brian Wahler is leading a statewide effort in New Jersey to support House Energy and Commerce Committee Chairman Frank Pallone's efforts to elevate EECBG as a priority.

We thank them for their commitment of time and energy to this effort, as we press forward on these issues in this new Congress. The day is coming when Congress will invest in cities to help show that locally there are climate solutions are at hand.

What to Consider When Budgeting Cloud Migration at the Municipal Level.

Learn how calculating costs and forecasting future savings when budgeting cloud migration can help your local government realize tech modernization.

Budget requests for technology investments hold the promise of running government more efficiently at a reduced cost by improving resource management, processes and decision-making, according to the report, "Transforming Government Through Technology," developed in 2018 to counsel federal operations in digital modernization.

In the report, the Technology CEO Council (TCC) recommended cost-reduction estimates over a 10-year period be used to justify investments in federal workforce, processes and technology tools.

Likewise, civic technology applications that do not have a clear revenue stream often require creative thinking, and potentially a reform of local procurement processes. But budgets can be used to tackle the issue, according to "The Civic Technology Landscape," a 2015 report by the Urban Sustainability Directors Network.

When targeting investment in new capabilities — such as migrating government services and operations to the cloud — consider simultaneously developing cost-reduction plans for outdated technologies and wasted resources as you shift costs from capital expenses to operating expenses.

Continue reading.

EfficientGov

by Andrea Fox

April 1, 2019

Pros and Cons of 529 Accounts for College.

A beginner's guide to the popular account for saving for college

When saving for college, it's often parents who need to educate themselves about the financial options they have in front of them. As with any major expense, understanding the impact your decisions will have on your future is the first step of the process.

One popular college-saving vehicle parents can evaluate is the decades-old "529" savings account. These accounts offer tax advantages but can also have limited utility since the purpose is so specific.

These are some of the pros and cons of 529s:

The Pros:

- Money in 529 accounts grows tax-free and remains that way until you withdraw it for qualified educational expenses.
- Depending on where you live, you could be eligible for tax deductions or credits if you invest in a 529. More than 30 states offer some kind of tax break.
- The account's beneficiary can usually be changed later on to a different direct relative if your child doesn't end up using all the money in the 529. That provides flexibility and can allow the account to survive for generations.
- Anyone can contribute, though it's best to have a parent own the account for tax reasons.
- 529s can offer financial-aid advantages. While the Fafsa, the federal application that determines financial-aid eligibility, typically counts 20% of student-held assets as available funds to pay for college, 529s owned by students or parents are only considered at 5.64%.

The Drawbacks:

- 529s can be restrictive. Once you invest into the account, the money is earmarked for higher education. Withdrawing the money for any other purpose will impose penalties and fees on the money you've saved.
- What counts as qualified educational expenses can be confusing. Many community colleges, for example, don't include room and board in their total cost of attendance, meaning funds in a 529 can't be used to cover that part of the college experience.
- The plans are subject to changing tax regulation conditions. What the funds can be used for has expanded, but since they're tax-advantaged, the uses can change in varying political conditions.
- There isn't a one-size-fits-all approach to 529s, which means how you open and maintain the account could subject you to higher fees.
- Noncustodial guardians or grandparents who open 529s will face a tougher road with financial aid. As soon as a student withdraws money, it can be counted as untaxed income, which can be counted toward the expected family contribution calculation at a rate of up to 50% of the amount.
- The funds in a 529 cannot help for precollege expenses, such as campus visits or application fees.

Your Resources

Depending on your personal situation, some advantages could work against you and some of the disadvantages could work in your favor. For example, if you don't have a direct relative to whom you can transfer the account, you'd need to get creative about spending down the money in that account if there is any left over.

As with any major decision, you need to consider the future to determine how your actions now could affect your financial reality. If you are unclear, a financial professional can help you sort through the nuances. But there are resources available to you before you seek out professional advice.

The SEC has a 529 account guide for investors as they weigh their options. It dives deeper into the specifics around the tax code. Using the information here in conjunction with the government's guide can be a good way to begin evaluating your options.

Additionally, Chana Schoenberger writes a regular column about saving for college and recently answered the top six questions she has received about the often-confusing plans. She has answered several years of questions that range from common to unique, which may prove helpful to your decision.

However you approach the decision, it's important to consider all the information in front of you. There may be further considerations beyond the pros and cons listed that apply to your particular situation.

But as tuition prices continue to rise, your savings options now could affect your child's college choice in the future. Being financially smart can mean that your money isn't the one making the final decision for them.

The Wall Street Journal

By Kevin McAllister

March 24, 2019 2:00 p.m. ET

Why Cities and Pension Funds are Suing Big Banks (Again).

Baltimore hopes to spearhead two class action lawsuits that accuse banks of rate fixing.

Baltimore has filed two antitrust lawsuits in eight days, alleging price-fixing by big banks and hoping to turn both procedings into class action suits that seek billions in damages for governments and pension plans.

The suits address two different kinds of municipal market bonds, but both levy the same charges: that banks manipulated interest rates to their advantage, at the expense of taxpayers.

"That's a big accusation because what that means is these banks were all in cahoots with each other," says David Brunori, a research professor of public policy at the George Washington University. He adds that the complaint "reads like a crime novel," conjuring up images of collusion behind closed doors in smoke-filled rooms. "I suspect it doesn't actually work that way."

If the allegations are true, Brunori estimates the liabilities for banks could be in the billions. That makes it likely many plaintiffs would opt for a settlement, as has happened with other municipal market lawsuits.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | APRIL 5, 2019

States Need to Spend on Infrastructure. Pension Shortfalls Are Getting In the Way.

The U.S. can have sound public pensions or sound infrastructure. Choose one.

States and municipalities face the twin crises of collapsing bridges and underfunded pensions and public-sector retirees' medical costs. The result is that those retirement expenses are crowding out critical infrastructure needs, according to Bank of America Merrill Lynch municipal-finance analysts.

The numbers are so huge that they numb the mind. Unfunded liabilities of state pension plans total $5.96 trillion, or about six times the federal budget deficit, according to a 2018 estimate by the American Legislative Exchange Council, or ALEC, a group of conservative state legislators. At the same time, there are more than 47,000 structurally deficient bridges in the U.S., according to the American Road & Transportation Builders Association—and at the rate we're going, it would take over 80 years for us to make the needed repairs.

Continue reading.

Barron's

By Randall W. Forsyth

April 4, 2019 8:00 a.m. ET

New MSRB Resource Highlights Infrastrucure Project in Every Congressional District

State and local governments rely on municipal bonds to finance infrastructure projects. Our new resource highlights one such project in every congressional district.

Find out how munis are making an impact in your community.

The Muni-Bond Mania.

Look who's benefiting from the limit on state-and-local tax deduction.

Democratic politicians in the states love to blame the GOP tax reform for blowing holes in their budgets even as they quietly benefit from the new limitation on state-and-local tax deductions. Lo, investors seeking to reduce their tax liability are gobbling up municipal bonds, driving down yields and reducing government borrowing costs.

Municipal bond funds are experiencing near-record inflows. More money poured into muni funds during the first eight weeks of this year than during the same period since at least 2006. No longer able to deduct most of their state-and-local taxes on their federal returns, investors are seeking alternative vehicles that offer protection from the tax man.

Surging demand for tax-exempt investments and low interest rates have let state and local governments borrow more cheaply. The 10-year AAA tax-exempt muni bond this week traded below 2%—about 60 basis points lower than the 10-year Treasury and 170 below a similarly rated corporate bond. Even low-quality muni debt like Illinois bonds boast yields as low as 3.6%.

Beyond the federal tax dispensation, most states exempt their own agency and local government debt. Hence the biggest beneficiaries of the muni-bond rally have been high-tax states, especially those with precarious finances. Eight of the 10 biggest bond issuers during the first quarter were in California, New York and Connecticut. New Jersey and the junk-rated city of Chicago were close behind.

Last week Chicago increased the size of a bond offering to take advantage of swelling demand and low interest rates. The spread on a 10-year Chicago bond relative to a top-rated muni has slid 125 basis points since 2017 despite the city's deteriorating finances and soaring pension payments. Investors last week also inhaled $440 million in bonds issued by Illinois, which is rated one notch above junk.

Democrats can't be blamed for trying to take advantage of the muni-bond mania. Illinois Gov. J.B. Pritzker has proposed selling $2 billion in bonds (which would be taxable) to inject into the state's insolvent pension funds that are only 40% funded. The idea is the state can borrow at a rate of around 5% and then earn 7% on pension-fund investments. Sweet.

But the state has already borrowed more than $17 billion to prop up its pension funds, and the interest-rate arbitrage transfers risk from state taxpayers and workers to investors. Recall that investors in Puerto Rico, Detroit and Stockton, Calif., were eventually burned by similar schemes.

One question is whether investors are underpricing the risk of muni bonds due to their tax exemption and the low interest-rate environment. This is especially concerning since rating agencies Moody's and Fitch recalibrated their muni-bond ratings in 2010. According to a new accounting study by MIT researchers, the subsequent grade inflation "appears to have yielded significant reductions in interest costs paid by issuers" while bringing in more business and higher fees for the raters.

Misaligned incentives may also be distorting investment decisions. Businesses could often put investor cash to more productive use than municipal governments, which in many cases are borrowing for projects that private industry could do at lower cost. Most muni-bond buyers are merely looking for a higher after-tax return, but they should remember that there's no such thing as a risk-free investment.

The Wall Street Journal

By The Editorial Board

April 4, 2019 7:58 p.m. ET

Fitch Ratings Finalizes U.S. Public Power Rating Criteria.

Fitch Ratings-New York-03 April 2019: Fitch Ratings has published the final, revised version of its sector-specific criteria report titled "U.S. Public Power Rating Criteria". This follows Fitch's June 14, 2018 exposure draft outlining various proposed changes to the criteria for which Fitch sought market feedback. Fitch's previous criteria report from May 18, 2015 and the noted exposure draft have both been retired.

Fitch has also published a special report titled "Feedback Report: U.S. Public Power Rating Criteria" that reviews the market feedback received on the noted exposure draft and Fitch's responses. Fitch made no substantive changes to its exposure draft as a result of market feedback. However, Fitch did include select changes to key rating drivers and the scenario analysis tool in the final criteria report. Primary changes to the rating criteria incorporated in the exposure draft and retained in the final revision are described below.

PRIMARY CRITERIA CHANGES

–Introduction of three key rating factors: revenue defensibility, operating risk, and financial profile;
–Individual assessments for each key rating factor;
–Financial profile alignment with business profile in rating assessment;
–Forward looking consideration of the impact of existing or needed capital investments that may increase financial leverage;
–Introduction of FAST, an issuer specific scenario analysis tool measuring the effect of demand stress on revenue, operating expenses, cash flow and rates.

RATINGS IMPACT

Fitch does not expect the proposed criteria revisions to trigger widespread rating changes, nor will the implementation curtail or influence normal rating migration. Within the next week, Fitch plans to publish rating action commentary to designate various ratings that could potentially be affected by the changes in the criteria as Under Criteria Observation (UCO). However, not all of the ratings designated as UCO will necessarily experience rating changes.

Rating changes will most likely reflect the criteria's heightened emphasis on leverage through the cycle, with upgrades reflecting relatively low leverage, and downgrades resulting from the recognition of higher leverage and/or elevated operating risk. In addition, Fitch also expects that debt ratings of issuers may be designated as UCO, where additional new information required under the revised criteria is currently unavailable and further analysis is necessary to assess the effect of the criteria on the rating. Overall, Fitch estimates fewer than 10% of the ratings covered by the criteria will be affected over time, with a roughly equal mix of upgrades and downgrades.

Fitch will review all of the ratings designated as UCO as soon as practical, but designation must be resolved within six months.

For more information, the full reports titled "U.S. Public Power Rating Criteria", "Feedback Report: U.S. Public Power Rating Criteria", "FAST Public Power – Fitch Analytical Stress Test V 1.1.1 and "FAST Public Power – Fitch Analytical Stress Test, Description and Model Foundation" are available at www.fitchratings.com.

Contact:

Dennis Pidherny
Managing Director
Fitch Ratings, Inc.

+1-212-908-0738
33 Whitehall Street
New York, NY 10004

Kathy Masterson
Senior Director
+1-512-215-3730

Media Relations: Sandro Scenga, New York, Tel: +1 212 908 0278, Email: sandro.scenga@thefitchgroup.com

Additional information is available on www.fitchratings.com

Muni Waste Bond Revives Memory of '90s Recycling Bust: Joe Mysak

- **Bagasse plant in Florida seeks to raise $190 million in debt**
- **Muni landscape is littered with similar deals that went bust**

This is one bagasse story.

I wrote that lead back in September of 1996, which shows that my sense of humor hasn't changed a whit, as well as how rarely bagasse enters the municipal market lexicon. When it does, investors can sometimes get hurt.

Bagasse — a French word, accent on the second syllable — is what's left after you extract the juice from sugarcane. The Florida Development Finance Corp. is selling $190 million in unrated solid waste disposal revenue bonds to do just that.

The deal is emblematic of a new generation of plants being financed in the municipal market designed to turn all matter of waste into fuel or building materials or something else. Over the last two years issuers in California, Colorado, Florida, Indiana, Nevada, Oregon, South Carolina, Texas and Washington have sold unrated — often high-yield — debt for such projects.

The limited offering for Southeast Renewable Fuels aims to build a mill that will turn bagasse, "other vegetative waste products'' and "energy sorghum'' into pulp for paper, as well as lignin, a chemical used by cement, adhesive and road-building companies.

The Southeast Renewable Fuels facility will be built in Clewiston, Hendry County, on the south bank of Lake Okeechobee and right in the middle of sugarcane plantations. The mill will be ready in 26 months after the bond deal is closed, and is expected to employ 70 people.

Sticky End

The last time bagasse featured in a municipal bond issue seems to have been in 1993 and 1994, when Flo-Sun Inc., one of Florida's largest sugar companies, borrowed almost $300 million to build two power plants to burn bagasse and, after sugarcane grinding season, wood. This was to produce steam and electricity, to be sold to Florida Power & Light.

The plants never quite achieved efficient operation, went bust, and the bonds defaulted. Bondholders eventually recouped 77 cents on the dollar, according to Richard Lehmann, publisher of the Forbes/Lehmann Distressed Municipal Debt Report.

There are some reassuring statements throughout the latest limited offering memorandum. The Southeast project uses “conventional pulp manufacturing equipment and processes,’’ similar to projects already running in Kenya and India.

There are agreements for biomass feedstock in place, and for the sale of all of the pulp and some of the lignin. All of which is great — and of course we like the idea of turning waste into something useful.

The biggest risk here — as it was in 1990s bagasse, and the latest co-generation and recycling deals — is operational. Can Southeast and all the various engineers and experts produce a successful commercial operation? Because taking one thing and turning it into something else isn’t as easy as it may sound. The municipal market’s landscape is littered with similar projects that ran out of money and time.

The risk factors section of the offering memorandum flags “start-up problems, the breakdown or failure of equipment or processes, the performance of the Plant below expected levels of output or efficiency,’’ and so on. Management is key.

An executive in the salvage business told me a couple of decades ago why a string of bond-financed de-inkers failed. These were mills designed to take waste paper, soak the ink off, and produce new pulp. The technology was fine, this man told me; he was buying the equipment. The management just couldn’t get it to work, or get back to market to raise the money needed to buy it more time.

Bloomberg Business

By Joe Mysak

April 5, 2019, 5:00 AM PDT

(Joe Mysak is a municipal market columnist who writes for Bloomberg. The observations he makes are his own and are not intended as investment advice.)

Prisons Built With Junk-Bonds Get Their Ratings Yanked by S&P.

- **Marshals Service, Bureau of Prisons haven’t responded: S&P**
- **Regular contact with federal agencies is important, S&P said**

In 2015, a riot broke out at the detention center in Willacy County, Texas, as inmates protested flooding toilets, rodents and overcrowding in the facility overseen by Management & Training Corp. That prompted the Federal Bureau of Prisons to pull out its inmates and the prison closed, shutting off some of the revenue needed to repay its debts.

The closure shows the level of volatility that investors owning prison bonds can encounter. In fact, Wall Street analysts still aren’t sure how to gauge the risk of a default on $13 million of outstanding debt tied to another Willacy County lockup for an entirely different reason.

Those bonds and debt issued for three other Texas jails had their already-junk credit ratings pulled by S&P Global Ratings, an unusual step that reflects the spotty financial disclosures in a corner of the $3.8 trillion market that once boomed as local governments sought to profit by holding federal inmates. That uncertainty has been amplified under President Donald Trump, whose policy shifts have left it unclear whether federal contracts will be renewed or jeopardized by deals cut in Congress.

S&P said in a statement that it withdrew the ratings after repeated, unsuccessful efforts to speak with the Bureau of Prisons and the U.S. Marshals Service, leaving its analysts doubtful that "meaningful dialogue will be forthcoming or be maintained on a regular basis." In December, the company said such regular contact with federal agencies has become increasingly important.

In addition to Willacy County's jail, S&P also withdrew the rating on debt sold for detention centers in Fannin County, Hudspeth County and Garza County.

"As an investor, you have to assume that no news is bad news for a credit," said Matt Fabian, a partner at Municipal Market Analytics. "S&P is totally on solid ground pulling those ratings."

Ripple Effect

Financial disclosures made to investors in the municipal-bond market are less closely regulated than those made by corporations that sell stocks and bonds, whose filings are monitored by the U.S. Securities and Exchange Commission. Some government's audited financial statements can take a year or more to be reported.

But the ripple effects cast by the federal government is unusual. S&P said information from agencies in Washington has become key amid debates like the one in February over the budget, when Democrats sought to slash the amount of money being provided to U.S. Immigration and Customs Enforcement to detain immigrants swept up by Trump's crackdown on those who enter the country illegally. It also said it had "little insight" into issues like contract renewals.

Garza County Judge Lee Norman said he thinks part of the issue is that the detention center, which is run by MTC, hasn't been able to secure a long-term contract with the Bureau of Prisons. Its troubles began when then-President Barack Obama's administration moved to end the Bureau of Prisons' use of privately-run prisons. But even under the Trump administration, which reversed that order, Garza County's detention facility has had a tough time securing a 10-year contract with the agency.

"It's been hard to get back on track, honestly," Norman said. He added that he thinks it comes down to bureaucratic issues at the Bureau of Prisons rather than issues with the detention center.

More Arrests

Representatives at the Marshals Service and the Bureau of Prisons did not respond to requests for comment. Issa Arnita, a spokesman for MTC, didn't respond to requests for comment.

The outlook for jail financings has improved under Trump, Fabian said. Former Attorney General Jeff Sessions in April 2018 announced a "zero-tolerance policy" toward illegal entry into the U.S. and said law enforcement would prioritize prosecuting criminal immigration offenses.

That's helped translate into more arrests by ICE, which is good financial news for the state and local detention facilities that house detainees on behalf of ICE and receive payment for doing so. ICE's Enforcement and Removal Operations reported an 11 percent increase in arrests of people in the country illegally in fiscal 2018.

Lack of information over what was happening in Willacy County's corrections facility was an issue prior to the 2015 riots. The county sued MTC in 2016, saying the company failed to alert the county to issues at the prison. MTC "turned a blind eye to the enormous problems that plagued the prison from its inception," according to the complaint. After the Bureau of Prisons ended its contract, investors that owned bonds sold for that portion of the prison complex took losses on the debt as part of a distressed exchange, according to S&P.

The county, which is in a remote area of the Rio Grande Valley, struggled after the prison closed, given many people in the area worked for MTC. Ultimately, officials last year decided to reopen the privately-run corrections center, something that was met with protests, according to local news reports.

The withdrawn ratings could suggest something "systemic" with the risks surrounding jail projects, Fabian said. "Lack of disclosure is typically more telling than what's being disclosed," he said.

Bloomberg Politics

By Amanda Albright

April 4, 2019, 6:56 AM PDT

— With assistance by Sophia Sung

What Cities' Revenue-Raising Methods Say About Their Pension Funding.

New research shows places that rely more on property taxes and less on state aid tend to have better-funded retirement systems.

For a range of reasons, some local governments have accumulated massive unfunded pension liabilities over many years. Most often, these shortfalls are attributed to political climates, downturns in the local economy and aging populations.

New research reveals that cities' revenue structures — the mix of taxes, fees and intergovernmental aid they take in — also play a critical role, potentially putting some places at greater risk of mounting pension liabilities.

The University of Texas at Dallas study, published in the journal State and Local Government Review, provides one of the first academic analyses of what factors influence pension funding at the local government level. It finds that localities that rely heavily on property taxes tend to contribute more to their pension systems, while those that depend more on state aid for revenue often experience greater pension funding woes.

Continue reading.

GOVERNING.COM

BY MIKE MACIAG | APRIL 2, 2019 AT 4:00 AM

Introduction to a Conduit Bond.

The municipal bond market began as a general obligation market similar to the Treasury market. Since then, the market has grown to include revenue bonds backed by specific municipal revenue sources and private activity bonds (PAB) designed to finance private projects that benefit the public.

Conduit bonds are a type of PAB designed to capture the tax benefits of municipal bonds to advance private projects.

In this article, we will take a closer look at conduit bonds, implications for investors, and tips to keep in mind when considering them for your portfolio.

What Are Conduit Bonds?

Conduit bonds are municipal securities designed to raise capital for revenue-generating projects that benefit the public. For example, a for-profit real estate development firm may issue conduit bonds to finance the construction of student housing or low-income housing projects. The issuer collects the tax or revenue used to secure the bonds and distributes it to the bondholders, but the conduit borrower is ultimately responsible for the debt obligations.

[Continue reading.]

municipalbonds.com

Justin Kuepper

Apr 03, 2019

[Fitch Ratings: Precedents Favor Pennsylvania Turnpike Commission in $6 Billion Truckers' Lawsuit]

Fitch Ratings-New York-02 April 2019: Precedents of similar lawsuits indicate that the $6 billion lawsuit filed by commercial truckers is unlikely to have a material adverse effect on the Pennsylvania Turnpike, according to Fitch Ratings. The practice of transferring a portion of tolls for the benefit of transit and other transportation-related purposes is both widespread and long-standing. To the extent a tolling entity must show transferred tolls are benefitting toll payers, courts have tended to take an expansive view regarding the knock-on benefits of transit recipients on toll road congestion. Although these precedents point to a likely favorable outcome for the turnpike, in the event the lawsuit prevailed including through any appellate process, Fitch would consider the terms of the settlement and management responses in assessing potential rating action. Fitch will continue monitoring the lawsuit and will consider any material developments in its rating.

The lawsuit, filed in March 2018 by the Owner Operator Independent Drivers Association (OOIDA), claims that the turnpike is violating the Commerce Clause by raising tolls to fund non-highway transportation projects in the state. Under Act 44, the turnpike must pay PennDOT $450 million a year to support non-highway programs, through fiscal 2022. Act 89 amended Act 44, reducing the payments to $50 million starting in fiscal 2023, with the balance to be made up by the commonwealth from its motor vehicle sales tax revenues. In order to make these payments, the turnpike issued subordinate debt. The higher debt service requirements necessitated toll rate increases in excess of inflation every year since 2009, most recently by 6% in January 2019. The OOIDA requested (1) a preliminary injunction requiring the segregation of all toll receipts in excess of current operating and maintenance costs and funding for the senior revenue bonds, (2) a permanent injunction preventing the issuance of any additional bonds for Act 44 payments outside the turnpike system and (3) a permanent injunction prohibiting the use of toll revenues to make payments on outstanding subordinate bonds issued for Act 44 payments. The lawsuit also requested monetary damages including a refund of a portion of certain tolls. The preliminary injunction was withdrawn, allowing PTC to make its payments on the outstanding subordinate bonds. Since the lawsuit was filed, the turnpike has not issued any additional subordinate debt and thus has not made three Act 44 payments. The Act 44 Lease and Funding Agreement was amended to allow for the deferral of payments through June 2019. Fitch expects that the Agreement would be further amended if the lawsuit is still unresolved.

Similar lawsuits have been filed against state entities and proved unsuccessful. The Ohio Turnpike and Infrastructure Commission was sued in 2015 for raising tolls to divert funds to non-turnpike projects. A federal district court dismissed all except one claim. The court ruled that despite not being spent on the maintenance of the turnpike, the funding spent on non-turnpike projects benefited turnpike users. The outstanding claim that the increased tolls were an unlawful tax or user fee was remanded to state court where it was dismissed in 2017. The judge ruled that the turnpike commission has the legal ability to charge the tolls even if they are considered taxes. The American Trucking Associations (ATA) have filed lawsuits in New York and Rhode Island claiming that tolls on commercial trucks violate the commerce clause of the U.S. Constitution. The lawsuit filed against the New York State Thruway in 2013 was dismissed by a federal appeals court in 2018. The court ruled that Title 23 of the Intermodal Surface Transportation Efficiency Act of 1991 defined the upstate canal system as an eligible recipient of excess funds from the Thruway. In March 2019, the ATA's lawsuit against the Rhode Island Department of Transportation for tolling tractor-trailers was dismissed by a federal district court judge on the grounds that the matter was more appropriate for state courts because the tolls are a state tax. The state anticipates the case will be refiled in state court.

If the ruling on the Pennsylvania Turnpike lawsuit prohibits future issuance of debt for transfer payments, the turnpike would be able to continue servicing its outstanding debt on the senior and subordinate liens. A ruling could also require the turnpike to pay a lump sum refunding up to the $6.1 billion paid out under Act 44. In that unlikely scenario, Fitch anticipates the turnpike would look to the commonwealth's general government (AA-/Stable) and legislature for assistance. The legislature enacted Acts 44 and 89, which led to the subordinate lien debt issuances and associated toll increases that spurred the litigation. Fitch will continue monitoring developments in the case and assessing potential rating implications. Fitch rates the Pennsylvania Turnpike senior and subordinate bonds 'A+' and 'A-', respectively, with Stable Rating Outlooks.

Contact:

Anne Tricerri
Associate Director
+1-646-582-4676
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Scott Monroe
Director
+1-415-732-5618

Media Relations: Sandro Scenga, New York, Tel: +1 212 908 0278, Email:

sandro.scenga@thefitchgroup.com

Additional information is available on www.fitchratings.com

[EPA Administrator Wheeler Announces New WIFIA Funding for Water Infrastructure Projects.]

Funding could leverage $6 billion in public and private investment for construction-ready projects to protect drinking water from lead and emerging contaminants, upgrade aging infrastructure, promote water recycling and reuse.

WASHINGTON — Today, U.S. Environmental Protection Agency (EPA) Administrator Andrew Wheeler announced the availability of funding to provide an estimated $6 billion in Water Infrastructure Finance and Innovation Act (WIFIA) loans in 2019.

“Through WIFIA, we are addressing several of President Trump’s top priorities simultaneously: modernizing our nation’s aging infrastructure, improving public health protections, and creating jobs,” said EPA Administrator Andrew Wheeler. “This new round of WIFIA funding provides up to $6 billion in credit assistance which, combined with other sources, could support $12 billion in water infrastructure projects and create more than 180,000 jobs. For this round, we are prioritizing construction-ready projects in three areas: water reuse and recycling, reducing exposure to lead and addressing emerging contaminants, and updating aging infrastructure.”

The WIFIA program plays an important role in President Donald Trump’s efforts to rebuild America’s aging water infrastructure while improving local water quality, creating jobs and better protecting public health.

WIFIA loans are available to public and private borrowers for a wide range of drinking water, wastewater, drought mitigation, and alternative water supply projects. This year’s Notice of Funding Availability (NOFA) highlights the agency’s priority to finance projects that are ready for construction in three key areas: reducing exposure to lead and addressing emerging contaminants in drinking water systems; updating aging infrastructure; and implementing water reuse and recycling.

The WIFIA program received $68 million in funding in the Consolidated Appropriations Act of 2019, which was signed into law by President Trump on February 15, 2019. This is a $5 million increase in the program’s funding from 2018. Leveraging private capital and other funding sources, these projects could support $12 billion in water infrastructure investment and create more than 180,000 jobs. EPA will accept letters of interest (LOI) from prospective borrowers for 90 days after publication in the Federal Register.

To date EPA has issued eight loans totaling over $2 billion in WIFIA credit assistance to help finance over $4 billion for water infrastructure projects and create over 6,000 jobs. EPA has invited an additional 42 projects in 17 states and D.C. to apply for a WIFIA loan. These 38 borrowers will receive WIFIA loans totaling approximately $5.5 billion to help finance nearly $11 billion in water infrastructure investments and create 172,000 jobs.

Background

Established by the Water Infrastructure Finance and Innovation Act of 2014, the WIFIA program is a federal loan and guarantee program at EPA that aims to accelerate investment in the nation’s water infrastructure by providing long-term, low-cost supplemental loans for regionally and nationally significant projects.

WIFIA credit assistance can be used for a wide range of projects, including:

- drinking water treatment and distribution projects;
- wastewater conveyance and treatment projects;
- enhanced energy efficiency projects at drinking water and wastewater facilities;
- desalination, aquifer recharge, alternative water supply, and water recycling projects; and
- drought prevention, reduction, or mitigation projects.

EPA will evaluate proposed projects described in the LOIs using WIFIA's statutory and regulatory criteria as described in the NOFA. Through this competitive process, EPA will select projects that it intends to fund and invite them to continue the application process.

For more information about WIFIA and this funding announcement, visit: https://www.epa.gov/wifia

03/29/2019

Why Infrastructure Looks Sexy to These Investors.

Investors pouring record sums into infrastructure funds are betting the sting of mishaps like Chicago's parking meter deal has faded enough to make P3s, as they're called, fashionable again. And local investment firms are grabbing their share of the inflows.

Investors are throwing record sums of money at investment funds designed to finance the refurbishing of America's crumbling roads, creaky bridges and outdated airports—and Chicago firms such as Loop Capital and GCM Grosvenor are grabbing their share.

Last year, $90 billion flowed into such infrastructure funds worldwide, a near doubling over 2014, according to research firm Preqin, a London-based tracker of the alternative-assets market. Much of that money went to U.S. firms, but it may not stay in the country.

It could help cash-strapped local governments like Chicago and Illinois shore up public properties, to avoid mishaps like the Lake Shore Drive girder crack in February. But Chicago's flawed 2008 sale of parking meters to private interests chilled such deals nationwide, and financial firms face a hard sell in drawing U.S. cities and states back into public-private partnerships—P3s, in industry parlance.

Continue reading.

Crain's Chicago Business

by LYNNE MAREK

March 29, 2019 01:50 PM

Toll Roads Could Fix America's State-Pension Crisis. Here's How.

There is an infrastructure crisis in America. The U.S. earned a D+ in infrastructure for 2017 from the American Society of Civil Engineers. State pensions aren't in great shape either. They are underfunded by an astounding $6 trillion. And as Barron's Randall Forsyth points out, U.S. states face a dilemma: they need to fund both infrastructure and pensions, but have trouble doing either.

Maybe America's neighbors to the north can teach it something about funding infrastructure projects. Friday, Canadian engineering & construction firm SNC-Lavalin (SNC.Canada) sold 10% of a toll road it owned to the Ontario Municipal Employee Retirement System for $2.4 billion.

SNC has fallen on hard times. It is embroiled in a bribery and kickback scandal that stretches back to 2015 and shares plunged 28% on Jan. 28 due to a problem in one of its mining projects. SNC stock has lost about 2% a year on average since news of the bribery scandal broke, about 7 percentage points worse than the Canadian TSX Composite Index.

Continue reading.

Barron's

By Al Root

April 6, 2019 7:00 a.m. ET

FERC Approves Termination of Market Power Mitigation Measures.

Market power mitigation measures adopted in 2005 to address horizontal market power concerns arising from the merger of Louisville Gas and Electric Company and Kentucky Utilities and the subsequent withdrawal of LG&E/KU from the Midcontinent Independent System Operator, Inc. have recently been terminated by the Federal Energy Regulatory Commission, over the objection of Commissioner Cheryl LaFleur. *Louisville Gas and Electric Company and Kentucky Utilities Company*, 166 FERC ¶ 61,206 (2019).

Need for Market Power Mitigation

LG&E and KU are electric public utilities in Kentucky which proposed to merge in 1998. One of the issues FERC considers when it reviews utility mergers under Section 203 of the Federal Power Act is the effect of the merger on competition. In order to allay horizontal market power concerns raised by their proposed merger, LG&E/KU committed to join the Midcontinent Independent System Operator, Inc. (MISO), which was then being organized as an independent regional transmission organization.

Members of MISO may obtain transmission service throughout the multi-state MISO footprint for a single, non-pancaked transmission charge. Therefore, LG&E/KU's participation in MISO enabled load-serving entities connected to its transmission system to obtain electricity from sources outside of the LG&E/KU footprint without paying multiple transmission charges. In its order approving the merger, the FERC found that the availability of transmission service to customers connected to the LG&E/KU system from anywhere within the MISO footprint at a single, non-pancaked rate helped to mitigate any horizontal market power concerns. An increase in potential electricity suppliers within the LG&E/KU destination market meant more competitive rates for consumers.

Adoption of De-pancaked Mitigation Measures

In 2005, after the merger had closed, LG&E/KU sought FERC authorization to withdraw from MISO, and proposed instead to offer transmission service over their combined transmission systems through a stand-alone Open Access Transmission Tariff (OATT). In order to provide transmission customers the benefits of non-pancaked transmission rates comparable to those enjoyed while LG&E/KU belonged to MISO, it also adopted a De-pancaking Mitigation mechanism involving transmission rates for new service into and through its system from MISO.

Under that mechanism, certain load-serving municipal electric utilities within the LG&E/KU footprint that purchase power from generation sources in MISO receive a credit for transmission service under the LG&E/KU OATT equal to charges for transmission and ancillary services they paid under the MISO Tariff. In addition, LG&E/KU waived transmission and ancillary service charges under the LG&E/KU OATT for power delivered by such customers from generation sources connected to the LG&E/KU system into MISO. As a result, load-serving utilities within the LG&E/KU footprint have continued to obtain transmission service through the KG&E/KU and the MISO systems for a single, non-pancaked transmission charge.

Termination of De-pancaked Mitigation Mechanism

In August 2018, LG&E/KU filed an application with the FERC to terminate the De-pancaking Mitigation provisions. In considering this request, the FERC rejected arguments that any market power mitigation measures either (a) must remain in effect in perpetuity, or (b) have a finite term. Instead, the FERC explained that the De-Pancaking Mitigation measures could be terminated "if LG&E/KU has demonstrated that loads located in the LG&E/KU market will continue to have access to a sufficient number of competitive suppliers after the mitigation is removed."

In support of its request, LG&E/KU argued that market conditions in the Midwest have changed substantially since the adoption of the De-pancaking Mitigation mechanism. LG&E/KU submitted an analysis showing that the wholesale requirements customers within its boundaries have many more sources of power available today than in 1998; that many of those customers had successfully solicited power supply arrangements from suppliers other than LG&E/KU; and that a delivered-price test revealed more than 100 entities with capacity that could be delivered into the LG&E/KU footprint at competitive rates. After reviewing the record, the FERC found that:

…the Merger continues to be consistent with the public interest without the De-pancaking Mitigation because the record shows that loads located in the LG&E/KU market will continue to have access to a sufficient number of competitive suppliers after the mitigation is removed.

Transition Period

At the time of the FERC's acceptance of the De-pancaking Mitigation, all wholesale requirements customers connected to the LG&E/KU system had long-term contracts to purchase the electricity needed to meet their bulk power supply requirements from LG&E/KU. Some of those customers have now terminated the purchase of power from LG&E/KU and are purchasing power from third-party suppliers, while other customers are in the process of doing so.

Nevertheless, the FERC was concerned that these customers may have made arrangements to procure power from generation sources located outside of the LG&E/KU footprint in reliance on the De-pancaking Mitigation measures. Therefore, as a condition of their termination, the FERC required that the De-pancaking Mitigation measures remain in effect for all wholesale requirements customers dependent upon the MISO transmission system during a transition period equal to the initial term of each power purchase agreement entered into by each such customer.

Commission La Fleur's Dissent

Although the FERC granted the request to terminate the De-pancaking Mitigation provisions after a transition period, Commissioner LaFleur was concerned that the delivered price test provided by LG&E/KU showed that customers would have limited access to alternative generation suppliers during periods of the year when the market is highly or moderately concentrated. She also believes that because the solicitations relied on by LG&E/KU were conducted while the De-pancaking Mitigation mechanism was in place, they were insufficient evidence of adequate competitive options that might be available without mitigation. She therefore would have preferred that the FERC set the matter for an evidentiary hearing in order to confirm that the wholesale requirements customers connected to the LG&E/KU system would have adequate access to competitive third party generation suppliers after the mitigation was terminated. With due regard for rate pancaking, she concluded by saying that:

…while people frequently talk about how the sausage gets made, this case shows how the pancakes get made. While a single pancake may be fine, I do not believe that LG&E/KU should be able to force feed a short stack of pancakes to [the wholesale requirements customers]. Without better ingredients than are presented in this record, the conclusion that these customers have adequate menu alternatives is half-baked at best. While I expect the majority would rather than I hop to their decision, I am not waffling, and respectfully dissent.

Conclusions

The order reflects the FERC's pragmatic attitude in determining whether horizontal market power mitigation measures are needed to protect against potential adverse effects of utility mergers on competition. Although termination of the De-pancaking Mitigation mechanism might affect the ability of some potential suppliers to serve loads within the LG&E/KU market economically, the FERC was satisfied that loads located in the LG&E/KU market would continue to have access to a sufficient number of competitive suppliers after the mitigation is removed. Although Commissioner LaFleur would have preferred that there be additional evidence to support the FERC's conclusion, the transition arrangements provide a reasonable opportunity for affected wholesale customers of LG&E/KU to test the FERC's conclusions while seeking new supplies of electricity to take effect when their existing power purchase agreements with LG&E/KU expire.

by James K. Mitchell

April 4, 2019

Davis Wright Tremaine LLP

[FERC Permits Transmission-Only Public Power Entity to Use Same Formula Rate for Future Transmission Projects in Different PJM Zones Based on Cash-Flow Method.]()

On March 26, 2019, FERC accepted, subject to condition, AMP Transmission, LLC's ("AMP") proposed formula rate template and implementation protocols (collectively "Formula Rate") to recover a revenue requirement based on a cash-flow method for AMP's integrated transmission facilities located in the PJM Interconnection, L.L.C. ("PJM") region. As a minor condition of acceptance, FERC directed AMP to revise on compliance its Formula Rate to enable AMP to use it in

PJM transmission zones that require different rate years, as opposed to only in zones whose rate year is based on the calendar year.

AMP is a non-profit entity that was formed solely to provide transmission-related services in PJM through its ownership of some of the transmission facilities of American Municipal Power, Inc.'s members that require compliance with certain NERC Reliability Standards. On November 1, 2018, AMP submitted to FERC a proposed cost-based, forward-looking formula rate that utilizes a cash-flow method to develop its revenue requirement, which does not include an allowance for depreciation expense or for return on rate base. Rather, the cash-flow method incorporates a provision for the recovery of debt service payments and a margin requirement, which is a percentage of AMP's debt service obligation. AMP stated that, as a start-up entity with no equity, it must debt-finance the facilities it will purchase or build, and because the term of any available loans is expected to be shorter than the service life of transmission facilities, a non-cash flow approach does not ensure that AMP will receive the revenue it needs each month to service its debt. AMP also requested approval of the Formula Rate to be used in any PJM transmission zone for any facilities that AMP Transmission may own or lease in the future.

In its order, FERC accepted AMP's proposed Formula Rate, subject to condition. FERC found that AMP had demonstrated that the cash-flow based formula is more appropriate for its circumstances, allowing it to closely match expected revenue with the time of debt service requirements, than the non-levelized approach, which may not ensure it receives the revenue it needs each month to service its debt. FERC also found just and reasonable: (1) AMP's margin requirement; and (2) AMP's proposal that its Formula Rate apply to transmission facilities that are acquired in yet-to-be determined PJM transmission zones with implementation at some point the future. However, FERC found that AMP's Formula Rate did not allow for use in a PJM transmission zone using a non-calendar based rate year, which was contrary to AMP's stated intent to provide flexibility for use of Formula Rate in zones with different rate years. FERC thus directed AMP to revise on compliance its Formula Rate to enable AMP to use it in PJM transmission zones that require different rate years, as opposed to only in zones whose rate year is based on the calendar year.

A copy of FERC's order is available [here].

by Meghan Mandel and Miles Kiger

April 2, 2019

Troutman Sanders LLP

[Court Ruling in Puerto Rico Bankruptcy Fans Revenue Bond Fears.]

CHICAGO, March 28 (Reuters) – A decision this week by a U.S. Appeals Court in a lawsuit related to Puerto Rico's bankruptcy raises concerns over the payment of municipal bonds backed by specific revenues during future Chapter 9 cases, Fitch Ratings said on Thursday.

The Boston-based First Circuit court on Tuesday determined that municipalities are not required to make payments on debt secured by special revenues while bankruptcy proceedings are ongoing, although municipalities can voluntarily opt to do so.

"The ruling, by stating such payments are optional, creates uncertainty about full and timely payment of special revenue obligations during bankruptcy of the related municipality," Fitch said.

The credit rating agency added that if the ruling stands, it could negatively affect ratings on certain bonds secured by utility, transportation and tax revenue.

The appeals court affirmed a ruling by U.S. District Court Judge Laura Taylor Swain, who is overseeing the island's bankruptcy, which was filed in 2017 in an effort to restructure about $120 billion of the U.S. commonwealth's debt and pension obligations.

Swain had dismissed a lawsuit by insurance companies guaranteeing payments on defaulted Puerto Rico Highways and Transportation Authority bonds. The bond insurers claimed that payments on the debt from pledged toll and other revenue should not be halted during the bankruptcy.

Assured Guaranty Corporation, one of the plaintiffs in the lawsuit, said on Thursday it is assessing options, including an appeal to the U.S. Supreme Court.

"We disagree with the court's ruling, which is at odds with prior court decisions and the legislative history relating to special revenue bonds and has potential negative implications for revenue bonds throughout the municipal bond market," Assured said in a statement.

Chapter 9 municipal bankruptcy expert James Spiotto, managing director of Chapman Strategic Advisors, said the appeals court decision came as a surprise to the municipal bond market, which had assumed Swain's ruling would be reversed.

"This could have a very adverse effect on the use of special revenues all over," he said.

Revenue bonds accounted for an average of 64 percent of annual issuance in the $3.8 trillion municipal market since 1990, according to Refinitiv data. Not all revenue bonds qualify as being backed by special revenues under the bankruptcy code, which specifies special excise taxes or revenue derived from governmental projects or systems providing transportation, utilities or other services.

Reporting by Karen Pierog in Chicago Editing by Matthew Lewis

MARCH 28, 2019

Ruling on Puerto Rico Revenue Bonds May be 'Game Changer' on Mainland.

Credit analysts and ratings agencies said this week's federal court decision in Puerto Rico's bankruptcy may have implications for special revenue bonds across the nation.

The ruling called into question a long-standing assumption that special revenue bonds would continue to be paid in Chapter 9 municipal bankruptcies.

"If this decision were to hold, it would be a game changer in the municipal bond world," Evercore Director of Municipal Research Howard Cure said Thursday. "Holders of these special revenue bonds that thought they had bankruptcy protection from a government entity would ultimately be lumped into the government's credit profile."

On Tuesday the 1st Circuit Court of Appeals ruled that the relevant Chapter 9 sections made payment of these bonds in bankruptcy optional and not mandatory. The court ruled in a case brought by four bond insurers concerning Puerto Rico Highways and Transportation Authority bonds. The appeals court panel was affirming an earlier decision by Puerto Rico bankruptcy Judge Laura Taylor Swain.

Fitch Ratings said it was "evaluating the potential rating implications" of the ruling.

"Credit ratings that could be negatively affected by the decision, if it stands, include bonds secured by utility, transportation and tax revenues that are currently rated above the municipality's Issuer Default Rating (IDR)," Fitch said. "Although technically the decision only affects districts within the 1st Circuit (Maine, Massachusetts, New Hampshire, Puerto Rico and Rhode Island), Fitch believes that this decision will be influential in municipal bankruptcy cases nationwide given the overall lack of municipal bankruptcy case law."

The court's ruling was "contrary to the long-established belief in the municipal market that payment on the special revenue debt, such as that issued by utility systems, was required throughout the automatic stay period," Fitch said.

On Thursday Assured Guaranty Corp. told The Bond Buyer that its professionals were "reviewing all of our options," including seeking Supreme Court review of the appeals court ruling.

Fitch said, "The insurers have several avenues of appeal, and Fitch will monitor the court proceedings as they occur."

Kroll Bond Rating Agency said Wednesday it "is analyzing the potential implications to the broader market of the decision rendered on March 26 by the U.S. Court of Appeals for the First Circuit." Kroll said special revenue opinions informed its ratings of Los Angeles School District general obligation bonds, San Diego Unified School District general obligation bonds, and Board of Education of the City of Chicago general obligation bonds.

Cure said if the ruling became the prevailing legal interpretation of special revenue bonds, investors would have to treat the credit of special revenue bonds similarly to the way they treat related government entities. "A case in point would be the City of Chicago and the impact on the water and sewer system bonds, where the city does have some control of rates, or, a more extreme case, Chicago's O'Hare and Midway airports where the city has little if any control over rates charged to airlines and concessionaires."

Moody's Investors Service had a different response to the court's ruling: "The recent 1st Circuit ruling in the HTA case highlights the ongoing uncertain treatment of special revenue bonds in Chapter 9," said Moody's Vice President Genevieve Nolan.

"Case law offers few precedents, and only a handful of examples to support the assertion that a special revenue designation protects revenue bonds in bankruptcy," she continued. "For these reasons Moody's continues to link its special tax and municipal utility ratings to the general credit quality of the issuer."

BY SOURCEMEDIA | MUNICIPAL | 03/28/19 04:47 PM EDT

By Robert Slavin

[NFMA Responds to First Circuit Puerto Rico Opinion on Special Revenues.]

The NFMA is disappointed that the U.S. Appeals Court affirmed U.S. District Court Judge Swain's decision allowing for Puerto Rico's Highway and Transportation Authority to withhold bond payments backed from pledged tolls and other revenues during bankruptcy. As we stated in the amicus brief that we filed on May 16, 2018 (click here for Amicus Brief), revenue bonds are a critical source of financing for infrastructure projects and it has been an underlying premise and expectation of the municipal market that timely payment of debt service on special revenue bonds would be honored in all circumstances, including Chapter 9 bankruptcy. Judge Swain's Assured Guaranty decision, and the recent affirmation by the Appeals Court, is at odds with prior court decisions and legislative history and is likely to result in negative market implications for revenue bonds throughout the municipal market.

Fitch Ratings: Appeals Court Ruling on Special Revenues Could Affect Municipal Debt

Fitch Ratings-New York-28 March 2019: Fitch Ratings is evaluating the potential rating implications of Tuesday's ruling by the United States Court of Appeals for the First Circuit regarding the bondholder protections provided by special revenue status under the bankruptcy code. The ruling, in a case brought by Assured Guaranty Corp, and three other bond insurers regarding the Puerto Rico Highways and Transportation Authority's (PRHTA) special revenue bonds, affirms a 2018 district court decision regarding special revenues as defined in Chapter 9 of the U.S. Bankruptcy Code. The circuit court ruling is in response to a creditor appeal of the district court's dismissal of claims regarding payment of the PRHTA bonds. The insurers have several avenues of appeal, and Fitch will monitor the court proceedings as they occur.

In the ruling, the circuit court agrees with the district court's opinion that section 922(d) of Chapter 9 grants permission to, but does not require, a municipality to continue paying special revenue obligations during a bankruptcy proceeding. This is contrary to the long-established belief in the municipal market that payment on special revenue debt, such as that issued by utility systems, was required throughout the automatic stay period. The ruling, by stating such payments are optional, creates uncertainty about full and timely payment of special revenue obligations during bankruptcy of the related municipality.

The circuit court opines that since the plain language of the code is unambiguous, there is no need to rely on the legislative history of Chapter 9 to interpret them. However, the legislative history appears to clearly indicate the intent to limit the reach of the automatic stay for municipal entities and to make it inapplicable to pledged special revenues.

Credit ratings that could be negatively affected by the decision, if it stands, include bonds secured by utility, transportation and tax revenues that are currently rated above the municipality's Issuer Default Rating (IDR). Although technically the decision only affects districts within the first Circuit (Maine, Massachusetts, New Hampshire, Puerto Rico and Rhode Island), Fitch believes that this decision will be influential in municipal bankruptcy cases nationwide given the overall lack of municipal bankruptcy case law.

Contact:

Amy Laskey
Managing Director, U.S. Public Finance
+1-212-908-0568

Fitch Ratings, Inc.
300 West 57th Street, New York

Laura Porter
Managing Director
+1-212-908-0575

Media Relations: Sandro Scenga, New York, Tel: +1 212 908 0278, Email:
sandro.scenga@thefitchgroup.com

Additional information is available on www.fitchratings.com

S&P: The Drawbacks And Benefits Of U.S. Local Government Consolidations

Municipal consolidations generally materialize to reduce expenditures and save taxpayers' money through operating efficiencies. However, despite some large-scale and notable consolidations, municipalities and school districts rarely follow through on merging.

Continue reading.

Mar. 26, 2019

PPP Innovation Project Award Winner: Paine Field, Snohomish County Airport

The National Council for Public-Private Partnerships' (NCPPP) is proud to name Paine Field, Snohomish County Airport the recipient of the 2019 Innovation Project Award. Paine Field in Snohomish County, Washington is the first privately funded, built and operated passenger terminal in the U.S. as a result of a uniquely structured public-private partnership (P3).

Enormous economic growth in the Seattle region… read more →

Investing in Water for Impact.

At Shenandoah Growers' indoor farm in Rockingham, Va., rainwater is collected on the roof and channeled into a retention tank, where it is mechanically filtered before being pumped into a proprietary system that creates a natural nitrogen cycle indoors.

Then the U.S. Department of Agriculture certified organic water is intermittently supplied to the roots of herbs, micro-lettuces, and other leafy greens growing in soil-filled containers, with leftover water circulating back to the tank in a closed-loop system. Meanwhile, the plants are bathing in energy-efficient LED lights.

"It's a soil-based approach to growing organic produce that uses far less water and avoids the typical agricultural runoff that pollutes land and groundwater with fertilizers and pesticides," says Timothy Heyden, Shenandoah's CEO.

XPV Water Partners, an investing firm focused on small, growing companies tackling big water challenges, invested in Shenandoah in 2016, leading the 30-year-old company's second round of funding, during which it raised $35 million to expand its U.S. indoor growing capacity.

Toronto-based XPV, which has raised two funds totaling $400 million since launching in 2006, provides one of the few pure vehicles for impact investors to address water scarcity and quality challenges resulting from the big macro trends it follows: urbanization, population growth, and climate change.

XPV was drawn to Shenandoah for its innovative approach to addressing the biggest issues at the food-water nexus: water scarcity and water quality.

"It takes a lot of water to produce food," says David Henderson, who founded XPV in 2006, catering to big institutional investors including large family offices. "And agricultural runoff is probably the single largest point-source pollution in the world."

Shenandoah Growers, which has grown more than 200% in the past five years to more than $100 million in sales, presents a clear way to address the central water challenges.

But investing in water for impact—to create a social or environmental benefit while earning a financial return—isn't always simple. Because water touches so many systems—municipal, industrial, and agricultural—it's often difficult to tease out as a separate investible category. And because governments and regulators are often involved, things can move slowly.

Water is also very local. "The challenges you face in California are going to be different than the challenges you face in Beijing," Henderson says. "But, of course, wherever there's complexity, there's also opportunity."

Greentech Capital Advisors, an investment-banking and asset-management firm focused on sustainability, is also finding opportunities in the trends that XPV identifies, such as the widening gap between supply and demand driven by population growth. Filling that demand will boost the price of water, and require that aging infrastructure be replaced.

"The extremes of water, like drought and flooding, and the implications of those extremes have led water from being seen as a commodity and, particularly in the U.S., free and available to anyone, all the time, to water being properly priced and seen as something that's a valuable resource," says Duncan Williams, a partner at Greentech.

Any boom in water investing for social and environmental impact, however, is unlikely to happen fast.

Encourage Capital, a U.S. social-impact private-equity firm, is realizing the scope of the difficulties as it works with partners to find investments to solve some of the seemingly intractable problems in the Colorado River Basin, a region it has extensively studied in recent years with support from the Walton Family Foundation.

The firm is pursuing opportunities in agriculture and ranching—which accounts for 70% of the basin's water use—as well as in municipal water and infrastructure. "Urban use is growing, and growing much more rapidly" in the region, says Ricardo Bayon, an Encourage Capital partner.

The greatest promise lies in agriculture, where sometime this year the firm expects to have a pilot investment or portfolio of investments to take to high-net-worth individuals, family offices, and other investors.

The plan would involve buying land and/or working with landowners to substitute high-water-use, low-value crops with low-water-use, high-value crops, Bayon says. "You make money on the water, and you make money on the change in the crop."

The lead time on the municipal projects it's pursuing in cities like Los Angeles and San Francisco to address storm-water management and other water problems will take far longer because "we're dealing with municipal agencies, and they do not move at the speed of light," Bayon says.

Encourage Capital has partnered with the World Resources Institute to work on these challenges over the long term, and has identified potential areas where private capital could overlap with municipal finance.

One goal is to integrate water systems like drinking water, storm water, and sewage water that are typically handled by separate agencies.

"It's clear the future of the way we manage water for a city has to be a lot more integrated," he says.

Encourage Capital and the Liquid Assets Project, a consortium it's part of, conclude that through their efforts to put together deals, philanthropic capital will be needed to "prime the pump and guide" water impact investments into the future, Bayon says.

"It's not that private capital won't get there on its own, but it's not necessarily as cognizant of the social and environmental implications," he says.

The firm's difficulties in finding investments that can ensure both financial returns and impact should give some impact investors pause.

As XPV's Henderson says, "Water is a great area to invest in; there's lots of growth, but you've got to be cautious in how you approach it."

Barron's

By Abby Schultz

March 27, 2019 7:30 a.m. ET

Public Private Partnerships in the USA: Debevoise & Plimpton

General PPP framework

Overview

How has the concept of public-private partnership (PPP) developed in your jurisdiction? What types of transactions are permitted and commonly used in your jurisdiction?

There is no uniform statutory definition of PPP in the United States. The scope of transactions that each state may use to procure from, or partner with, the private sector for the delivery or operation of infrastructure varies from state to state. In some cases, including, perhaps most notably, the state of New York, with respect to transportation projects, some infrastructure-related procurement laws have not permitted the typical forms of contracts used in PPPs, requiring, for example, the separation of the procurement of the design of a project from the procurement of the constructions of the same.

Some authors trace back the development of the modern form of PPP to the power purchase agreements developed in the United States during the 1980s, which provided for a two-component compensation system: a capacity availability payment and an actual usage payment.

The market for PPP transportation projects began to develop in the 1990s with the SR-91, Dulles Greenway and Camino Colombia projects. However, when these projects ran into financial difficulty, the market for this kind of PPP project froze for several years. It was only in the mid- to late 2000s that the transportation PPP market in the United States began gaining new momentum. However, many PPP projects at the municipal level had existed for long before that, mainly in the water and waste water sectors. Correctional services companies have also built prisons and offered their services to all levels of government for several years.

Covered categories

What categories of public infrastructure are subject to PPP transactions in your jurisdiction?

The categories of public infrastructure that can be procured through the PPP model also vary from state to state. The most visible projects developed using this model are transportation projects. However, it is becoming more common to find social infrastructure projects being developed in the form of PPPs, particularly courthouses, prisons and schools.

Legislative framework

Is there a legislative framework for PPPs in your jurisdiction, or are PPPs undertaken pursuant to general government powers as one-off transactions?

Some states have PPP-specific enabling legislation; others rely on legislation relating to their procurement authority and common law. In some cases, the PPP enabling legislation is limited to specific categories of projects, such as transportation. In others, it allows the performance of all types of infrastructure projects.

Currently, most states and Puerto Rico have enacted PPP-specific legislation that permits PPP transportation or social projects. In some cases, the PPP-enabling legislation authorises specific projects on an ad-hoc basis. Some states have enacted pilot programmes authorising the procurement of a limited number of projects using the PPP model.

Relevant authority

Is there a centralised PPP authority or may each agency carry out its own programme?

This mostly depends on the approach followed by each state. In those cases where, for example, PPP enabling legislation is limited to specific types of projects, such as transportation, it is commonly the state’s department of transportation that is charged with the execution and performance of the applicable PPP project. In other states, a centralised PPP authority (which may be an authority created expressly to fulfil such a role, an office within a department of the state government or an existing instrumentality of the state) is in charge of coordinating the PPP policy for the state. In some cases, such an authority is also directly in charge of executing and performing the PPP directly with the private sector, and in others it is a sector agency (eg, the department of transportation) that executes the PPP under the supervision of the centralised PPP authority. States that have created centralised PPP authorities include California, Colorado, Georgia, Michigan, Oregon, Virginia and

Washington. All of these authorities exist within the department of transportation or treasury. Among these states, the PPP authorities of California and Michigan have a broad sector mandate, while the other state authorities are focused primarily, if not solely, on transportation. In other states, the PPP programme has been entrusted to more than one authority. For example, in the case of Indiana, the power to execute transportation PPP agreements has been granted to two separate authorities: the Indiana Finance Authority, the state's authority in charge of the centralised debt programme, with respect to toll road projects only; and the Department of Transportation, for a broader scope of ground transportation projects.

Procurement

Are PPPs procured only at the national level or may state, municipal or other subdivision government bodies enter into PPPs?

Owing to the distribution of powers in the United States, most PPP projects are procured at the state or local level. Some localities and other municipalities, such as city governments or transportation authorities, have traditionally entered into PPPs based on the powers assigned to them under home rule laws or the general powers granted to authorities. However, the federal government has also entered into PPP projects, mostly relating to social infrastructure (eg, through the Department of Veterans Affairs, the National Park Service and the Postal Service), but most importantly, the federal government has significantly encouraged the use of the PPP model, particularly in the transportation sector, through financing and grant programmes such as the Water Infrastructure Finance and Innovation Act (WIFIA), the Transportation Infrastructure Finance and Innovation Act (TIFIA), Railroad Rehabilitation and Improvement Financing (RRIF) and Infrastructure for Rebuilding America (INFRA) (formerly Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies (FASTLANE)). The Federal government created the Build America Bureau to serve as a single point of contact and coordination for states, municipalities and project sponsors looking to explore ways to access federal financing programmes.

Remuneration

How is the private party in a PPP remunerated in your jurisdiction?

The permitted forms of remuneration for the private party vary depending on the state. However, commonly used forms of remuneration include construction milestone payments, availability payments and shadow tolls and user payments (eg, tolls). Although historically some PPP projects have been entered into on the basis of the private party being compensated with the right to collect and keep toll revenue, most of the recent projects are being pursued as availability payments.

Sharing revenue and usage risk

May revenue risk or usage risk be shared between the private party and the government? How is risk shared?

As discussed above, the form of compensation varies depending on the jurisdiction. Some jurisdictions, such as Texas, have incorporated the sharing of usage risk through the use of shadow tolls in public-private projects. In certain revenue-risk deals, it is not unusual for the public entity to retain a share of revenues and thus share the risk.

Government payment obligations

In situations where the private party is compensated in whole or in part through availability or other periodic payments from the government, are the payment obligations

of the government subject to the relevant legislative body approving budgetary funding in the future?

State constitutions vary on the period for which a legislature may appropriate payment obligations. Appropriation risk is generally present in PPP agreements in the United States and addressed by remedies entitling the private party, among other alternatives, to suspend work or claim relief events.

Rate of return caps

Is there any cap on the rate of return that may be earned by the private party in the PPP transaction?

Some PPP agreements in the United States have included a mechanism whereby, if the project company refinances the project debt, and as a result thereof there is an improvement in the rate of return of the sponsors, some or all of the gain is passed through to the public entity. Customarily, if the normal operation of the project produces an improved rate of return, there is no rebalancing requirement. On the other hand, some PPP agreements include terms that limit the obligation of the public entity to compensate the project company for adverse actions or certain termination events by reference to a maximum rate of return, as reflected in the financial model used in connection with the closing of the PPP agreement, regardless of the actual financial performance of the project.

Restriction of ownership transfer

Is the transfer of direct or indirect ownership interests in the project company or other participants restricted?

Some PPP statutes establish restrictions relating to the transfer of ownership in the project company depending on the stage in the procurement of the project. For example, in some cases, once a consortium has been shortlisted to participate in the bidding for the project, its members cannot change prior to the award of the PPP agreement. In addition, even in the absence of statutory restrictions, it is customary for the PPP agreements or the bidding rules to include restrictions on transfers by the owners of the project company.

Procurement process

Relevant procedure

What procedures normally apply to a PPP procurement? What evaluation criteria are used to award a PPP transaction?

Generally speaking, statutes include planning and approval processes for PPP projects to determine in the first instance whether the project is worth pursuing. Statutes differ on how this process is performed, mostly based on whether a dedicated PPP authority exists or not. In some states, this process is also involved with respect to unsolicited proposals. Once the relevant authority has decided to procure a project under the PPP model, generally, a public bidding process is required under the applicable legislation. The most commonly used process involves a solicitation for expressions of interest together with a submission of qualification, following which the procuring authority selects a shortlist of bidders to which a request for proposal is issued. It is customary for the procuring authority to request comments and invite commentary by the shortlisted bidders before formally issuing the request for proposals.

Evaluation criteria vary from state to state. In some cases, a specific set of factors must be evaluated. In others, the generic best value for money test (in addition to satisfying the technical requirements of the project) is used.

Consideration of deviating proposals

May the government consider proposals to deviate from the scope or technical characteristics of the work included in the procurement documentation during the procurement process, without altering such terms with respect to other proponents? How are such deviations assessed?

Many jurisdictions within the United States allow proposers to offer alternative technical concepts on a confidential basis, and it is a common feature in many of the current PPP procurements. The authority may accept these deviations and determine whether the procuring authority will indeed receive better value for money by accepting the deviations, while at the same time satisfying the expected outcome from the original technical requirements. After receiving the confidential proposal, in advance of the proposer's bid, the authority would then analyse if it is willing to accept it or not, based on value for money offered and satisfaction of its expected goals. Typically, before performing such an analysis, the authority will receive the confidential proposal and decide whether it indeed constitutes a deviation or not.

Unsolicited proposals

May government parties consider unsolicited proposals for PPP transactions? How are these evaluated?

Some PPP statutes, particularly in the most active states in the PPP market, permit receipt of unsolicited proposals. The proposal is, in most cases, subject to an analysis similar to that of projects that the states propose by themselves. If the authority decides to proceed with the project as proposed, it then has to proceed through the same procurement process as if it had proposed the project itself. In some cases, the proponent is entitled to either credit in the evaluation of the proposals or to a special stipend for its work.

Government stipend

Does the government party provide a stipend for unsuccessful short-listed proponents or otherwise bear a portion of their costs?

In the case of some states, the procuring authority is permitted to offer a stipend. Where this is permitted, the stipend is customarily paid to the extent that the unsuccessful proponents agree to assign their work product related to their bid to the procuring authority, which can then incorporate it into the project at hand or other projects.

Financing commitments

Does the government party require that proposals include financing commitments for the PPP transaction? If it does not, are there any mechanisms during the procurement process to ensure that the applicable PPP transaction, once awarded, is financeable?

It is customary in the United States for the procuring authority to require evidence of availability of financing as part of the proponents' bids. Most commonly the requirement is to deliver financing commitments. However, in at least one recent case, the procuring authority has been satisfied with the delivery of highly confident letters.

Legal opinion

May the government ask its counsel to provide a legal opinion on the enforceability of the PPP agreement? May it provide representations as to the enforceability of the PPP agreement?

Typically, in the United States, the public entity does have its counsel provide a legal opinion and provide representations regarding the enforceability of the PPP agreement.

Restrictions on foreign entities

Are there restrictions on participation in PPP projects by foreign entities? May foreign entities exercise control over the project company?

Generally speaking, there are no specific restrictions regarding participation by foreign entities in PPP projects or controlling the project company. However, in the case of brownfield infrastructure projects that are deemed critical, depending on the amount of control that the private entity will exercise or whether the private entity is controlled by a foreign government, the transaction may be subject to review by the Committee on Foreign Investments in the United States, and the authority of the president of the United States to block the transaction if it is determined that it threatens to impair national security. The Exon-Florio provision (Title V, Section 5021 of the US Code, 23 August 1988), as amended, establishes a list of factors that the president must analyse in making a determination. It has been proposed to extend the authority under the Exon-Florio provision to greenfield projects. However, so far this proposal has not been adopted.

Design and construction in greenfield PPP projects

Form of contract

Does local law mandate that any particular form of contract govern design and construction activities? Does it mandate the choice of governing law?

Some PPP statutes mandate the use of specific forms of contracts. In some cases, the statutes create a specific form of PPP agreement or comprehensive agreement, and include the terms that have to be included therein. In such cases, even if the statute does not expressly say so, they create the obligation that the PPP agreement be governed by the law of the relevant state. Typically, a state is not amenable to accept a governing law other than the laws of such a state.

Design defect liability

Does local law impose liability for design defects and, if so, on what terms?

Generally, laws governing design defects in construction vary from state to state to a degree that would be well beyond the scope of this publication. However, although it is common that, in non-PPP projects, design professionals disclaim warranties of the adequacy of their services, some courts have held that, in the case of design-build contracts, unless expressly disclaimed, the design portion of the agreement is warranted in a similar fashion as the construction portion, based on the overall contract being a 'construction contract' and not treating each portion differently.

Warranties

Does local law require the inclusion of specific warranties? Are there implied warranties in cases where the relevant contract is silent? Does local law mandate or regulate the

duration of warranties?

Although PPP statutes may imply or list as one of the terms of the PPP agreement the inclusion of warranties, generally the legislation defers on the terms of the warranties to the terms negotiated by the granting authority and the private parties. It will be particularly important for a party participating in a PPP project to confirm whether the local legislation overrides any warranty requirements generally applicable to public contracts and, if permitted, to consider including any disclaimer thereof.

Among the implied warranties that are generally found in state legislation, good workmanship may be the most common. State laws generally regulate the duration of warranties, particularly in connection with hidden defects. However, it is common that the terms of these warranties can be altered by the agreement of the parties.

Although, generally, the uniform commercial code is not applicable to construction contracts, it is important to consider whether the PPP agreement has a component that could be characterised by courts as a goods' supply agreement. Some state courts have recharacterised certain construction agreements as dealing more precisely with the supply of goods. In such cases, implied warranties of merchantability, fitness for a particular purpose and good title could be made applicable to portions of the agreement. Therefore, the parties to a PPP agreement should consider whether they should be expressly disclaimed.

Damages for delay

Are liquidated damages for delay in construction enforceable? Are certain penalty clauses unenforceable?

Liquidated damages are generally enforceable to the extent that they are a reasonable estimation of damages that are difficult to calculate, and the intent of the clause is to compensate the non-breaching party and not to penalise the breaching party. On the other hand, clauses requiring the payment of a penalty owing to breaches are generally unenforceable.

Indirect or consequential damages

What restrictions are imposed by local law on the contractor's ability to limit or disclaim liability for indirect or consequential damages?

Generally speaking, any disclaimer of a contractor's liability that arises owing to its wilful misconduct or gross negligence is likely to be held unenforceable.

Non-payment

May a contractor suspend performance for non-payment?

This remedy is usually negotiated on a case-by-case basis.

Applicable clauses

Does local law restrict 'pay if paid' or 'paid when paid' clauses?

Payment terms are governed by different rules in each state. Some states deem some payment terms in construction contracts to be matters of public policy and, therefore, the terms provided for in the applicable statutes cannot be modified. In particular, some states have enacted 'prompt payment' statutes that would prohibit pay if paid or paid when paid terms in construction contracts, requiring contractors to review and approve invoices or pay them within a maximum period of time, regardless of whether payment from the owner has been received.

Are ‘equivalent project relief’ clauses enforceable under local law?

Equivalent project relief clauses are generally enforceable. However, to the extent that they run afoul of prompt payment statutes (eg, permitting a contractor to withhold payment to a subcontractor simply because the payment has been withheld by the owner and not on the basis of a specific breach by the subcontractor), equivalent project relief may be unenforceable.

Expansion of scope of work

May the government party decide unilaterally to expand the scope of work under the PPP agreement?

Subject to the right of the private party to request compensation for such a change, the government party typically may request changes to the scope of work under the PPP agreement. The terms of such a right to request changes are usually negotiated on a case-by-case basis.

Rebalancing agreements

Does local law entitle either party to have a PPP agreement ‘rebalanced’ or set aside if it becomes unduly burdensome owing to unforeseen events? Can this be agreed to by the parties?

This is not generally found in the United States. However, the general concept is more commonly addressed through a negotiated set of relief events forming the basis for compensation to the private party. We are not aware of a specific rebalancing requirement included in a PPP statute.

Liens laws

Are statutory lien laws applicable to construction work performed in connection with a PPP agreement?

Statutory lien laws are not necessarily overridden by PPP statutes, and therefore would be applicable to any work performed in connection with a PPP agreement. However, it must be noted that, to the extent that the asset on which work is performed is the property of the state, different rules may apply to such liens.

Other relevant provisions

Are there any other material provisions related to design and construction work that PPP agreements must address?

Different states may have different degrees of requirements related to the provision of construction bonds or other forms of performance assurance. Some PPP statutes override those requirements generally applicable to public contracts. However, in some states (or in states without a PPP statute), the generally applicable requirements may be applicable to PPP agreements, which may result in a significant financial cost.

Operation and maintenance

Performance obligations

Are private parties' obligations during the operating period required to be defined in detail or may the PPP agreement set forth performance criteria?

There is no mandatory uniform treatment across states. In recently closed projects and projects that are currently in the procurement stage, a mixed approach of detailed obligations and performance criteria is being used.

Failure to maintain

Are liquidated damages payable, or are deductions from availability payments possible, for the private party's failure to operate and maintain the facility as agreed?

There is generally no specific regime of liquidated damages or deductions in PPP statutes; they are determined on a case-by-case basis. As availability payment projects have become the most common model in use, it has become more common for PPP agreements to include a deduction regime.

Refurbishment of vacated facilities

Are there any legal or customary requirements that facilities be refurbished before they are handed back to the government party at the end of the term?

There is no particular legal requirement regarding the degree to which facilities must be refurbished before they are handed back to the government party. Recently closed projects and projects currently in procurement include handback requirements to varying degrees. In some cases, such handback requirements include the establishment of a reserve account, funded from payments received by the project company, starting a number of years before the end of term, which must be handed (in whole or in part) to the government in case the scheduled refurbishment of the project is not performed to the required level.

Risk allocation

Delay

How is the risk of delays in commercial or financial closing customarily allocated between the parties?

This varies from project to project. The project company typically is not excused from achieving commercial close, unless the state authority has failed to satisfy its obligations, including obtaining authorisations allocated to it. To the extent that a delay in financial close is not because of the project company (including, for example, trying to renegotiate the terms included in the financing term sheet used for the procurement of the PPP agreement, failing to obtain required approvals assumed by the project company, etc), some states have agreed to take on the risk of timely financial close by agreeing to cover differences in margin or interest rates assumed in the applicable financial model.

How is the risk of delay in obtaining the necessary permits customarily allocated between the parties?

If responsibility for the acquisition of the permit was allocated to the government party (which is typically limited to major environmental authorisations), a delay in obtaining such a permit typically entitles the private party to relief in the form of an extension of the time to perform its obligations.

In some cases, the private party assumes the obligation to continue the approval process for some approvals initiated by the government party, and, in such cases, the private party then assumes the risk of timely issuance of such approvals.

Force majeure

How are force majeure and geotechnical, environmental and weather risks customarily allocated between the parties? Is force majeure treated as a general concept relating to acts outside the parties' control or is it defined with reference to specific enumerated events?

In different jurisdictions within the United States, and at different times, PPP agreements have included a force majeure concept that is treated both as a general concept relating to acts outside the parties' control and a list of specific enumerated events that have satisfied the typical concept of force majeure. Occurrence of a force majeure event typically entitles the private party to relief in the form of an extension of the time to perform its obligations, but not additional economic compensation. Weather conditions are usually covered by the concept of force majeure in those cases in which the private party is entitled to relief.

Discovery of geotechnical circumstances that were not shown in the reference information provided by the government party, or that could not be expected or learned after a reasonable investigation (the standard of which may vary from state to state), typically entitles the private party to relief in the form of an extension of time to perform its obligations and payment of additional compensation to cover for additional costs. A similar approach is usually followed for pre-existing environmental conditions and third-party release of hazardous substances, but the calculation of the compensation for additional costs arising from these circumstances in some cases is different.

Third party risk

How is risk for acts of third parties customarily allocated between parties to a PPP agreement?

Depending on the type of project, the government party typically assumes responsibility for some matters, such as access rights to real estate property or the performance of work by other contractors. However, PPP agreements sometimes make the private party responsible for obtaining some access rights or cooperation from third parties (including in connection with additional property (not originally contemplated for the project)). To the extent that the government party has assumed such a responsibility, any failure to provide access, lack of cooperation or failure to perform by third parties typically entitles the private party to relief, including in the form of economic compensation or extensions to the schedule.

Political, legal and macroeconomic risks

How are political, legal and macroeconomic risks customarily allocated between the parties? What protection is afforded to the private party against discriminatory change of law or regulation?

Risk of political actions (including discriminatory changes in laws and regulation) that occur because of the government of the state to which the government party to the PPP agreement belongs is assumed by the government party. The occurrence of such events typically entitles the private party to extension of time and economic compensation for additional costs. However, in the case of non-discriminatory actions by the state, the economic downside is shared between the state and the private party to varying levels.

Mitigating events

What events entitle the private party to extensions of time to perform its obligations?

See questions 33 to 37.

What events entitle the private party to additional compensation?

See questions 33 to 37.

Compensation

How is compensation calculated and paid?

The calculation of compensation is determined on a case-by-case basis by the PPP agreement, and to a large extent is dependent on the model of PPP used. In revenue risk projects, it is customary to see an allowance for increase in tolls or extensions of the term of the PPP agreement. In availability payment transactions, it is customary to find increases in the availability payment. In both cases, it is common to find an obligation to pay a lump sum by the government party, which, in some cases, is intended to restore the private party to the situation it would have been in but for the occurrence of the relief event, and in other cases, it is intended to restore the private party to the situation it projected in the financial model used for commercial close (in some cases as updated from time to time).

Insurance

Are there any legal or customary requirements for project agreements to specify a programme of insurance? Which party mandatorily or customarily bears the risk of insurance becoming unavailable on commercially reasonable terms?

Customarily, PPP agreements include a programme of insurance that each party must carry. Typically, unavailability on commercially reasonable terms entitles the party obliged to maintain the affected insurance to some form of relief, which may take different forms on a case-by-case basis.

Default and termination

Remedies

What remedies are available to the government party for breach by the private party?

Typically, PPP agreements in the United States allow the government party to collect liquidated damages or apply deductions on the payments due to the private party. To the extent of repeated or material breaches, the government party typically may terminate the PPP agreement. Additionally, the government party has the right to order the suspension of work, to enter into the site and correct any wrongful use or to step-in and perform actions that the project company fails to perform.

Termination

On what grounds may the PPP agreement be terminated?

This varies on a case-by-case basis, but some of the most common termination events that are included in PPP agreements include material or repeated breach (including violations of laws and governmental approvals), abandonment of the project, failure to achieve substantial completion by a certain longstop date, insolvency of the project company or, while its equity commitments remain outstanding, of an equity member, and changes of control.

Is there a possibility of termination for convenience?

PPP agreements in the United States typically provide for termination for convenience, subject to payment of compensation.

If the PPP agreement is terminated, is compensation available?

Customarily, compensation is available in the event of termination of the PPP agreement, including in the case of termination owing to default by the government party or the private party, convenience and extended relief events. Depending on the cause of termination, the termination payment typically includes a combination of amounts due to lenders and, as long as termination is not owing to default by the private party, a component to compensate the private party for its equity in the project. Most commonly, the calculation of the portion of the termination payment that corresponds to the private party involves a determination of the present value of the amounts that the private party was projected to receive during the remaining time of the agreement or a fair market value calculation, depending on the PPP model used for the particular project.

Financing

Government financing

Does the government provide debt financing or guarantees for PPP projects? On what terms? Which agencies are responsible?

States may have different incentive programmes that can apply to different projects. However, the most common debt financing and guarantee programmes for PPP projects are the TIFIA, RRIF, WIFIA and INFRA federal programmes described in question 5. In addition, states and their instrumentalities sometimes agree to issue private activity bonds (a type of tax-exempt bond), and on-lend the proceeds for such an issuance to the project company, to be used for the construction of the relevant PPP project.

Privity of contract

Are lenders afforded privity of contract with the government party through direct agreements or similar mechanisms? What rights will lenders typically have under these agreements?

Typically, PPP agreements in the United States provide for lender rights, naming such lenders as third-party beneficiaries. In addition, it is common for the procuring authority to enter into direct agreements with lenders. These rights typically include the right to cure defaults by the project company, or step into the stead of the project company.

Step-in rights

Is there a mechanism under which lenders may exercise step-in rights or take over the PPP project? Are lenders able to obtain a security interest in the PPP agreement itself?

Lenders regularly obtain a security interest in the PPP agreement itself, and are actually entitled to step into the stead of the project company themselves or through a party appointed by them, which must satisfy certain criteria set forth in the PPP agreement.

Cure rights

Are lenders expressly afforded cure rights beyond those available to the project company or are they permitted to cure only during the same period and under the same conditions as the project company?

This has varied from project to project, depending, in particular, on the jurisdiction procuring the project. In some cases, the cure period is in addition to the cure period of the project company, and in others, the lenders are afforded only the same period as the project company.

Refinancing

If the private party refinances the PPP project at a lower cost of funds, is there any requirement that the gains from such refinancing be shared with the government? Are there any restrictions on refinancing?

This term is not necessarily addressed by PPP statutes. However, PPP agreements that have recently achieved commercial close, or that are currently in the procurement stage, have included an obligation to share any refinancing gain, or even give it all up.

Governing law and dispute resolution

Local law governance

What key project agreements must be governed by local law?

Several jurisdictions deem construction agreement terms to be matters of public order. As such, construction contracts may be required to be governed by the law of the state where the project is located.

Government immunity

Under local law, what immunities does the government party enjoy in PPP transactions? Which of these immunities can be waived by the government?

Generally, states have adopted sovereign claim acts that allow for the state to be sued for liability subject to the satisfaction of certain procedural formalities, in some cases having to prosecute the claim before specific (in some cases, special) courts. However, the scope of immunities that states have retained varies from state to state, and may include immunity from exemplary or punitive damages.

Availability of arbitration

Is arbitration available to settle disputes under the project agreement between the government and the private party? If not, what regime applies?

Arbitration is generally available for the resolution of disputes. Some PPP statutes expressly provide that the granting authority may submit disputes to arbitration. However, many states have been reticent to accept binding arbitration, making PPP agreements subject to the jurisdiction of local courts. Some states have accepted the inclusion of non-binding arbitration clauses into their PPP agreements, where the state has the option to remove an action and have it heard by a court or reject the award and have the dispute further resolved by a competent court.

Alternative dispute resolution

Is there a requirement to enter into mediation or other preliminary dispute resolution procedures as a condition to seeking arbitration or other binding resolution?

There is no specific approach that can be deemed uniform throughout jurisdictions in the United States. This has varied from project to project, but it is common to find PPP agreements providing for the requirement of engaging in prior negotiations or mediation as a condition for submitting a dispute for binding determination by an arbitrator or court.

Special mechanisms

Is there a special mechanism to deal with technical disputes?

PPP agreements generally include mechanisms to deal with technical disputes through determination by technical experts. However, there is no particular mechanism that is uniform throughout jurisdictions.

Updates and trends

We continue to see the most US PPP activity in the transportation infrastructure sector, and there is growing interest in applying the PPP model to the social infrastructure sector. The LaGuardia Airport Central Terminal Building (CTB) project and the Maryland Purple Line light rail transit project were both long-awaited, marquee transportation infrastructure projects that achieved financial close in 2016. The University of California Merced Campus Expansion also achieved financial close in 2016, and will test the viability of the PPP model for delivering social infrastructure projects.

We have also seen a notable increase in the airport sector, notwithstanding the limitations in the Federal Aviation Administration's (FAA) airport privatisation pilot programme that have hindered PPPs at US airports. Financial close for the Denver International Airport Great Hall project and for the Los Angeles International Airport's Automated People Mover PPP project was achieved in 2017 and 2018, respectively, Indianapolis International Airport tendered a storm and waste water treatment PPP in 2016, and the Illinois Department of Transportation is currently evaluating a PPP structure to develop, finance, operate and maintain a new South Suburban Airport. In addition to the LaGuardia CTB project, the Port Authority of New York and New Jersey is pursuing the redevelopment of Terminal A at Newark Airport through a modified PPP structure, which will involve multiple separate contracts for different aspects of the project, and the redevelopment of Terminals C and D at LaGuardia Airport, largely from private-sector investment.

In terms of procurement structure, one trend we are seeing is the 'beauty contest' procurement. In these procurements, the shortlisted bidders are asked to submit indicative proposals for a conceptual project, instead of a substantively complete concession, and the procuring authority will pick the team that it wants to directly negotiate the detailed terms and provisions of the project. Essentially, the preferred proponent wins a pre-development agreement and the right to negotiate the project with the procuring authority. Both the Indianapolis International Airport waste water project and the Denver Airport Great Hall project were procured on this basis, and it is expected that the newly announced South Suburban Airport in Illinois will also be procured this way.

Broadband network PPP projects is a new category that has attracted particular interest in the past few years. Starting with Kentucky's KentuckyWired project, which achieved commercial close in

2015 and was the result of an unsolicited bid, several broadband projects have come to market in the past three years. Currently, there are more than half-a-dozen projects in procurement process or about to start their procurement process, including proposed projects by the Pennsylvania Turnpike, Riverside County and City of San Francisco in California, the Georgia Department of Transportation and Oakland County, Michigan. Each of these projects seeks to implement the PPP model to either use and improve existing assets or build completely new networks that will serve the needs of the procurement authority (in some cases allowing incremental capacity to be used and marketed by the concession company) or create public access networks. The diversity in the scope of works and services to be provided, assets being allocated and goals pursued make it interesting to follow and see if and in which cases the PPP model will prove adequate for this type of infrastructure.

The current Trump administration has put forward a plan to invest up to $200 billion dollars in federal funds in infrastructure with the goal of stimulating at least $1.3 trillion dollars in new investment by states, local government and private investors over the next 10 years. A number of practical questions have been raised about the plan, and in any event, it is considered unlikely that Congress will implement it. Therefore, it is unclear whether existing incentives will continue in the longer term and what if any new incentives will be put in place. In the current market, TIFIA funding remains vitally important and, historically, the TIFIA Joint Programme Office (JPO) (the office at the US Department of Transport that administered the programme) worked hard to ensure a level playing field among all bidders for any project eligible for TIFIA financing. It is worth noting that the administration of the TIFIA loan programme has now been consolidated under the new Build America Bureau with other loan and grant programmes, namely the RRIF loan programme, Private Activity Bonds (PABs) and INFRA grant programme under a single agency. The hope is that by consolidating these programmes in a single office, federal resources will be deployed more effectively.

Debevoise & Plimpton LLP

by Armando Rivera Jacobo and Ivan E Mattei

USA March 26 2019

Why the 2020 Budget Debate Indicates More Challenges for Cities.

> *"The Budget devolves responsibility to State and local governments, which are better positioned to assess local community needs and address unique market challenges."* – The President's budget proposal for fiscal year 2020, explaining the proposed elimination of the Community Development Block Grant and HOME Investment Partnership programs for the third straight year.

The administration's budget proposal for FY20 begins with a message touting an "unprecedented", two-year economic boom that has, among other things, resulted in the creation of five million new jobs. For the administration, this means now is a good time for Congress to bring federal spending and debt "under control".

The president's budget proposes to bring spending and debt under control through drastic cuts to safety net programs, including food stamps, Medicaid and Medicare. The proposal also looks to eliminate programs that expand economic opportunity and mobility, including Community

Development Block Grants, Economic Development Grants, Community Services Block Grants, Social Services Block Grants, 21st Century Community Learning Centers, and the Weatherization Assistance Program.

For cities, towns, and villages, the 35-day partial government shutdown was a disturbing period of uncertainty that spurred local leaders into action to minimize impacts on vulnerable residents. According to the Congressional Budget Office, the overall economy lost $11 billion during the shutdown. Individual cities have also calculated local economic losses and have adjusted budget and revenue projections accordingly.

The cost of emergency measures and economic losses associated with the shutdown exposed a growing number of fiscal headwinds that would make it difficult, if not impossible, for cities to make up for the cuts proposed by the administration. Among them:

- **Local tax revenue is slowing down.** NLC's 2018 City Fiscal Conditions survey indicates that local tax revenue growth is experiencing a year-over-year slowdown, with growth in service costs and other expenditures outpacing it. This suggests that many cities may be approaching the limits of their current period of fiscal expansion.
- **Federal funding for domestic discretionary programs is *already historically low.*** According to a report from the Center on Budget and Policy Priorities, funding for federal programs (other than Social Security and Medicare) is historically low as a percent of GDP – and it is projected to fall further. Funding for domestic discretionary programs, which includes grants to cities and towns, has been limited since 2011 by the Budget Control Act (BCA) that mandates sequestration if Congress is unable to reach pass higher spending caps.
- **States continue to preempt local authority.** NLC's report, City Rights in an Era of Preemption: A State-by-State Analysis, shows that 42 states have enacted tax and expenditure limitations on local governments. State preemptions created additional uncertainty during the partial government shutdown and have created additional obstacles to raising revenue or spending at the local level to make up for significant losses at the federal level.
- **New Limits on the State and Local Tax Deduction.** The new $10,000 cap on state and local tax deductions, enacted under recent federal tax reform legislation, will hit nearly 11 million taxpayers nationwide this year, according to a report by the Treasury Department. Treasury estimates the cap will prevent those 11 million taxpayers from deducting $323 billion in state and local tax payments from their federal tax returns, which takes money out of local economies.
- **Advance Refunding Bonds Eliminated.** That same tax reform bill exposed that cities' fiscal vulnerabilities are larger than federal budget and appropriations decisions. The bill eliminated advance refunding municipal bonds, a valuable cost-saving tool for municipalities that allowed municipal debt to be refinanced at lower interest rates. Earlier iterations of the legislation even threatened private activity bonds, which put billions in municipal market savings at risk. NLC research shows that 61% of city finance officers think the loss of tax-exempt advance refunding bonds will negatively impact their city's ability to meet financial needs.

Add to these headwinds that municipal governments are generally required to balance their budgets and cannot resort to deficit spending of the sort that the federal government relies on, and it becomes clear how unprepared states and cities are for the kind of wholesale devolution of responsibilities proposed by the administration.

NLC is again tracking funding for city priorities throughout the federal budget and appropriations process at www.nlc.org/budget. A breakdown of proposed funding for individual programs is available at the link.

National League of Cities

By Michael Wallace

March 25, 2019

Bonds Versus Bond Funds: Minnows Versus Sharks.

Brokerage firms like to tell clients they should buy bonds instead of bond funds, but that is rarely a good idea. Investors almost always have an advantage buying a mutual fund's portfolio of bonds rather than buying bonds directly.

Treasury bonds are an important exception. The Treasury market is extremely large and liquid, its structures are as simple as they come, and most brokerages charge modest fees to buy and sell them at very fair prices. For pretty much everything else, the cards are stacked against you.

Time Is Relative

The appeal of Treasury bonds to many do-it-yourself investors is that the former have fixed maturity dates, and the U.S. government has always made good on paying back principal when that time comes. What may be less obvious is that with a few exceptions, most other bond sectors carry features–such as the option for borrowers to refinance or pay off debt early–that make the timing of principal return much less certain. That goes for most municipals, mortgage securities, and corporate bonds (though the latter often carry some financial penalties designed to compensate investors for the option).

The chief risk associated with an embedded option is that you'll get your money back early at just the wrong time–when market yields are low, the incentive for borrowers to refinance is high, and by definition reinvesting the money at a good rate is most difficult.

What may be less obvious is the cost associated with that option. Think of it this way: When you purchase a bond with an option attached, you're actually buying the bond and simultaneously selling the borrower an option (to refinance). You'll never see the price of the option broken out, but the bond's price–and by extension its yield–will have the value of the option baked in. As such, an identical bond without the option would carry a lower yield and a higher price.

The difference isn't trivial, and no institutional investor would ever pay the same price for those two bonds. In fact, they put tremendous effort into figuring out how much that option is worth and how much more yield they should get from the borrower to account for it.

It's not plain-vanilla math, though, and the number is by definition an estimate. That's because most borrowers' decisions are based on the level of interest rates when they have an opportunity to refinance. Every homeowner with a mortgage knows that it will only make financial sense to refinance when rates get low enough, but that pinning down when that's going to happen or how low they're going to get can be as difficult as predicting the weather.

As such, the process for pricing an embedded option is especially complex for plain-vanilla mortgages that can be refinanced at any time. And institutional investors know that unless they know what it's worth, the market will always look to underpay.

The Return of Your Money

While we know the U.S. Treasury is a safe bet to pay you back, the risk of being stiffed exists with just about every other kind of bond. Knowing how to handicap that risk is another laborious exercise requiring skill, knowledge, and experience. Most fund managers have teams of analysts spending most of their time looking into the finances of bond issuers whether large or small, municipal, corporate, or otherwise. It would be almost impossible for any individual to devote the amount of time and effort to replicate that work, and even if one could, the cost of doing so would likely be well beyond any benefit one might get from going it alone.

Here too, though, the practical risk often isn't actually whether you're going to get your principal back, but rather how much extra yield you should demand in exchange for the risk that you won't. And keep this in mind: While most individual investors don't bother buying mortgages directly, the fact that many do choose to purchase corporate and municipal bonds on their own also means there are plenty of parties–including brokers, corporate borrowers, or mutual fund managers–who make it their business to sell debt to investors who don't know that number and to whom they can sell bonds without paying anywhere close to it.

Buying in Bulk

Let's say for the sake of argument, though, that you still want to buy a bond with an embedded call option and some level of credit risk and that you've even somehow managed to get confident in the yield number that you're going to demand. Unless you're going to invest a ton of money all at once, it's nearly a sure bet that you're going to have to give up some of that yield in the form of higher trading costs that you won't see broken out from a bond's price either.

The data will look different for every sector and time period, but the phenomenon is well-established. Vanguard has studied the relationship between trade size and pricing among municipal bonds at least three times in the past 15 years, and the data have always borne out that the smaller the bloc the higher the cost, and you generally won't get institutional-level pricing on a single purchase until you're above the $1 million range. And in the case of municipals, roughly 70% of trades are under $50,000, which means most people are giving up the pricing advantage they'd get by throwing in with other investors in a fairly priced fund.

Morningstar

by Eric Jacobson

26 Mar 2019

A Cautionary Tale for the New Muni Bond Era.

A decade after the Libor scandal, a new approach to interest rates could help U.S. states and cities – if they change their thinking.

There's a moment in Act II of Hamlet where his old college buddies are trying to convince him to look on the bright side. Sure, his dad died and his mom hooked up with his uncle, they argue, but Denmark could be worse off. Hamlet's response is one of William Shakespeare's great lines: "There is nothing either good or bad, but thinking makes it so."

Hamlet meant that our beliefs about our circumstances matter more than anything. In fact, they matter a lot more than what others tell us, even if everyone else might be right. Oddly enough, Hamlet's view offers a cautionary tale about the future of the municipal bond market.

A decade ago, two big developments rocked public finance: the Great Recession and the news that bankers in the Bard's beloved England had conspired to manipulate the ubiquitous London Interbank Offered Rate. Libor is the most common benchmark interest rate index used to make adjustments to variable rate loans. Unsurprisingly, public finance experts focused much more on the recession, but the Libor scandal may ultimately prove more important in the long run.

By early 2008, states and localities had borrowed billions of dollars at variable short-term interest rates. This made sense because short-term rates were far below the long-term rates governments were used to getting. By stringing along a series of short-term bonds, governments could borrow for the long run but pay less to service that long-term debt. Even better, with an insurance contract known as a floating-to-fixed swap, they could borrow at variable rates and pay lower long-term fixed rates. Prudent public debt managers around the country employed this strategy, especially when it saved money early in the Great Recession.

But they shortly found themselves dragged into scandal because much of that variable rate was pegged to Libor. When bankers held Libor artificially high, governments believed they paid higher short-term rates than they would have otherwise. When rates were held artificially low, floating-t--fixed swaps paid less and governments had to make extra debt service payments out of pocket. Before the dust settled, several big banks paid millions to settle state and local governments' claims of wrongdoing. State and local leaders across the country vowed to never again venture into the variable rate market, even for bonds tied to other short-term benchmarks.

In the decade since the Libor scandal, the finance industry has worked to develop a better, more transparent benchmark. Last year, it agreed to phase Libor out and instead go with the Secured Overnight Financing Rate (SOFR). Unlike Libor, which was run by the banks and was based on bankers' expected short-term interest rates, SOFR is administered by the New York Federal Reserve and is based on the market prices of very short-term investments. In concept, that makes variable rates less susceptible to manipulation. This is a major move, considering the estimated $200 trillion in mortgages, credit cards and other assets that are tied to variable interest rates.

It's still early for SOFR. Regulators, investors and academics have generally called it a move in the right direction. But so far just a few large governments and corporations have issued SOFR-referenced debt. That will change. As investors become more comfortable with it, they will look for more SOFR-related investment opportunities. That could mean a chance to revive the moribund market for variable rate municipal debt.

When that happens, states and localities will face a difficult choice. They could stick with beliefs based in Libor-era thinking and conclude that variable rate debt is too good to be true. Or they could bring their thinking into the SOFR era and reconsider the many potential benefits of a prudent variable rate debt management strategy. By then, things will have changed in Denmark.

governing.com

By Justin Marlowe | Columnist
Endowed Professor of Public Finance and Civic Engagement at the Daniel J. Evans School of Public Policy & Governance at the University of Washington

April 2019

Fitch Ratings: Fortunes May Soon Turn for the Better for U.S. NFP Hospitals

Fitch Ratings-Austin-26 March 2019: Though not over yet, U.S. not-for-profit hospitals appear to have weathered the worst of their operational challenges with more performance stability not far off, according to Fitch Ratings in a new report.

Among the developments generating the most market interest is the emergence of non-traditional competitive entrants like Amazon with grand designs to reinvent healthcare delivery. Whether they succeed in the long run remains to be seen, but it seems inevitable that these non-traditional entrants will ultimately change the way individuals interact with the sector. As such, hospitals will become more concerned with “steerage” into the providers care delivery system versus “leakage” outside the provider system.

Another headwind for the sector is payor mix, which is shrinking. Commercial contracts are yielding diminishing margins at the same time that commercial payors are decreasing as a percentage of revenue due to the growth of Medicare enrollees. “With an estimated 10,000 people set to turn 65 years old every day over the next decade, the spread between the profit generating commercial business and break-even to unprofitable government payors will continue to shrink,” said Senior Director Kevin Holloran.

Interestingly, it’s the very same Baby Boomer generation that will actually benefit some hospitals over time. “With almost all providers aiming to break even or better on Medicare, organizations that successfully absorb Medicare reimbursements will find themselves well positioned for the future,’ said Holloran. Many providers will find themselves the beneficiary of a growing book of business that is characterized by heavy healthcare usage.

Elsewhere, profitability for hospitals and healthcare systems is still on the decline, though the pace of declines appears to be leveling off. “Operating margin percentages for most hospitals are actually lower than those experienced during the Great Recession of over a decade ago,” said Holloran. “What has yet to be determined is whether margins continue to fall over the longer term, or if this is the point where the sector’s rally begins.”

Despite the heavy headwinds and pressures on operational performance, the healthcare sector has historically been successful at maintaining generally consistent margins over an extended period of time – through both ups and most importantly through downs. As such, not-for-profit hospitals will begin to find their operational footing as 2019 progresses.

Contact:

Kevin Holloran
Senior Director
+1-512-813-5700
Fitch Ratings, Inc.
111 Congress Avenue, Suite 2010
Austin, TX 78701

Media Relations: Sandro Scenga, New York, Tel: +1 212 908 0278, Email: sandro.scenga@thefitchgroup.com

Additional information is available on www.fitchratings.com

S&P ESG in USPF: Connecting The Dots

Environmental, Social or Government related factors contributed to 34% of rating actions in 2017 and 2018.

Continue Reading

Mar. 28, 2019

S&P: When U.S. Public Finance Ratings Change, ESG Factors Are Often The Reason

S&P Global Ratings performed a two-year review of environmental, social, and governance (ESG) factors in our criteria and how they influenced, positively or negatively, the credit profile of our U.S. public finance (USPF) entities. These include local governments and states, as well as health care, housing, higher education, charter school, utility, transportation, and public power enterprises.

Continue Reading

Mar. 28, 2019

New Standards to Drive U.S. Sustainability-Linked Lending.

NEW YORK (LPC) – Global standards set in place by loan trade associations this week that tie syndicated loan pricing to companies' sustainability performance are expected to stimulate the budding U.S. green lending market.

Less than a handful of U.S. companies have issued sustainability-linked loans since the first deal for natural gas utility CMS Energy was completed last June, far lagging firms in Europe which are leading the global push to improve environmental performance.

The new sustainability standards, which were issued on Wednesday by the Loan Market Association (LMA), the Loan Syndications and Trading Association (LSTA) and the Asia Pacific Loan Market Association (APLMA), are expected to bolster borrowers' and investors' confidence in green lending.

Sustainability-linked loans are any kind of loans that incentivize borrowers with margin reductions or increases depending on their ability to meet pre-set environmental performance targets.

A lack of direction and consistency in being able to identify and measure these goals has been stifling growth so far, bankers said.

"By having pricing tied to a borrower's improvement in sustainability performance, it directly incentivizes borrowers to make improvements," said Tess Virmani, the LSTA's associate general counsel. "If market interest keeps gathering steam, then the sustainability-linked loans will find a good home in the corporate loan market."

One of the main differences between sustainability-linked loans and green loans, which are linked to use of proceeds, is that they can be raised for general corporate purposes rather than specific projects. Loans for general corporate purposes are more widely issued, which is likely to boost sustainability-linked loans.

Key characteristics of sustainability-linked deals include disclosing the loan's tie to the company's overall social responsibility strategy; having sustainability pricing targets arranged between borrower and lender; reporting on sustainability performance and external reviews, according to the new lending principles.

TESTING THE WATERS

Global water technology company Xylem Inc became the fourth U.S. company to issue a sustainability-linked loan, with an $800 million revolving credit in early March. Xylem is the first general industrial company to commit to reducing its environmental footprint this way.

The four U.S. sustainability-linked loans that have come to the market so far — two this year and two last year — tally roughly $8 billion. Banks are targeting the sector as a growth area as they seek to improve their own credentials.

"Banks want to show their growing commitment to sustainable development goals, and this is one of the products they might use to show that," said Anna Zubets, vice president at Moody's Investors Service.

Last year, sustainability-linked loans issued globally topped $36 billion, led by European companies, according to Moody's.

Global issuance in the more mature green bond market, in contrast, could jump 20 percent to $200 billion this year, the rating agency said.

"The U.S. is a little behind on the discussion but you see it happening here as well. More than 80 percent of the S&P 500 listed companies are now issuing sustainability reports and it becomes a bigger discussion among shareholders and investors and asset managers, which is what we see among our client base," said Anne van Riel, head of sustainable finance at ING.

"I expect that that will automatically carry over to more sustainable financing, whether green loans, green bonds or sustainable-linked loans."

ING was the sustainability coordinator for Xylem's deal, and helped the company to decide reasonable but ambitious performance targets to guide loan pricing.

Interest margins on Xylem's general corporate purpose revolving credit will be based on social and corporate governance ratings by independent provider Sustainalytics. Citigroup, JP Morgan, ING, BNP Paribas and Wells Fargo were lead arrangers and bookrunners.

Pricing is initially based on ratings, opening at 110 basis points over Libor with a 15-basis points facility fee, and then will be adjusted up or down by up to 5 basis points based on its ability to achieve predetermined sustainability targets, according to a regulatory filing.

The other sustainability-linked loans completed in the United States so far include global logistics real estate group Prologis Inc in January, renewable energy and utility company Avangrid Inc last July and electric and natural gas utility CMS Energy and its main unit Consumers Energy last June.

“Some treasurers and CFOs are a bit more conservative, and when they see their peers doing it or see more market activity they will also follow,” said van Riel.

Having clear standards for the asset class is a way to hold management accountable for promises made, and make green identification more than a marketing tool.

“In order for money to continue to flow into these kinds of products, reporting standards are going to have to develop and mature so the market can be credible and management can be held accountable for goals,” Zubets said,

“Investors can have trust that if something is labeled as green it is actually going to deliver an impact.”

Reuters

by Lynn Adler

MARCH 22, 2019

Reporting By Lynn Adler; Editing by Tessa Walsh and Michelle Sierra

---

What Are Green Bonds and How ‘Green’ Is Green?

Trillions of dollars of investment are needed to combat global warming. Enter green bonds, a way for issuers to raise money specifically for environmentally friendly projects — such as renewable energy or clean transport — and to be able to boast about it publicly. Fund managers also like the notes as a way of meeting growing investor demand for sustainable options. The market, which opened slowly more than a decade ago, has boomed in recent years, helping spur development of other socially conscious debt products. Because investors face the challenge of judging whether a note is truly green, regulators are working on standards to help guard against greenwashing, or misleading claims about just how good a friend to the environment an issuer is.

1. What do green bonds finance?

Green bond proceeds can go toward new or existing projects that are meant to have positive environmental or climate effects. Inside that, the range is vast. It covers energy, transport, waste management, building construction, water and land use. Some definitions also include communications and information technology.

2. How big is the global green-bond market?

A cumulative $580 billion of green bonds were sold through 2018, according to Bloomberg New Energy Finance. Another $170 billion to $180 billion are likely to be sold in 2019 based on what’s currently happening in the market, BNEF analyst Daniel Shurey says. The market is expected to keep growing, with Europe alone needing about 180 billion euros ($203 billion) of additional investment a year to achieve 2030 emission targets set by the European Union in the 2015 Paris Agreement on climate change. For now, however, green bonds are a tiny fraction of the more than $100 trillion global bond market.

3. Who sells green bonds?

Issuers from more than 50 countries have sold green bonds including supranational institutions such as the World Bank and the EU's European Investment Bank. Companies are also in the market, along with local, state and national governments. The first emerging-market green bond was issued in South Africa in 2012. Poland opened the sovereign market in 2016, followed by the likes of France, Belgium and Ireland. The U.S. is the largest source overall, led by the mortgage giant Fannie Mae and local governments selling notes to finance infrastructure such as sewerage upgrades.

4. Who decides whether a bond is green?

It's complicated. Many issuers say they follow the Green Bond Principles, endorsed by the International Capital Market Association in 2014 to bring transparency to the market. The principles are voluntary, covering how to spend and manage proceeds, how to evaluate if a specific project is green-worthy, and what type of reporting to put in place. A slew of companies offer services to independently assess, verify or certify a bond's green bona fides. They include ratings companies such as Moody's Investors Service; the Climate Bonds Initiative, which created the first green-bond standard in 2010; and specialized firms such as Paris-based Vigeo Eiris, Amsterdam-based Sustainalytics, and Cicero Shades of Green, a unit of the Norwegian climate research institute Cicero. (Bloomberg LP, the parent of Bloomberg News, provides a green-bond tag and the related disclosures of issuers.)

5. Just how green are green bonds?

It can sometimes be difficult to say given the lack of globally accepted standards or consistent verification. The perception of what's green can differ, too. China, the world's biggest carbon emitter and No. 2 green-bond issuer, has faced criticism for using green bonds to finance coal-burning power plants, even if the new facilities are cleaner than predecessors. Reports say Chinese regulators may drop so-called clean coal from green-bond definitions to harmonize them with EU standards and win international investors. In its analysis, Oslo-based Cicero uses three shades of green:

- dark green for things that will lower carbon emissions in the long run like wind energy
- medium green for things that take a good step forward such as plug-in hybrid buses
- light green for environmentally friendly steps that won't change the long-term outlook on their own, such as more efficient fossil-fuel infrastructure

New coal projects get labeled brown for being in opposition to what Cicero calls a "climate-resilient future." There's also debate over whether an issuer's overall environmental commitment or carbon footprint should be taken into account. Poland's sovereign green bonds were snubbed by at least one major investor because of the country's reliance on coal and its mixed record on climate action. In 2017, Madrid-based Repsol SA became the first major oil company to sell green bonds.

6. Is there hope for a global green bond standard?

Yes. The EU is creating a Green Bond Standard, which will build on current market practices, such as the ICMA Green Bond Principles. Issuers from anywhere in the world will be able to cite compliance, if their plans are independently verified by an EU-accredited assessor. However, the new standard will be voluntary, rather than legally binding. The European Commission, the EU's executive arm, has directed a group of experts to make recommendations. The International Organization for Standardization is also preparing a Green Bond Standard that will draw upon existing principles.

7. Who buys green bonds?

In general, it's the same as the rest of the bond market — institutional investors including pension funds, insurance companies and asset managers. The overall green market is also getting a boost from investors seeking "responsible" or "sustainable" places to put their money. That has helped Europe's listed green funds double assets under management since 2013 to more than 32 billion euros in 2017, according to Novethic, a sustainable finance data provider. In 2015, France became the first country to require institutional investors to report how they consider environmental factors. The EU is likely to encourage asset managers across the bloc to integrate sustainability requirements into investment decisions as part of its work on the Green Bond Standard.

8. Does green investing mean compromising on returns?

Not necessarily. The vast majority of green bonds are investment grade and they are priced similarly to conventional debt at issuance. Growing investor demand and relative scarcity could also help boost secondary market prices. In the euro market, green bonds returned 0.34 percent in 2018, while the overall investment-grade market returned 0.41 percent, based on Bloomberg Barclays indexes. But for issuers themselves, bringing a green bond to the market can entail additional costs to cover getting an external opinion and report annually on the use of proceeds.

9. Are green bonds the same as sustainable bonds?

No. Green bonds are used solely for environmental goals, while sustainable bonds combine both environmental and social objectives. There are also social bonds, whose proceeds are dedicated to projects aimed at improving social welfare or helping disadvantaged populations. The range of socially conscious instruments keeps growing as more investors look to do good while making money, and regulators look to the instruments to influence policy and investment decisions. There are now loans linked to specific environmental, social or governance targets, which give companies an incentive to achieve what they say they will. And in October, the Seychelles sold the world's first sovereign blue bond, debt issued to finance marine and ocean-based projects that have positive environmental, economic and climate benefits.

Bloomberg QuickTake Analysis

By Lyubov Pronina | Bloomberg March 29

To contact the reporter on this story: Lyubov Pronina in Brussels at lpronina@bloomberg.net

To contact the editors responsible for this story: Hannah Benjamin at hbenjamin1@bloomberg.net, Neil Denslow, Melissa Pozsgay

---

Direct Purchases of Bonds By Banks: A Popular Alternative for Municipalities.

Traditionally, municipalities have sold bonds through competitive sales and negotiated sales. In a competitive sale, bids from interested buyers are opened at the advertised time and place, and the issuer awards the sale to the successful bidder by a sale resolution or an award order signed by an authorized official.

The closing of the issuance of the bonds usually occurs roughly seven to ten days thereafter.

In a negotiated sale, the issuer typically selects a bond underwriter, which markets the bonds. The issuer and the underwriter then negotiate the terms of the bond, and the closing occurs about one to two weeks later.

Municipalities have increasingly used a third method to sell bonds – "direct purchases" by banks or financial institutions, including community, regional and national banks. Bank direct purchases ("BDPs") have become a popular alternative to competitive or negotiated sales of municipal bonds. BDPs can benefit municipal bond issuers by saving them time and expenses compared to competitive or negotiated sales.

BDPs are usually quicker and less expensive for municipalities than competitive or negotiated bond sales because they impose fewer requirements on the issuer:

- No published Notice of Sale in The Bond Buyer (national newspaper of the municipal bond industry)
- No underwriter (and no underwriter's discount or fee)
- No placement agent (and no placement agent's fee)
- No Preliminary Official Statement or final Official Statement (disclosure documents)
- No bond ratings (and no rating agency fees)
- No Continuing Disclosure Undertakings for the purchased bonds
- No CUSIP number for the purchased bonds
- Sometimes no bond trustee; rather, a local official may be the Transfer Agent
- Sometimes no Bond Purchase Agreement; rather, a bank term sheet or commitment letter is more commonly used

No book-entry-only registration; rather, the registered bondholder is the bond buyer
These advantages make BDPs an attractive option for municipalities. In BDPs, the interest rate may be a fixed or variable rate, as agreed between the issuer and bank. The term of the bonds may range from under 10 years to 15 years, as agreed between the issuer and bank. The bonds may or may not be tax-exempt bonds for federal income tax purposes.

Although BDP transactions can be attractive to both municipalities and bank purchasers, they can involve many special considerations that are beyond the scope of this article.

Scott H. Hogan

USA March 27 2019

Foster Swift Collins & Smith PC

How Public Pensions Could Trigger the Next Financial Crisis.

Given that public pension funds are now the dominant investors around the globe, and the fact that agencies are scrambling to raise taxes to catch up on massive unfunded liabilities, he expects the credit boom to continue at least a few more years. … This other extreme view comes from the Modern Monetary Theory, and Reynolds believes it is just as wrong as the expectation of disaster any minute now.

Read the full article on: [ValueWalk]

Truth in Accounting

Michelle Jones | April 1, 2019

Future Growth of Public Finance Advisory Market 2019-2026 Analysis with Major Player Deloitte, the Hackett Group, KPMG, Forbes, EY, Accenture, L.E.K. Consulting, PwC.

Miami, FL — (SBWIRE) — 03/31/2019 — Public Finance Advisory is a study of the role of government in the economy. It is one of the adjustments to assess government revenue and government spending by government authorities, achieve desirable effects and avoid undesirable consequences. Helping municipal and not-for-profit entities to structure and arrange tax-exempt debt transactions to meet their financing needs.

This research report which has been made by using primary and its subordinate techniques. During the analysis of the Public Finance Advisory market, the existing industries, as well as upcoming startups have been considered. It helps to make informed decisions in the businesses. Well explained Porter's five analysis and SWOT analysis have been used by a researcher of the report.

For Sample Copy of Reports: https://www.qyreports.com/request-sample?report-id=116097

Companies Profile: Deloitte, The Hackett Group, KPMG, Forbes, EY, Accenture, L.E.K. Consulting, A.T. Kearney, Bain & Company, Boston Consulting Group, Booz Allen Hamilton, McKinsey & Company, Mercer, PwC, JPMorgan Chase & Co., Crisil, ICICI, IFCI, BNY Mellon, Raymond James, Oliver Wyman, Accenture, etc.

The business profiles of leading key players have been profiled to get a detailed description of applicable strategies carried out by top-level companies. The global Public Finance Advisory market has been analyzed in terms of the competitive landscape. It highlights the cost of Public Finance Advisory industries. This research report helps to provide the proper guidelines for boosting the performance of the companies. Detailed information of several clients, vendors, and sellers have been included in the report. Financial terms such as prices, shares, and profit margin have been presented in terms of facts and figures.

Get Discount on this Report@ https://www.qyreports.com/ask-for-discount?report-id=116097

The objectives of the Public Finance Advisory Market report are:

– In-depth analysis of the degree of competition across the globe
– Estimation of global market values and volumes
– Business profiling of prominent companies across the global regions like North America, Latin America, Middle East, Asia-Pacific, Africa, and Europe
– Detailed elaboration on global market value, volume, and penetration
– Global market growth projections
– Detailed description on development policies and plans

It takes a closer and analytical look at the various companies that are striving for the global Public Finance Advisory market. To get more clients rapidly, different applicable sales strategies have been mentioned in the report. The statistical surveying report on Public Finance Advisory market predicts the growth of Public Finance Advisory industries in the near future. A notable feature of the report is an analysis of applications, end-users, size and technical platforms.

Any query, ask to our expert@ https://qyreports.com/enquiry-before-buying?report-id=116097

Table of Content (TOC):

If you have any special requirements, please let us know, we will offer you the report as per your needs.

Q1 2019 Review: Tax-Free Municipal Bond - A Shining First Quarter For Munis

Summary

- Muni supply is down. The drop last year has carried over to this year.
- Demand is also higher, particularly in the high-tax states like New York, New Jersey, and California.
- In the past few weeks, longer-maturity munis have also declined in yield as investors have moved further out on the yield curve to secure incremental yield.
- Clearly, there has been a reversal in bond market sentiment since last October, when the 10-year Treasury reached nearly 3.25%.

The first quarter of 2019 was a good one for the tax-free bond market, with yields falling during the quarter.

There are two main reasons that munis have had a good run so far this year.

Muni supply is down. The drop last year has carried over to this year. Remember, 2018 supply was down almost 25% compared to 2017 supply, in part due to the glut that was issued at year-end 2017 to beat the tax bill. The market has struggled with lower supply since. A great deal of the drop in supply can be traced to the 2017 tax reform act, which prohibited advance refundings of older, higher-coupon municipal bonds. Refundings were an important source of supply in past years, particularly in 2014 and 2016.

Demand is also higher, particularly in the high-tax states like New York, New Jersey, and California. Because of the SALT provisions of the tax bill, the cost (in terms of foregone yield) of owning out-o--state bonds in these states is much higher. We don’t see this demand factor changing. (See our February piece regarding the SALT conundrum.)

In the past few weeks, longer-maturity munis have also declined in yield as investors have moved further out on the yield curve to secure incremental yield. Also, the more dovish stance by the Federal Reserve since year end, reinforced in the March Federal Reserve meeting, has seemed to ease retail investors' normal reluctance to invest in longer maturities. The tax-free muni yield curve is also much steeper than the Treasury yield curve is, with the difference between 10- and 30-year AAA munis at approximately 80 basis points, while the difference between 10- and 30-year Treasuries is only 44 basis points.

What does all this positive movement in the muni market mean?

Clearly, there has been a reversal in bond market sentiment since last October, when the 10-year Treasury reached nearly 3.25%. The 10-year is back to a 2.45 yield, but the drop of 80 basis points has been accompanied by almost no drop in the rate of core inflation (nor any rise). And even though headline inflation has fallen (mainly due to oil), the drop in real yields has caused us to reassess bond markets in general and tax-free bonds in particular.

We think the SALT provisions are resulting in people – particularly in high-tax states – paying more this year in income taxes. In a market that has seen a resumption of bond fund inflows, we are concerned that the approaching tax deadline may see some bond selling, either directly or in bond fund form, to pay for the taxes.

We are also concerned that state and local governments – again, particularly those in high-tax states – will be under pressure from their citizens to cut taxes to make up for the extra taxes being borne because of the SALT provisions. If high-tax states oblige but don't cut expenses, debt service coverage could suffer.

Last fall, we thought real rates were high, bond selling was overdone, and the muni yield of 4%-plus was a giveaway. That yield bogey is very hard to find in a bond market that has done an about-face in the past four months. Thus, we are getting more defensive at the margin to make sure we are positioned to take advantage of any volatility accompanying April 15th. When it gets crowded at our end of the boat, we generally start moving to the other end.

Seeking Alpha

by David Kotok
Chief Investment Officer, Wealth Preservation, portfolio strategy
Cumberland Advisors

Why Billions in Disaster Recovery Remain Unspent for 2017 Hurricanes.

A new GAO report signals bad news for places that will try to rebuild after the Midwest flooding.

Historic flooding in the Midwest has left millions of acres under water in 10 states after a "bomb cyclone" storm brought heavy snow and drenching rains. And it's far from over. Weather forecasters say more precipitation is on the way.

The task list for the cleanup and recovery is already mounting. So far, the floods are affecting the safety of more than a million private water wells; farms won't be able to plant crops this year; and Superfund waste sites are inaccessible.

And when it comes to getting the money to rebuild, states and localities in the Midwest likely have a long wait ahead of them.

According to a new report from the U.S. Government Accountability Office (GAO), states and localities have still barely tapped the billions in federal funding for 2017's major hurricanes.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | MARCH 29, 2019 AT 4:00 AM

Economics in Brief: Three City Bank Models | Finance Policy Passion | Pot Banking Progress

Here's what got our attention in the world of economic policy and practices this week. If you have a story idea for The Bottom Line, email our senior economics correspondent, Oscar Perry Abello, at oscar@nextcity.org. — Next City editors

Big Public Bank Deposit

San Francisco's treasurer released the Municipal Bank Feasibility Task Force Report last Friday. The findings didn't make the front pages — the city was up against another report delivered by some guy named Mueller that day — but the task force's analysis of three models for municipal-owned banks is worth digging into. BTW, here's how this whole deep dive came to be in S.F.

Must-See Livestreams

Reason #436 that Oscar Perry Abello is the Next City senior economics correspondent you need in your life? He says this profile in The American Prospect, "Congress's New Progressives Take On the Banks," "sums up a lot of why I'll be excited to watch livestreams of House Financial Services Committee hearings for the next year." We can't blame him: Chances are you've seen at least one viral video this month of someone being grilled by committee member Alexandria Ocasio-Cortez. With old and new legislators from major urban areas, everything from the Community Reinvestment Act to strengthening minority-owned banks is on the policy table.

Bipartisan Support for Pot Banking Bill

Speaking of the House Financial Services Committee, members moved a bill along Thursday that would help legal pot entrepreneurs get better access to financial services. As Roll Call reported, at a congressional hearing on the bill, the owner of a Washington, D.C.-based dispensary testified how current barriers more harshly affect less wealthy, minority cannabis entrepreneurs. Next City will continue to report on the growing activism by advocates looking to ensure economic inclusiveness in the industry as profits flow. Here's our latest on that movement, in Chicagoland.

NEXT CITY

MARCH 29, 2019

EPA Issues Guidance to Help States Improve Drinking Water Infrastructure.

Over $2 Billion to States, Tribes, and Territories in 2018

WASHINGTON (March 25, 2019) — Building on recent successes to move President Donald Trump's infrastructure agenda forward by providing the financing and resources communities need to modernize local water infrastructure, today the U.S. Environmental Protection Agency (EPA) issued new guidance for states to use when applying for financing from the Drinking Water State Revolving Fund (DWSRF).

In 2018 the Drinking Water State Revolving Fund (DWSRF) committed $2.8 billion in drinking water infrastructure loans and refinancing and disbursed $2.5 billion for drinking water infrastructure to improve our nation's public health.

Last week in a speech at the Woodrow Wilson Center, EPA Administrator Andrew Wheeler suggested federal water funding programs would be excellent models for international organizations to adopt in order to address the global water crisis.

Today's guidance for states highlights recent changes made to the DWSRF as a result of the America's Water Infrastructure Act (AWIA) of 2018. Of note, AWIA:

- increases the amount of additional subsidy available to disadvantaged communities;
- expands eligible uses of the DWSRF set-asides to include source water protection activities and source water assessments;
- extends the American Iron and Steel provision for DWSRF-funded projects through federal fiscal year 2023; and
- increases the maximum-authorized DWSRF loan term up to 30 years for any DWSRF-eligible community or up to 40 years for state-defined disadvantaged community.

A critical component of maintaining and repairing aging water infrastructure is properly managing assets such as tanks, pipes and pumps. Through planning and conducting inventories, systems can maximize their infrastructure investments while minimizing the total cost of owning and operating them. To support this work, EPA has also released an updated State Asset Management Initiatives document. This document update, required by AWIA, allows states to learn about the various state asset management promotion initiatives.

Background

Since the DWSRF was established in 1997, the EPA has worked with the states to turn $20 billion of the American taxpayers' money into $38 billion in assistance to infrastructure projects that are delivering drinking water to thousands of communities across the country—especially in low-income communities and where public health risk is the highest. The Drinking Water and Clean Water State Revolving Funds (SRFs) play an integral role in President Trump's efforts to rebuild the country's aging water infrastructure while improving local water quality, creating jobs, and protecting public health. In 2018, the SRFs committed $9.6 billion in drinking water and clean water infrastructure loans and refinancing and disbursed $8.8 billion for drinking water and clean water infrastructure.

For more information visit: https://www.epa.gov/drinkingwatersrf and https://www.epa.gov/dwcapacity.

Federal Court Deals Airbnb a Blow in its Fight Against Local Regulations.

"This case is hugely significant," says one legal scholar.

Santa Monica, California scored a significant win in federal appeals court on Wednesday, with a ruling that promises to set a favorable precedent for local governments seeking to regulate home-sharing and short-term rental websites like Airbnb.

Affirming a lower court's decision, the U.S. 9th Circuit Court of Appeals rejected claims by Airbnb and HomeAway.com that the city's home-sharing regulations were illegal under a federal law that shields internet companies from legal risks they could face from third-party content. Similar cases are pending elsewhere.

"Now we have a precedent that really, really opens the door to regulation," said Abbey Stemler, a professor of business law at Indiana University and a leading scholar on the sharing economy.

"Why this case is hugely significant in my mind is it now creates a way for local governments to rein in these platforms," she added.

Santa Monica's ordinance, first passed in 2015 and amended in 2017, permits city residents who obtain a special license to host visitors in exchange for money for a period of less than 31 days, as long as the resident and visitor are both staying in the home.

It also imposes obligations on platforms like Airbnb: They have to collect and submit occupancy taxes, they have to disclose certain listing and booking information to the city, and they can't complete bookings for property not licensed and listed in a city registry.

Businesses are prohibited under the ordinance from collecting booking services fees for unlicensed, and therefore unlawful, short-term rentals.

The companies grounded their legal arguments against the local regulations in a 1996 federal statute known as the Communications Decency Act. Section 230 of that law provides legal protections for online entities that host or republish speech.

A basic example would be that a company providing an online forum would not be held liable for defamatory content posted by a user. But Stemler explained that in recent years the Communications Decency Act has been used in efforts to block regulation.

In the Santa Monica case Airbnb and HomeAway.com argued that the city's ordinance required them to monitor and remove third-party content and in doing so violated the Communications Decency Act, interfering with protections afforded to them under the federal law.

The content monitoring and removal referenced here would have to do with actions the companies may have taken to check that properties appearing on their websites were included in the city's short-term rental registry and removing property listings if they were not.

"While we acknowledge the Platforms' concerns about the difficulties of complying with numerous state and local regulations, the CDA does not provide internet companies with a one-size-fits-all body of law," the 22-page opinion by Judge Jacqueline Nguyen says.

"Like their brick-and-mortar counterparts, internet companies must also comply with any number of local regulations concerning, for example, employment, tax, or zoning," it adds.

The decision points out that the ordinance does not force the companies to review the content of property listings, or to remove them. Instead it prohibits the processing of transactions for properties that don't meet registry and licensing requirements.

An analogy Stemler offers is that if a company hosted a website listing cocaine dealers and took a fee for each sale, the activity would not be protected under Communications Decency Act.

"That final step of processing the transaction is what Santa Monica is saying is not protected by the CDA," she added.

The companies also leveled some claims against the ordinance under the First Amendment. But the district court concluded that the local law regulated conduct, not speech. The appeals court agreed, saying it concerned "nonexpressive conduct—namely, booking transactions."

Airbnb did not respond to an emailed request for comment on Wednesday. The Santa Monica case is not the only time the tech firm has tangled with local governments over regulations.

Around the same time the company began its court battle over the Santa Monica rules it also challenged a similar ordinance in San Francisco. That case concluded with a settlement in 2017 and the company agreeing to follow an amended set of regulations.

In January, a federal judge ruled in favor of Airbnb and HomeAway in a New York City case, issuing a preliminary injunction that blocked city regulations from taking effect while the litigation continues.

A day later, Airbnb filed a lawsuit in a Florida federal court over Miami Beach's short-term rental restrictions. And last November the company sued Boston over its rules.

Some of the arguments the company has made in the Miami Beach and Boston cases hinge on the Communications Decency Act.

Route Fifty

By Bill Lucia,
Senior Reporter

MARCH 13, 2019

[What to Consider When Budgeting Cloud Migration at the Municipal Level.]

Learn how calculating costs and forecasting future savings when budgeting cloud migration can help your local government realize tech modernization.

Budget requests for technology investments hold the promise of running government more efficiently at a reduced cost by improving resource management, processes and decision-making, according to the report, "Transforming Government Through Technology," developed in 2018 to counsel federal operations in digital modernization.

In the report, the Technology CEO Council (TCC) recommended cost-reduction estimates over a 10-

year period be used to justify investments in federal workforce, processes and technology tools.

Likewise, civic technology applications that do not have a clear revenue stream often require creative thinking, and potentially a reform of local procurement processes. But budgets can be used to tackle the issue, according to “The Civic Technology Landscape,” a 2015 report by the Urban Sustainability Directors Network.

Continue reading.

efficientgov.com

by Andrea Fox

April 1, 2019

Fitch Feedback Report on Discussion Paper: Short-Term Ratings

Read the Report

Fitch Publishes Exposure Draft On New Short-Term Rating Criteria.

Fitch Ratings-London-22 March 2019: Fitch Ratings has published an exposure draft proposing new criteria for short-term ratings across its corporate, financial institution and public finance portfolio. The proposals follow a major review of the function and utility of our short-term rating scale, begun in August 2018 with the publication of a discussion paper and a broad-based market dialogue, which has helped shape our proposed, expanded approach to a short-term scale for today’s capital markets.

The proposed criteria revisions would amend our correspondence table between Long- and Short-Term IDRs to provide a substantially more differentiated analytical view of short-term risk between issuers. More specifically, we propose increasing the number of long-term ratings that can correspond to more than one short-term rating to five from three, by permitting Long-Term IDRs of ‘A’ to correspond to ‘F1+’ (in addition to the existing ‘F1’ mapping) and Long-Term IDRs of ‘BBB+’ to correspond to ‘F1’ (in addition to the existing ‘F2’ mapping).

The new proposed criteria would also reflect the greater granularity now present in our asset class criteria, compared with criteria in effect at the time of the original introduction of the short-term scale. Consequently, the exposure draft proposes specific short-term oriented analytical factors that would be used as the primary elements to distinguish between short-term ratings at crossover points.

We have also published a summary of feedback received during our market dialogue on alternative approaches to the current short-term rating scale. As well as responding to different options discussed with the market, this paper outlines some of the logistical issues associated with the proposed revised criteria.

The exposure draft contains an assessment, by sector, on the estimated potential impact of the proposed criteria. The short-term ratings of any issuers whose ratings we believe will be affected by the finalised change in criteria will be individually placed Under Criteria Observation (UCO) upon publication of the final criteria, at the conclusion of the exposure draft period. No long-term ratings will be affected by this proposed criteria change, and we also do not currently expect any impact on any money market fund ratings, where short-term ratings serve as inputs to the rating process. We intend to conclude resolution of all eventual UCO designations within six months of the publication of final criteria. The new criteria would apply cross-sector at the point of finalisation, and sector criteria would be updated to reflect the approach in the course of scheduled sector criteria updates.

Fitch invites feedback on the proposed criteria from market participants. Comments should be sent to criteria.feedback@fitchratings.com by 23 April 2019. Fitch will publish on its website any written responses it receives, in full, including the names and addresses of such respondents, unless the response is clearly marked as confidential by the respondent.

Contact:

Corporates
Richard Hunter
Global Group Head – Corporates
+44 20 3530 1102
Fitch Ratings Limited
30 North Colonnade
London E14 5GN

Financial Institutions
Alan Adkins
Managing Director
+44 20 3530 1709

Public Finance
Dennis Pidherny
Managing Director
+1 212 908 0738

Nicolas Painvin
Managing Director
+33 1 44 29 91 28

Sovereigns
Tony Stringer
Managing Director
+44 20 3530 1219

Supranationals
Arnaud Louis
Senior Director
+33 1 44 29 91 42

Infrastructure & Project Finance
Stephane Buemi
Senior Director

+44 20 3530 1236

Fund & Asset Managers
Alastair Sewell
Senior Director
+44 20 3530 1147

Media Relations: Peter Fitzpatrick, London, Tel: +44 20 3530 1103, Email:

peter.fitzpatrick@thefitchgroup.com
Adrian Simpson, London, Tel: +44 20 3530 1010, Email: adrian.simpson@thefitchgroup.com
Louisa Williams, London, Tel: +44 20 3530 2452, Email: louisa.williams@fitchratings.com

Additional information is available on www.fitchratings.com

Fitch Ratings: Updated U.S. Public Finance Tender Option Bond Criteria

Fitch Ratings-New York-22 March 2019: Fitch Ratings has published the following updated report: "U.S. Public Finance Tender Option Bond Rating Criteria." This report updates the prior report published on March 28, 2018. The key elements of Fitch's tender option bond rating criteria remain consistent with those of its prior criteria report.

Contact:

Joseph Staffa
Senior Director
+1-212-908-0829
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Dennis Pidherny
Managing Director
+1-212-908-0738

Media Relations: Sandro Scenga, New York, Tel: +1 212 908 0278, Email:
sandro.scenga@thefitchgroup.com

Additional information is available on www.fitchratings.com

Record High Value a Cause for Concern for Muni Bond Bulls.

Sean Carney, head of municipal strategy and primary markets at BlackRock, discusses record high valuations in the municipal bond market. He speaks with Bloomberg's Taylor Riggs in this week's "Muni Moment" on "Bloomberg Markets."

Watch video.

Bloomberg MarketsTV Shows

March 20th, 2019

Municipal Bonds Off to Best Yearly Start Since 2014.

- **Muni-debt funds have raked in cash steadily since early Jan.**
- **Tax-exempt bond returns are twice as high as Treasuries**

State and local-government bonds are headed for their strongest start to a year since 2014, propelled by an influx of cash into municipal-debt mutual funds as investors seek out tax havens and the Federal Reserve holds off on interest-rate increases.

The securities have returned 1.8 percent in 2019, putting them on track for the best first-quarter showing in five years. That's roughly double the gain for Treasuries, according to Bloomberg Barclays indexes.

The outperformance has been driven in part by a push among investors to cut their tax bills after the new limit on state and local deductions was ushered in, a trend that Bank of America Corp. analysts said they expect to continue. The Fed's decision to step back from tightening monetary policy is also boosting fixed-income investments.

"SALT is creating elevated demand, especially on the two coasts," said Michael Pietronico, chief executive officer of Miller Tabak Asset Management. "The perception that the Federal Reserve is on hold has helped pull cash off the sidelines."

Investors have added about $12.6 billion to municipal-bond mutual funds since early January, with about $1.6 billion sent in during the week ended March 13, the tenth straight weekly gain, according to Lipper US Fund Flows data. At the same time, the pace of new bond issuance hasn't kept up with demand, analysts say, a factor that helped push the prices of top-rated 10-year bonds earlier this month to their highest against Treasuries since at least 2001.

"We expect demand to remain strong, supply to remain light – it's going to be a struggle to find value," said Pietronico, who anticipates that municipal bonds will return from 3 to 4 percent this year. "As the year progresses, we think it will get more brutal."

Bloomberg Markets

By Claire Ballentine

March 18, 2019, 10:30 AM PDT

How to Survive the Zombie LIBOR Apocalypse: Saul Ewing

They're out there now, in small towns and big cities, getting ready to rise up and wreak financial havoc on unsuspecting bond issuers and borrowers. Unless they're sought out early and neutralized, the zombie LIBOR interest rates could take a big bite out of municipalities, hospitals, colleges and other institutions and borrowers with outstanding

bonds, loans or swap contracts bearing interest rates tied to LIBOR.

It's already fairly well known that LIBOR, the London interbank offered rate, is being phased out as a reference rate. By the end of 2021, LIBOR will be replaced with another, as yet undetermined, reference rate or rates. Bank regulators in the United Kingdom and the United States have realized, belatedly, that LIBOR never was an efficient or fair way to set international benchmark interest rates. LIBOR is basically an average of what a small number of banks estimate on a daily basis to be their cost to borrow unsecured funds from each other in different currencies across different time periods. These unregulated self-reported estimates (or, more accurately, educated guesses based on an extremely small number of unsecured interbank lending transactions) are not based on actual transactions and, being free from governmental oversight or transparency, were ripe for inaccuracies and even manipulation.

Following some headline-grabbing charges of LIBOR-rigging by large banks, LIBOR's days were numbered, and the British authority overseeing LIBOR announced that, after 2021, it will no longer persuade or compel banks to submit estimates for the determination of LIBOR. The only question left then was what would replace LIBOR – or would a seemingly undead LIBOR continue to control interest rates as Zombie LIBOR?

Beware the Zombie LIBOR

LIBOR is now, in effect, a dead rate walking. The plan is that LIBOR will cease to exist as a benchmark interest rate at the end of 2021, but many imaginative market observers are calling it a "Zombie LIBOR", because it's not really alive now, and it may not really be dead after 2021. As mentioned above, LIBOR is no longer considered to be a reliable benchmark rate, and may become even less reliable as fewer banks provide LIBOR estimates and others move to alternate interest rates. Issuers and borrowers may begin to wonder whether their existing LIBOR-indexed bonds, notes or swap instruments actually reflect the real cost of borrowing money. Issuers and borrowers entering into new transactions may eschew LIBOR altogether in favor of another benchmark rate, without waiting for 2022 to roll around.

However, because so many currently outstanding bonds, loans and swap transactions have LIBOR baked into them, with no easy way to switch to another interest benchmark or comparable interest rate, it's possible that LIBOR may need to stay around even after 2021 in order to provide these "legacy" deals with a benchmark interest rate, no matter how unreliable. Some legacy deals with maturities extending beyond 2021 may have no other good choice but to stick with a zombified LIBOR, even as new deals and other legacy deals have switched over to another, more nimble, benchmark rate. LIBOR, kept artificially alive by a small number of reporting banks, would then go head to head with another rate, or rates, until the legacy deals all mature or find a way to provide an alternate benchmark rate.

SOFR to the Rescue?

In the United States, a committee convened by the Federal Reserve Bank to study LIBOR replacements recommended the adoption of an alternative interest rate benchmark tied to U.S. treasuries-backed repurchase agreement market from actual market transactions. The recommended rate – called the Secured Overnight Financing Rate, or SOFR – represents rates that banks are able to fund overnight on a basis secured by U.S. government debt. The Federal Reserve Bank of New York has been publishing SOFR on a daily basis since April 3, 2018.

As a benchmark for determining interest rates, SOFR has some structural advantages over LIBOR. SOFR is an overnight secured rate based on actual Treasury transactions, changing daily, whereas

LIBOR is an unsecured rate based on bankers' estimates of future rates, which means that SOFR is much less susceptible to manipulation and abuse than LIBOR. LIBOR is based on unsecured loans and, therefore, builds in a risk premium; SOFR is a secured rate, with no risk premium, so SOFR generally produces a lower rate than LIBOR and is considered less volatile than LIBOR. And who knows what could happen to LIBOR if, or when, Brexit becomes a reality? So far, it appears that SOFR is the heir apparent as the benchmark interest rate in the U.S. following LIBOR's ultimate demise, assuming LIBOR really does go away.

Who's in Harm's Way?

For decades, LIBOR has been ubiquitous in lending and swap transactions. In the public finance sector, many state, county and local issuers, school and park districts, conduit 501(c)(3) borrowers such as hospitals and colleges, and conduit private activity bond borrowers have issued bonds or entered into loan or letter of credit transactions which provide that interest is to be determined by reference to a floating LIBOR rate (of usually 30, 60 or 90 days), together with an "applicable margin" or spread expressed as a percentage or basis points. LIBOR may be used in determining a taxable rate or tax-exempt rate, or both, and borrowers may have the option to convert floating LIBOR rates into floating prime or fixed rates, and then back again.

Issuers and borrowers have also been frequent participants in swap transactions, under which the issuer or borrower pays a fixed rate of interest to a counterparty and receives in return a floating rate as a percentage of LIBOR. In these transactions, the bonds are issued with a fixed rate, which is then exchanged with the swap counterparty for a LIBOR-based rate, so that the bondholders receive interest at a floating rate tied to some percentage of the applicable LIBOR.

Not only do issuers and borrowers need to concern themselves with the phase out of LIBOR, but banks, underwriters, placement agents, trustees, bondholders and other participants in the municipal bond marketplace will also be closely monitoring the looming battle between LIBOR and SOFR, and trying to determine which side to choose.

The Specter of a LIBOR Legacy

With 2021 staring down at them, bond issuers, conduit borrowers, banks and others are now facing LIBOR's demise from two distinct viewpoints – either those with existing, or legacy, transactions which have pegged interest rates to some fraction of LIBOR, or those entering into new deals with the full knowledge that LIBOR as we know it won't be around forever. For those entering into new floating rate transactions, being forewarned is being forearmed against Zombie LIBOR. As further discussed below, issuers, borrowers and banks can anticipate the phase out of LIBOR and draft their documents accordingly, such as by providing appropriate spread, trigger and fallback provisions. Those with legacy contracts referencing LIBOR, however, aren't so lucky. They will need to pour over their existing documents and get a handle on what happens to their interest rates once LIBOR is history.

Issuers and borrowers with legacy agreements for LIBOR-indexed debt maturing prior to the end of 2021 have, ostensibly, no great incentive to revisit their LIBOR agreements, yet they may wish to calculate whether the LIBOR-based interest rate they are currently paying has a real relationship to the actual cost of borrowing funds. They may discover that their LIBOR is a Zombie LIBOR untethered from reality. In that case, they might want to renegotiate for a lower interest rate – through a new benchmark rate, a new applicable margin, or both – for the remaining term of their LIBOR obligations.

On the other hand, issuers and borrowers with legacy agreements for LIBOR-indexed debt maturing after the end of 2021 have a pressing incentive to revisit their LIBOR agreements – and as soon as possible. These agreements contain the seeds of a Zombie LIBOR uprising which, left unchecked, could lead to uncertainty, higher interest rates and the municipal bond market version of panic in the streets.

The trouble with many legacy LIBOR contracts is that they didn't even bother to contemplate that LIBOR may go away someday, or else they contemplated only a temporary suspension of LIBOR quotes. Those legacy contracts which were sagacious enough to address the possible unavailability of LIBOR, no matter how short-term, usually provided for "fallback" language setting out an alternate benchmark rate to be used when LIBOR was not available.

These fallback provisions have taken many forms, and have set up a variety of alternate benchmark rates, ranging from choices like prime, some sort of fixed rate, some other floating rate determined by another index listed in the financial press, or a rate picked at random by a lender or bond trustee. Issuers and borrowers will need to scrutinize the fallback language, if any, in each of their legacy LIBOR contracts with an eye towards such critical issues as:

- **What's the alternative?** Does the fallback language clearly and unambiguously identify an alternate benchmark rate? Is the alternate benchmark rate readily ascertainable in today's market, and does the alternate benchmark rate accurately reflect the cost of borrowing money? If the fallback rate is the prime rate, the issuer or borrower will be facing a rate substantially higher than LIBOR. There's no sense in replacing a Zombie LIBOR with another unreliable rate, or a rate that gives one party a distinct advantage over the other.
- **Who's in charge?** The fallback language may give the lender, a bond trustee or some other party carte blanche to determine if LIBOR is indeed unavailable and what alternate benchmark rate is to be used in LIBOR's place. Does the issuer or borrower have any say in the matter? If it doesn't like the new alternate benchmark rate or the resulting new interest rate, can the issuer or borrower refinance or redeem without getting hit with a prepayment penalty?
- **What's the spread?** The fallback language in many legacy contracts may have described an alternate benchmark rate, but probably did not provide a mechanism for adjusting the applicable margin or spread in the event LIBOR is not available. Many legacy LIBOR documents set the interest rate for a bond or loan at a multiple of LIBOR – for example, 0.75 of LIBOR for a tax-exempt bond. As mentioned above, though, LIBOR is a risk-based rate and therefore runs higher than risk-free reference rates such as SOFR (which, being based on secured short-term transactions, will generally be a lower rate than LIBOR). A higher or lower applicable margin may be required so that the actual interest rate paid under LIBOR will be roughly comparable to the actual interest rate under the alternate benchmark rate. Issuers, borrowers and lenders may need to perform mathematical gymnastics to come up with a new spread to use with the new benchmark rate, but the end result should be that the actual interest rate charged to the issuer or borrower won't fluctuate wildly if and when an alternate benchmark rate replaces LIBOR.
- **How do we fix this?** There's a good chance that your legacy LIBOR contracts will have to be amended because the fallback provisions are absent, confusing or inadequate, or because the margin is too high or too low for the new alternate benchmark rate. But it may not be so easy to amend legacy contracts. Loan agreements with banks may require the bank's consent, or the consent of all or a majority of syndicated lenders. Indentures for bond issues may require the consent of all or a majority of bondholders. Issuers and borrowers should determine what consent, if any, is needed to amend legacy documents and, if so, can the required consent be readily obtained or waived?
- **But not so fast.** Amending legacy documents for tax-exempt bonds or loans could result in a "reissuance" for federal income tax purposes. The IRS considers a tax-exempt obligation to be reissued if there are what it deems to be "significant modifications" to the terms of the obligation

so that it ceases to be the same obligation as originally issued and is essentially a new obligation, unless the terms of the bond documents themselves provide for such modifications. A reissued tax-exempt bond or loan is subject to a re-testing of the requirements for tax exemption. At a minimum, a new Form 8038 will need to be filed with the IRS, bond counsel may be required to perform additional tax due diligence, and bond counsel, issuer's counsel and/or borrower's counsel may have to give new opinions. The bottom line is that bond counsel should always be consulted prior to any amendments of legacy documents for tax-exempt obligations.**Getting Around LIBOR Before It Goes Away**

While bond issuers, conduit borrowers and banks with legacy LIBOR deals will bear most of the brunt of the LIBOR phase out, that doesn't mean that structuring and negotiating new floating rate transactions is going to be a piece of cake for anyone. Those entering into new floating rate bond or loan deals will know the perils of going forward beyond 2021, and will need to be very careful in their negotiations over issues such as:

- **A workable alternative.** New contracts tied to LIBOR should provide for a definitive alternate benchmark rate to go into effect as soon as LIBOR is no longer available. As of early 2019, SOFR seems to be the leading contender for the new benchmark rate, but there are also good arguments in favor of the Federal Funds Effective Rate, especially with respect to swap contracts. Other benchmark rates may emerge as we get closer to 2021. The key thing is to not leave it to chance but instead have a workable, fair fallback benchmark rate waiting in the wings.
- **Who's pulling the trigger?** New contracts should also clearly state who is responsible for determining when LIBOR is no longer available, and how that party will make that determination. Should the new benchmark rate kick in on January 1, 2022, or can the new benchmark rate go into effect earlier, when someone, somewhere determines that LIBOR is nothing but a hollow zombie?
- **Setting the spread.** As discussed above, the spread or margin for LIBOR may not necessarily be the appropriate spread for another benchmark rate. For new contracts, the issuer/borrower and lender should agree on an appropriate spread for when the new benchmark rate goes into effect.

Become a Zombie LIBOR Fighter

The closer we get to 2021, the more likely it is that LIBOR will become a zombie interest rate. It won't reflect real-world interest rates and may wind up costing unwary issuers and borrowers a lot of money in interest rates that are substantially higher than the market rate.

However, you can – and must – fight back against the Zombie LIBOR infestation. First, identify all of your bonds, loans, swap contracts and other financial commitments which have interest rates tied to LIBOR. Then, review the appropriate documents for each deal to see how they handle LIBOR unavailability triggers, new benchmark interest rate fallback provisions, adjustments to the margin and the other issues discussed above. If there is a fallback mechanism, try to figure out what your new interest rate might be using the new benchmark rate multiplied by the appropriate margin (either the existing margin or a new margin corresponding to the new benchmark rate). Is the LIBOR-based rate and the currently specified margin higher or lower than the alternate benchmark rate that would replace LIBOR?

Most importantly, communicate with your lender, swap counterparty or bond trustee. You may need to renegotiate terms, restructure the debt or consider a refunding or refinancing. Also, seek the assistance of competent legal counsel, with up-to-date market experience, to help ward off Zombie LIBOR and guide you through the process of transitioning from LIBOR to the new interest rate benchmark.

by Randall Kulat

March 19, 2019

Saul Ewing Arnstein & Lehr LLP

S&P 2019 U.S. Municipal Green Bond & Resiliency Outlook: Will The Self-Labeled Market Rebound?

The U.S. municipal market for self-labeled green bonds bucked global trends in 2018 and declined for the first time since 2013, although this was in line with broader volume decreases in public financings reflecting tax law changes, which eliminated the ability of issuers to advance refund existing debt.

Continue Reading

Mar. 14, 2019

When Bond Funds Make Sense.

When Bond Funds Make Sense

Like mutual funds and exchange-traded funds, bonds and bond funds can help investors take the edge off market volatility and create a balanced, diversified portfolio. But a debate rages among people who worry about this stuff: Is it better to own individual bonds or bond funds?

The benefits of bond funds

With an individual bond, you get 100 cents on the dollar when it matures (assuming the issuer doesn't default). The knock on bond funds is that, because they are constantly buying and selling bonds, they have no maturity date. Therefore if rates are rising, the value of the fund goes down, and you might have to sell the shares for less than you paid.

While this criticism of bond funds is accurate, there are quite a few caveats. For starters, you'll need at least $500,000 in the bond portion of your portfolio to achieve sufficient diversity and the scale to absorb transaction costs. Short of that, you're better off in funds.

What's more, a bond fund can take advantage of rising rates by constantly buying bonds with higher coupons. But say you own a $10,000 bond paying 3% interest and rates rise to 4%. The semi-annual payouts of about $150 won't be enough to buy a new, higher-yielding bond.

And finally, while it's true you will get your money back if you hold a bond to maturity, you still suffered opportunity cost – you were unable to invest that $10,000 in a new, higher-paying bond without selling and taking the loss.

Continue reading.

Barron's

March 24, 2019 11:00 a.m. ET

Moody's: FEMA's Decision About California Dam Is a Signal to States and Localities

The federal agency may want governments to repair and replace aging infrastructure before it fails, but making California eat some of the repair costs could lead to more deferred maintenance on other projects, the ratings company said.

State and local governments can no longer assume the federal government will cover the costs of disasters it deems caused by deferred maintenance after California's request for $306 million to repair the Oroville Dam was denied, Moody's Investors Service said this week in a report.

Heavy rainfall damaged the Northern California dam's spillway in February 2017, and the resulting flood risk forced the evacuation of 180,000 residents.

The Federal Emergency Management Agency notified the California Department of Water Resources on March 7 that only $333 million of the $639 million the state requested for repairs would be reimbursed. FEMA argued preexisting structural issues with the upper spillway should have been addressed before it failed—declaring those repairs ineligible for at least 75 percent reimbursement.

A 2018 forensic report found systemic problems at the dam, starting with its design and construction but also with maintenance of the structure.

The state agency plans to appeal the decision to FEMA for itself and 29 local water contractors, wholesalers that supply treated water. But FEMA has made clear state and local governments should expedite repair or replacement of aging infrastructure before it fails, according to Moody's weekly credit outlook.

"Prior to the FEMA denial, localities might have anticipated reimbursement even for structures of uncertain storm preparedness," reads the report. "Having to demonstrate infrastructure sufficiency for natural disaster cost reimbursement by FEMA will increase the cost and complexity of local governments' disaster preparation and post-disaster recovery."

The agency doesn't intend to send messages with its decisions, Brandi Richard, spokeswoman for FEMA Region IX, told Route Fifty by email.

"We do encourage tribal, state, and local governments and homeowners to maintain and repair structures as a way to reduce the severity of damage caused by disasters," she added.

FEMA hasn't received the water agency's appeal yet, Richard said, and the appeals process could take up to 18 months. In the meantime, DWR plans to charge contractors $42 million over the course of 2019 for the repairs.

Should FEMA reject DWR's appeal, the department will either have to absorb the repair costs, probably by tapping reserves, or pass them onto contractors and ultimately ratepayers. That could result in higher-than-expected water bills for 27 million people, about 70 percent of California's population, according to the report.

Most of DWR's revenue, 50 to 55 percent, comes from the Metropolitan Water District of Southern California, which serves 19 million customers across Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura counties. The Metropolitan Water District's contract runs through 2035, and the district would likely be responsible for 45 percent of repair cost through that duration, according to the report.

DWR did not respond to a request for comment.

“We support [DWR] and recognize the agency has worked tirelessly to protect public safety and to successfully repair the Oroville spillways,” said Jennifer Pierre, general manager of the association State Water Contractors, in a statement given to The Sacramento Bee. “We firmly believe that federally-required repairs to Oroville after a federally-declared emergency should qualify for full federal assistance.”

To further offset costs, DWR may have to defer maintenance on other projects, according to the report, which could lead to another disaster.

“Our decisions to grant or deny funding are solely based on the laws and guidelines that govern our work,” Richard said. “It is not our agency’s intent to be unfair to our state and local partners. That’s why we provide subject matter experts to help them submit projects for reimbursement.”

Route Fifty

By Dave Nyczepir
News Editor

MARCH 22, 2019

A Closer Look at Environmental Impact Bonds.

How Are They Affecting Green Infrastructure?

Across the nation, countless cities with antiquated sewer and stormwater systems are under orders from the U.S. Environmental Protection Agency (EPA) to reduce stormwater runoff to decrease the amount of pollution entering local waterways. When Washington, D.C., faced this problem, city officials decided to experiment with green infrastructure rather than investing in expensive new pumps and pipes. Since green infrastructure had never been implemented on such a large scale, however, the city faced a huge challenge when it came to financing the project.

For the city, the solution was to launch the country’s first Environmental Impact Bond, or EIB. Considered a “pay for success” strategy, an EIB allows cities to share both the risks and the rewards of solving problems through innovative strategies with investors. They make it possible for governments, investors and other participants to focus on overall outcomes rather than specific activities, and they are proving successful.

What are EIBs, how do they work and how exactly are they affecting green infrastructure? Let’s take a closer look.

EIBs and How They Work

EIBs are instruments for financing large projects that pay returns based on outcomes. Like Green Bonds, they are commonly used to raise funding for environmentally sustainable projects, such as green infrastructure. Unlike Green Bonds, however, the financial return of the investment is tied directly to the success of the project. In other words, investors can only collect a return on their investment if the project proves to be successful. In the case of financing green infrastructure projects using an EIB, investors see a financial return when a demonstrable difference to the environment is achieved.

The current generation of investors cares about environmental and social returns as much as it cares about financial gain. Known as “impact investors,” these individuals and organizations are seeking environmental, social and financial returns when making investments. When a municipality decides to fund a green infrastructure project using EIBs, it seeks investors who want to help pay for environmental capital projects.

Once bonds have been issued, the issuer uses the obtained funds to pay for their planned green infrastructure solutions. The principal amount of the bonds and interest must be remitted on scheduled payment dates. Following an evaluation period, the issuer pays the investors an outcome profit when there is demonstrable proof that the project has performed better than expected. If it underperforms, however, the investor must pay the municipality a “risk-sharing” payment. This usually means that the investor receives little or no interest.

[RELATED — Sharing the Risks and Rewards: Examining the ‘Pay for Success’ Model of Environmental Impact Bonds]

What Is Green Infrastructure?

Green infrastructure, also sometimes referred to as GI, is an innovative approach to managing stormwater runoff. It utilizes natural processes, such as evapotranspiration and infiltration, to slow down stormwater to prevent it from overwhelming municipal sewer systems and polluting waterways.

Green infrastructure also harnesses the power of these natural processes to clean and sometimes reuse stormwater. There are several types of green infrastructure, but the overall goal is to replicate natural environments and make it possible to deal with rainwater and snowmelt runoff as naturally as possible.

Green infrastructure includes things like permeable pavements, bioretention and roof-top collection processes. Porous asphalt, pervious concrete, rain gardens, bioswales and tree boxes can all be used in green infrastructure processes as a means of allowing water to be absorbed naturally into the ground. Green roofs, rain barrels and cisterns serve as options for collecting or reusing rainwater and reducing runoff. Man-made wetlands are also common solutions for dealing with stormwater in urban and suburban areas.

Benefits of Environmental Impact Bonds for Green Infrastructure

Because green infrastructure solutions are relatively new and have not been tested in the long term, obtaining financing is often a major challenge for municipalities. Environmental Impact Bonds provide access to funding for projects that are normally difficult to finance. They may also make it possible to obtain financing faster by engaging new investors.

Green infrastructure projects are sometimes risky. Financing them through EIBs means that the risk is shared by municipalities and investors. This, of course, makes it easier for municipalities to embrace green strategies since they are not carrying the entire burden if a project fails.

How EIBs Are Affecting Green Infrastructure

There are more than 700 communities throughout the United States with combined sewer systems.

This means that stormwater and raw sewage flow through the same system before reaching a treatment facility. When these systems are overwhelmed, the combined sewage and stormwater ends up polluting local waterways. EIBs make it possible for municipalities facing this type of problem to fund environmentally friendly projects as solutions.

In the case of Washington, D.C., the original plan was a $2.6 billion tunnel system to keep overflow out of local rivers. Partway through the project, however, planners realized that green infrastructure initiatives would cost less ($25 million) while helping the city solve its wastewater problem. The country's first EIB made it possible to move ahead with this innovative project that may have otherwise been impossible to finance.

EIBs are having a huge impact on green infrastructure because they enable municipalities of virtually all sizes to embrace solutions like permeable pavement, green roofs and rain gardens. Financing such projects through traditional means is often challenging due to the unique risks involved with green infrastructure, but organizations are coming up with creative ways to implement greener infrastructure. For example, Atlanta won the first EIB Challenge supported by the Rockefeller Foundation and will be provided with $12.9 million worth of green infrastructure. With the help of creative financing, EIBs make it possible for municipalities to embrace these innovative, environmentally friendly and cost-effective alternatives to traditional stormwater management infrastructure.

A Unique Funding Option

The impact of paving over forests, meadows and wetlands has been seen on a massive scale across the nation. Through green infrastructure projects, however, many cities and communities are creating natural methods of dealing with stormwater runoff. Environmental Impact Bonds can provide a unique means of funding these projects, as they allow municipalities to share the risk with investors who are interested in environmental, social and financial returns on their investments.

Atlanta DWM completes first publicly-issued Environmental Impact Bond

Quantified Ventures, an impact investment firm, and Neighborly, a mission-oriented broker dealer, recently announced the issuance of the first impact bond to be offered on the public markets. The $14 million Environmental Impact Bond (EIB) gives the City of Atlanta Department of Watershed Management (DWM), access to funding for innovative green infrastructure projects that will address critical flooding and water quality issues, reduce stormwater runoff and enhance the quality of life of Westside neighborhoods that are in the Proctor Creek watershed.

The Atlanta EIB builds on the success of previous impact bond offerings in several ways. As a publicly issued bond, it has all the hallmarks of a traditional public municipal bond offering, such as a designated CUSIP number providing wide distribution and access to the secondary market, and has been highly rated by Moody's (Aa3) and S&P (A+). It is also designed to be priced competitively with other municipal bond offerings.

The Atlanta EIB is the second impact bond to be structured by Quantified Ventures as an actual municipal bond, the first of which, with the DC Water and Sewer Authority, was sold in a private placement. In its role in the Atlanta offering, Quantified Ventures brought expertise in evaluating all aspects of EIBs, which require an ability to translate desired outcomes into financial value that can be priced into a security and develop a rigorous evaluation process.

WATER FINANCING & MANAGEMENT

MARCH 25, 2019

Well, You're Going to Hear About Muni Bond Lawsuits: Joe Mysak

- **Price-fixing, collusion at the center of series of complaints**
- **Minnesota adviser, financial fraud powerhouse seek billions**

There was a scene in the “The Sopranos,’’ in which mob boss Tony dreams of talking to a fish. “I don’t want to hear it,’’ he tells the fish. “Well, you’re gonna hear it,’’ the fish replies.

That’s where we are right now with a series of lawsuits filed against a bunch of banks that served as remarketing agents for variable-rate demand obligations. Nobody wants to talk about it. Nobody wants to comment. Nobody really wants to hear about it. But you’re gonna hear about it.

There’s so much about this story that is without precedent. First there was the series of lawsuits filed by a whistle-blower on behalf of California, Illinois, Massachusetts and New York, alleging damages and penalties of at least $3.6 billion.

These lawsuits allege that the banks didn’t price and remarket VRDOs individually, as they promised, but used something called “robo-resetting,’’ basically pricing them as if they were all alike in big buckets. The lawsuits also allege that Wall Street institutions conspired to keep the prices high enough that investors would never put them back, thus saving banks the trouble of having to find new buyers.

Then there was a big antitrust lawsuit filed in the Southern District of New York by Philadelphia, represented by famed financial fraud powerhouse Quinn Emanuel Urquhart & Sullivan. This referenced the whistle-blower as well as its own analysis, alleging that seven banks named in the complaint colluded to inflate prices on VRDOs. The lawsuit also specifically mentioned that the SEC and the Department of Justice were looking into the whistle-blower’s allegations, seeking unspecified damages and penalties in the “billions’’ of dollars.

And then the whistle-blower, a Minnesota adviser named Johan Rosenberg, revealed himself because of a Massachusetts ruling requiring that only individuals, not corporate entities, could file False Claims Act lawsuits in the state. This was the last piece of the puzzle.

Where to begin? First, you don’t get a lot of whistle-blowers making allegations in the municipal bond market, then letting everyone know who they are. Second, you don’t get a lot of law firms of the caliber of Quinn Emanuel standing as plaintiff’s counsel in the municipal market. Finally, of course, there’s the “billions” — probably the least interesting part about all of this, although it’s what will get headlines.

We’re still only at the very beginning of a process that will presumably take years, marking another gruesome episode in public finance. And yes, I know: You don’t want to hear it.

Bloomberg Business

By Joe Mysak

March 19, 2019, 7:03 AM PDT

Ex-Citadel Quants are Gunning for the $3.8 Trillion Muni Market.

- **Headlands responds to 13,000 municipal bond auctions a day**
- **Greater adoption of electronic trading in munis boosts quants**

The quants are coming for the $3.8 trillion municipal market.

Headlands Tech Global Markets LLC, a firm founded by former senior executives at Citadel LLC, is using complex mathematical formulas and powerful computers to buy and sell state and local government securities, seizing on the sometimes divergent prices in a market where the vast majority of bonds only rarely change hands.

Headlands' five-man band of algorithm-driven traders have become a major, if little known, force in the industry, bidding each day on about 13,000 municipal securities that are put up for sale on electronic trading platforms. That's placed it among a group of companies that are bringing technology that has swept through other corners of Wall Street to state and local-government debt trading, challenging a long-held view that a market that finances everything from factories to state governments requires detailed research to gauge prices.

"This idea that every bond is a unique snowflake and a story — they say 'balderdash'," Paul Daley, a managing director at BondWave LLC, a financial technology company, said of Headlands' approach. "All these bonds are mathematical equations, and if we can model it, we can price it."

The emergence of Headlands comes as quantitative trading firms are stepping into a gap left by securities dealers, who are holding less debt in inventory and concentrating instead on fulfilling orders for customers. The shift by dealers was spurred in part by regulatory requirements ushered in after the 2008 financial crisis that increased their cost of capital, prodding them to cut their holdings of state and local-government debt by about 60 percent since 2006, according to Federal Reserve Board statistics.

Generating Bids

"The algorithms and technology are bringing more liquidity into the market, which is a good thing," said Brad Winges, chief executive officer at Hilltop Securities in Dallas. "It's giving more transparency to the individual retail investor."

Matt Andresen, a former co-chief executive at Citadel Securities, the New York Stock Exchange's largest designated market maker, founded Headlands in 2010 with Jason Lehman, who ran Citadel's global options business, and Neil Fitzpatrick, former chief operating officer of Citadel Execution Services.

They were joined in 2013 by Martin Mannion, who had succeeded Fitzpatrick at Citadel. Headlands started trading municipal bonds in 2014 and focuses its computer-driven approach on lots of $100,000 or less, which represent about 80 percent of daily trade volume, though it also trades large blocks as well.

The Chicago-based firm executes more than 1,000 trades a day and had an inventory of $400 million, Andresen, Headlands' chief executive officer, told a fixed-income market structure panel in April 2018. He said the firm's technology can generate prices on more than 700,000 bonds.

"We felt like given our experience providing liquidity to retail-sized orders in other asset classes, even though munis were very different, that we could potentially add value as a liquidity provider," Mannion said in a phone interview. He declined to disclose Headlands profitability.

Ripe Market

Even with such approaches, the municipal market is unlikely to ever be as uniform as the stock market. The over-the-counter municipal bond market has more than 900,000 separate securities issued by tens of thousands of municipalities, with a big chunk of them held by buy-and-hold individual investors.

In 2011, about 99 percent of the market's bonds didn't trade on any given day, according to a report from the U.S. Securities and Exchange Commission. Last year, daily trades averaged 40,400, about half of which had a value of $25,000 or less, according to the Municipal Securities Rulemaking Board.

Yet, several factors have made the the market ripe for the type of quantitative trading that's already got a major hold on the stock market.

The release of same-day trading prices since 2005 has given firms like Headlands more than a decade of data that can now be used to build pricing models, while electronic trading platforms have increasingly displaced the old-fashioned practice of executing trades over the phone. Regulations enacted in 2016 that require brokers to seek the best prices available has also led them to expose bonds to a large number of bidders on such trading platforms.

Win or lose, through the auction process Headlands gets feedback that allows it to refine its pricing models. Automation allows the firm to respond, in periods of volatility, to a spike in the number of auctions, which would be difficult for an individual trader to do manually.

What makes Headlands different from banks such as Citigroup Inc. and Royal Bank of Canada, underwriters that also use such techniques, is that the company doesn't handle new securities offerings and focuses mostly on small lots of bonds. Quantitative tools have allowed the big banks to free up traders to focus on block trades of more than $1 million, where relationships with counterparties are important.

Winges, a former senior executive at Piper Jaffray Cos. who took over as Hilltop's CEO last month, said the firm is spending more money on data aggregation and trading capability for clients. But he said computers won't replace humans on the trading floor.

"If you want to compete, the perfect combination is technology with historical knowledge," Winges said. "You can have the greatest quant model and still lose money and you can have the smartest trader — but not have a lot of technology — and he or she is going to lose money, too."

Bloomberg Markets

By Martin Z Braun

March 19, 2019, 5:11 AM PDT

[Quants in the Muni Market Show Bond Liquidity Will Be Fine.]

Debt markets continue to evolve in an era of diminished Wall Street influence.

At least one quantitative trading firm thinks it has finally cracked the code to the widely idiosyncratic, infrequently traded, largely individual investor-based U.S. municipal bond market.

Bloomberg News's Martin Z. Braun has the scoop:

> Headlands Tech Global Markets LLC, a firm founded by former senior executives at Citadel LLC, is using complex mathematical formulas and powerful computers to buy and sell state and local government securities, seizing on the sometimes divergent prices in a market where the vast majority of bonds only rarely change hands.
>
> Headlands' five-man band of algorithm-driven traders have become a major, if little known, force in the industry, bidding each day on about 13,000 municipal securities that are put up for sale on electronic trading platforms. That's placed it among a group of companies that are bringing technology that has swept through other corners of Wall Street to state and local-government debt trading, challenging a long-held view that a market that finances everything from factories to state governments requires detailed research to gauge prices.
>
> "This idea that every bond is a unique snowflake and a story — they say 'balderdash'," Paul Daley, a managing director at BondWave LLC, a financial technology company, said of Headlands' approach. "All these bonds are mathematical equations, and if we can model it, we can price it."

Continue reading.

Bloomberg Opinion

By Brian Chappatta

March 19, 2019, 10:15 AM PDT

Brian Chappatta is a Bloomberg Opinion columnist covering debt markets. He previously covered bonds for Bloomberg News. He is also a CFA charterholder.

Legal Insight - Summary And Analysis Of The Water Infrastructure Improvement Act

Background

Over the last several decades, cities and other municipal entities (such as water reclamation districts) that own and operate wastewater treatment plants and sewer systems have been subjected to additional and increasingly stringent regulatory requirements under the Clean Water Act (CWA).

These requirements emanate from several distinct CWA programs, including those that address control of nutrients and other discharges from municipal treatment plants (also called publicly owned treatment works, or POTWs); systems that combine domestic effluents and stormwater (which give rise to combined sewer overflows, or CSOs); municipal separate storm sewer systems

(MS4s); wasteload allocations in total maximum daily loads (TMDLs); and other CWA requirements. Each of these requirements is imposed independently, but the combined impact on the municipal operations, and on the financial status of the community and its residents, can be enormous.

To address these municipal concerns, EPA, in 2012, adopted a policy that allows municipalities to do an “integrated plan” or an IP. In an IP, the municipality can assess all of the CWA requirements that apply to its operations and prioritize them in a manner that seeks to maximize the environmental benefit from using the available resources. Several communities (including Lima, Ohio; Springfield, Massachusetts; and Evansville, Indiana) have used the IP process and have found that it can help them reduce their economic burdens while better protecting water quality.

However, broad implementation of the IP process has not proceeded quickly. Many communities have found that EPA Regions and States within which they operate are hesitant to use this new mechanism. Also, without clear statutory authorization, there is some concern about the long-term stability and continuity of the program. To address these concerns and to provide clear legal authority for IPs, Congress passed the Water Infrastructure Improvement Act – H.R. 7279, now Public Law 115-436, which provides Congressional support for use of the IP process on a long-term basis. The president signed the act into law on Jan. 14, 2019.

The new law’s IP provisions ensure that each community must be informed by their permitting authority (in most cases, the State) that it has the opportunity to develop an IP that can be incorporated into its CWA permit. The permit can then incorporate all regulatory requirements addressed in the IP – and may include projects to reclaim, recycle or reuse wastewater, as well as green infrastructure measures. IP permits can contain compliance schedules, which can last longer than one permit term. IPs can also be developed by communities in enforcement actions, and communities that develop IPs can request that their enforcement orders or decrees be modified based on the provisions in the IP. To ensure that EPA is held accountable for the effective implementation of the IP program, the Agency has to prepare a report to Congress on IPs, and make that report publicly available, within two years after the new law was enacted. The report must contain information on all IPs developed and implemented since EPA’s guidance was issued in 2012.

In addition to codifying the IP process, the new law also contains provisions that promote the use of “green infrastructure” measures, such as porous pavement and green roofs. Many communities have sought to use these measures to reduce stormwater discharges without the need to build extensive and costly “gray infrastructure” (GI) systems, such as storage tanks and underground tunnels. However, implementation of GI concepts by EPA and other federal agencies has been inconsistent – sometimes encouraging and promoting their use, and sometimes imposing such extreme restrictions on their implementation that communities simply build gray systems instead. The GI provisions in the Water Infrastructure Improvement Act are intended to require EPA to work actively to promote GI use (within existing legal authorities), and to coordinate the GI policies that are being implemented by EPA offices and other agencies.

In navigating the myriad CWA requirements that are imposed on their operations, municipalities have often found it difficult to have their community-specific concerns heard by EPA. They have also found it challenging to access financial information and other resources that are available to them through EPA. Therefore, the new law includes one other provision: it creates a new office at EPA for a Municipal Ombudsman. The ombudsman’s office will assist municipalities by providing them with information and assistance, and will also have the responsibility of providing information to EPA Administrator to ensure that the Agency policies as to CWA obligations of municipalities are consistently implemented by all EPA offices, including EPA Regions.

Specific Provisions of New Law

1. Integrated Planning

- EPA (or the State if the State has been delegated a National Pollutant Discharge Elimination System NPDES permit authority) must inform communities of the opportunity to develop an integrated plan that may be incorporated into the municipality's permit.
- A permit incorporating an integrated plan may integrate all regulatory requirements addressed in the plan, including requirements related to: (1) a combined sewer overflow, (2) a capacity, management, operation and maintenance program for sanitary sewer collection systems, (3) a municipal stormwater discharge, (4) a municipal wastewater discharge, and (5) a water quality-based effluent limitation to implement an applicable wasteload allocation in a total maximum daily load.
- An integrated plan incorporated into a permit may include the implementation of (1) projects, including innovative projects, to reclaim, recycle, or reuse wastewater; and (2) green infrastructure.

2. Compliance Schedules in Integrated Planning Permits

- A permit incorporating an integrated plan can contain a compliance schedule, which can be longer than one permit term if the compliance schedule is authorized by the State water quality standards and meets the requirements of EPA regulation concerning compliance schedules, 40 CFR 122.47.
- The requirement in EPA regulations (40 CFR 122.47) for compliance by an applicable statutory deadline does not prohibit implementation of an applicable water quality-based effluent limitation over more than one permit term.
- Nothing in the CWA provision regarding compliance with water quality-based requirements (Section 301(b)(1)(C)) precludes including a compliance schedule in an integrated planning permit.
- A compliance schedule can be reviewed each time that the permit is renewed, to determine whether the schedule should be modified.

3. Implementation of Integrated Plans Through Enforcement

- In any CWA enforcement action relating to municipal discharges, EPA must inform the municipality of the opportunity to develop an integrated plan.
- Any municipality under a CWA administrative order or settlement agreement (including a judicial consent decree) that has developed an integrated plan may request a modification of the order or agreement based on the integrated plan.

4. Report to Congress on Integrated Plans

- Within two years after enactment, EPA must submit a report to Congress on integrated plans, which must contain information regarding each integrated plan that has been developed and implemented under the CWA since the publication of EPA integrated planning framework in 2012. The report must also be made publicly available.

5. Municipal Ombudsman

- An Office of Municipal Ombudsman has been created at EPA.
- The ombudsman will have duties that include providing technical assistance to communities seeking to comply with the CWA, and providing information to the administrator to help ensure that Agency policies are implemented by all EPA offices, including Regional offices.
- The ombudsman will work with headquarters and Regional offices to ensure that communities are provided information about available federal financial assistance, about flexibility available under the CWA, and about the opportunity to do an integrated plan.

- The ombudsman will publish, on EPA's web site, general information related to technical and financial assistance to municipalities, flexibility available under the CWA, and resources developed by EPA related to integrated plans.
- The ombudsman will also publish on the website, a copy of each permit, order, or judicial consent decree that implements or incorporates an integrated plan.

6. Green Infrastructure

- EPA must promote the use of green infrastructure in, and coordinate the integration of green infrastructure into, CWA permitting and enforcement, planning efforts, research, technical assistance, and EPA funding guidance.
- EPA must ensure that the Office of Water coordinates efforts to increase use of green infrastructure with other federal agencies, State, tribal and local governments, and the private sector.
- EPA must direct each Regional office, as appropriate based on local factors, and consistent with the requirements of the CWA to promote and integrate the use of green infrastructure within the Region, including outreach and training, and incorporation of green infrastructure into permitting and other regulatory programs, codes, and ordinance development, including requirements under consent decrees and settlement agreements in enforcement actions.
- EPA will promote green infrastructure information sharing, including through a web site.

7. Savings/Transition Provisions

- Nothing in the integrated planning provisions reduces or eliminates available flexibility under the CWA, including the authority of a State to revise a water quality standard after a Use Attainability Analysis, subject to EPA approval.
- A compliance schedule issued in a permit shall not revise a compliance schedule in a judicial order or decree resolving a CWA enforcement action to be less stringent, unless the order or decree is modified by agreement of the parties and the court.
- Nothing in the integrated planning provisions modifies any obligation to comply with applicable CWA technology and water quality-based effluent limitations.

Analysis of New Provisions and Practical Impacts

The Water Infrastructure Improvement Act provides several tools that municipalities can use to improve their programs for CWA compliance – to make them more effective, less confusing, and to reduce the onerous financial burdens on the communities and their ratepayers. Each community should, for example, consider carefully assessing whether developing an integrated plan will be useful to address its particular compliance obligations. The new law emphasizes incorporation of IPs into permits, rather than enforcement orders or decrees, so each community doing an IP will want to explore use of the permit mechanism rather than the enforcement tools that are usually used by EPA and the States. In developing IP permits, long-term compliance schedules should now be available for use, to ensure that the community has enough time to implement its compliance requirements in a reasonable and affordable manner. Also, the community should be able to include innovative projects in its IP, including reclaim/reuse/recycle programs and green infrastructure measures.

Beyond use of the IP process, communities should be able to utilize other opportunities provided by the new law, whether they are developing an IP or dealing with their CWA issues in another way. To the extent that the community wants to use green infrastructure, for example, it can now point to the clear congressional message that EPA should be promoting – not discouraging – use of GI measures. And, even if it is not using GI or developing an IP, a community can seek the help of the new ombudsman if it encounters difficulties in dealing with EPA demands, or if it needs assistance in accessing EPA financial or informational resources.

Role of Barnes & Thornburg in Assisting Communities

The law firm of Barnes & Thornburg – and its Water Team – has assisted many communities in addressing their CWA compliance and enforcement issues.

In 2010, the Water Team began working with the U.S. Conference of Mayors in its efforts to craft solutions to the CWA challenges faced by its members. In that capacity, members of the team were closely involved in the Conference of Mayors' work with EPA to develop the Agency's integrated planning policy. During the development of that policy, the Water Team convened a group of municipalities that were interested in integrated planning ideas – the Municipal Integrated Planning Alliance (MIPA) – and through that group, participated in EPA meetings and submitted detailed comments on EPA draft policies. Once EPA issued its policy, the Water Team began working with communities to develop IPs, and succeeded in obtaining the first EPA approvals of final IPs. Subsequently, as IP issues began to be debated in Congress, the members of the Water Team participated in drafting proposed legislation. During the legislative process, the team lawyers represented the National Association of Clean Water Agencies (NACWA), and worked in cooperation with the Conference of Mayors and other municipal groups, in developing and obtaining passage of the final bill.

Our Water Team has deep knowledge of the Water Infrastructure Improvement Act because of our direct involvement with the bill. With that knowledge, the Water Team assists clients with how those provisions can be used to address their specific challenges, how to develop detailed IPs, and how to engage with EPA and State agencies to secure approval of IPs.

For more information about the new CWA provisions, please contact the Barnes & Thornburg attorney with whom you work, practice lead of the firm's Water Team, Fred Andes, at 312-214-8310 or fandes@btlaw.com, or chair of the firm's Environmental Law Department, Erika Powers at 312-338-5904 or epowers@btlaw.com.

1https://www.epa.gov/sites/production/files/2015 10/documents/integrated_planning_framework.pdf.
2https://www.congress.gov/115/bills/hr7279/BILLS-115hr7279enr.pdf

Barnes & Thornburg LLP

by Fredric P. Andes and Erika K. Powers

March 19, 2019

[On the Intersection of Competition Law and Local-Government Conduct .]

This post studies an interesting question in competition law: can a local government be sued for money damages based on a federal antitrust violation?

The answer is "no," according to a recent decision from a federal court in Charlotte. *Benitez v. Charlotte-Mecklenburg Hospital Authority* is one of several high-profile antitrust cases involving Atrium Health, the large public-hospital system in Charlotte.

Raymond Benitez had inpatient care at Atrium. After insurance, Mr. Benitez faced a $3000 medical bill.

Mr. Benitez's insurer had an agreement with Atrium. That agreement included what are known as steering restrictions. These restrictions limited an insurer's ability to direct subscribers—like Mr. Benitez—to healthcare providers other than Atrium.

These facts prompted a putative class action. The complaint alleges that the steering restrictions unlawfully drive up prices for inpatient services, inflate the amount of co-insurance that patients must pay Atrium, and thereby violate the federal antitrust laws. The putative class sought money damages and an injunction to stop Atrium's steering restrictions.

Atrium moved for judgment on the pleadings. It argued that a federal statute called the Local Government Antitrust Act barred the claim for monetary damages. The Act provides local governments with absolute immunity against monetary damages brought under section 4 of the Clayton Act.

In its opening brief, Atrium emphasized that it functions as a political subdivision of the state—and that it was created to serve a public purpose. Atrium pointed to numerous cases that have applied the Act to hospitals based on those features.

Judge Robert J. Conrad, Jr. agreed.

Judge Conrad began his analysis by looking at the Act's definition of "local government." That definition includes any "special function governmental unit established by State law in one or more States."

Judge Conrad then noted that courts have broadly construed this definition. That broad construction means that the Act applies to a wide range of decisions that any local-government entity makes.

And, to eliminate any doubt, Atrium is a local-government entity. The General Assembly created Atrium as a public-hospital authority under chapter 131E of the North Carolina General Statutes. Judge Conrad specifically cited section 131E-16(14), which defines a hospital authority as "a public body and a body corporate and politic organized under [North Carolina law]." He explained that the term "body politic" means "a body acting as government."

Judge Conrad then turned to Atrium's powers under the statute. Those powers, he observed, parrot the powers that the General Assembly gave to municipal hospitals under the same chapter. This similarity bears significance, because the Fourth Circuit has granted absolute immunity from antitrust damages to a municipal hospital established under chapter 131E.

By extension, Judge Conrad concluded, a public-hospital authority formed under chapter 131E is likewise immune from antitrust claims that seek monetary damages.

So the Act shields Atrium from claims for money damages. But it does not shield Atrium from claims for injunctive relief.

Judge Conrad put the case on ice nonetheless. He did so because the same injunctive relief being sought in *Benitez* is also being sought in another pending case against Atrium before Judge Conrad. A stay in *Benitez* avoids duplicative litigation, and a resolution of the issues in the other case would resolve the issue in *Benitez*.

That resolution is coming soon, because the parties in the earlier case have reached a proposed settlement. That settlement stops Atrium from enforcing steering restrictions in its insurer contracts and bars Atrium from taking action that would prohibit, prevent, or penalize steering by insurers in the future.

Ellis & Winters LLP

byScottie Lee and Stephen Feldman

Legislation Introduced in the States Raises Privacy and Contracting Concerns.

At least 28 states have legislation pending that would require state vendors to use a software application that would track actual computer time by state vendors who bill for hours of work on computers. Monitoring by the software would include frequent screen shots and logging of key strokes, and the referred to technology is currently only being offered by one company.

An analysis by the Department of Finance and Administration in Arkansas finds that:

> The provisions in this legislation create significant issues with privacy and federal regulatory compliance. It is not possible to take a screen shot every three minutes and not capture individual and personal data. Key logging software would record everything including passwords, healthcare, and other personal information with no mechanism for redaction before being recorded or stored by the tracking software.

The National Association of State Chief Information Officers has issued the following statement.

> NASCIO, which represents state CIOs, opposes state legislation which would mandate contractor monitoring software because of the significant risks to citizen privacy and federal regulatory compliance concerns it could create. While NASCIO certainly supports contractor productivity, cost efficiency and successful project outcomes, legislation of this nature could introduce unnecessary risks to citizen data by essentially transferring ownership of private citizen data to a third party. This type of legislation also has the potential for unintended consequences, such as impacting a state's cybersecurity insurance policy coverage. State CIOs inherently understand and appreciate the seriousness of protecting citizens' data, and therefore do not support legislation that could serve to increase or introduce additional risk.

According to NASCIO, legislation has been introduced in the following states: Arizona, Arkansas, Colorado, Connecticut, Hawaii, Iowa, Idaho, Illinois, Indiana, Kansas, Louisiana, Maryland, Minnesota, Mississippi, Montana, Nebraska, New Jersey, New Mexico, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Texas, Virginia, Washington and West Virginia.

NASACT members should be aware that the software company seeking to have the legislation passed is billing it as an important fraud prevention and accountability tool. Your office may receive questions from your state legislators.

Questions should be directed to NASACT's Washington Office at (202) 624-5451.

S&P: With Oil Price Volatility, Recent Economic Gains In U.S. Oil-Producing States Are At Risk

Over the past year, economic performance among oil-producing states stabilized following a lingering economic downturn that began in mid-2014. A changing economic outlook and a wide range of fiscal adjustments resulted in an easing of the negative pressure facing overall state credit quality.

Continue Reading

Mar. 12, 2019

Creating a New Marketplace for Resilient Infrastructure Investment.

Summary of Contents

- Understanding the stormwater investment challenge and opportunity
- What do we mean by a resilience marketplace?
- Better define the environmental and economic benefits of more resilient infrastructure
- Develop technical understanding and capacity around new financing tools
- Scale innovation and realize market potential

Climate change is getting harder to ignore, from alarming new reports about its impacts to debates around a Green New Deal. Yet for all this attention, individual places—from the biggest cities to the smallest towns—are still struggling to do something about it.

An unpredictable climate should serve as a strong motivator for every community to better maintain its manmade and natural stormwater infrastructure to be more flexible and responsive. Increased flood risks are among the clearest challenges, with climate change already having generated billions of dollars in flooding costs. But as we saw in Houston during Hurricane Harvey—and in several other places along the Gulf Coast, Mississippi River, and beyond over the past few years—many communities currently have failing systems of water pipes, plants, and natural wetlands. Even more troubling is how communities cannot even handle runoff from daily rainfall, as well as additional pollution.

Communities need a new approach to accelerate investment in infrastructure that is resilient to growing climate pressures. They should carry out proactive repairs of their aging, inefficient stormwater systems as a way to deliver fiscal savings and long-term environmental and economic benefits. They also should invest in new technologies and green infrastructure to better protect properties and improve livability.

Continue reading.

The Brookings Institute

by Joseph Kane & Adie Tomer

March 18, 2019

CUSIP Request Volume for Corporates and Municipals Increases.

NEW YORK, NY, MARCH 11, 2019 – CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for February 2019. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity over the next quarter, found a noteworthy increase in requests for new corporate and municipal debt identifiers, while requests for international security identifiers declined in February.

Read Report.

BDA Hosts Capitol Hill Infrastructure Fly-in and Congressional Briefing.

Read more.

Fitch Ratings: No Immediate Impact Likely on US Colleges in DoJ Investigation

Fitch Ratings-Chicago/New York-14 March 2019: This week's charges of fraudulent admissions brought on by the U.S. Department of Justice (DoJ) are not likely to lead to near-term negative rating actions for U.S. colleges and universities, according to Fitch Ratings. Over the longer term, credit risks may arise from related legal costs, as well as from reputational damage contributing to any weakened demand and/or philanthropic efforts.

The DoJ has charged multiple individuals with federal crimes tied to seeking fraudulent admissions into various institutions of higher education. Eleven employees at eight universities were named in the filings, along with dozens of other individuals. No universities were named as defendants in the released criminal complaint.

These prominent institutions maintain sufficient expense flexibility, liquidity and student demand to mitigate minimal near-term effects. However, longer term, less definite fallout could include litigation, reputational damage, erosion of philanthropic support and other challenges arising from legislative or regulatory reactions. Highly rated universities have historically shown considerable resiliency through near-term legal and reputational risks. Additionally, the institutions involved generally exhibit strong demand profiles and robust financial positions.

Effective governance and leadership is necessary for long-term viability. As such, we view this as an important rating factor in assessing the creditworthiness and potential performance of a rated institution. As an asymmetric (downside risk only) credit factor, Fitch generally highlights instances where governance and management are weak in ways that constrain or pressure the rating. Our baseline expectation for rated entities is that governance practices and organizational structure are adequate and neutral to ratings with notably strong management to be reflected in operating and financial performance over time.

Notably, the sector as a whole continues to face scrutiny over the value of higher education. Any tempering of the broad public and private financial support the sector has benefitted from over time would pose longer term risks.

Contact:

Emily Wadhwani
Director, USPF
+ 1 312 368-3347
Fitch Ratings
70 W. Madison Street
Chicago IL, 60602

Justin Patrie, CFA
Fitch Wire
+1 646 582-4964
Fitch Ratings
33 Whitehall
New York, NY, 10004

Media Relations: Sandro Scenga, New York, Tel: +1 212 908 0278, Email: sandro.scenga@thefitchgroup.com

Additional information is available on www.fitchratings.com.

Inside Trump's Budget: 6 Things State and Local Governments Should Know

The president's 2020 proposal would slash domestic spending by nearly 10 percent and increase defense spending by 5 percent.

SPEED READ:

- President Trump's 2020 budget proposes major cuts for the Environmental Protection Agency, Medicaid, food stamps, cash welfare, public housing, transportation, clean energy and economic development.
- State and local organizations are noticeably quiet in response.
- It would run a $1 trillion federal deficit for the next four years.

This week, President Trump introduced his vision for the federal government's 2020 budget. It proposes slashing domestic spending by 9 percent, including a 31 percent cut to the Environmental Protection Agency (EPA). Defense spending, on the other hand, would increase by 5 percent, or $34 billion.

Here are six things state and local officials should consider when reviewing the administration's proposal.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | MARCH 14, 2019 AT 3:12 PM

How The Rooftop Solar Financing Model Can Alleviate "Water Poverty"

Celebrities have had a bit of a rough news cycle this week, but earlier this month came a feel-good story about actor Jaden Smith providing money to help Flint, MI residents get "The Water Box", a relatively small-scale drinking water treatment system.

We shouldn't have to rely upon the generosity of celebrities to make sure everyone has access to clean, safe drinking water. And yet, nevertheless, here we are. While we're all probably at least a little familiar with pictures of villagers in developing countries facing scarce water supplies, the problems exist right here in America as well, and they're getting worse.

This isn't a problem isolated to Flint, despite all the media attention there. Recently 21 cities and towns in New Jersey learned they have elevated lead levels in their own tap water. There are an estimated 240,000 water main breaks in the United States each year, and degrading water infrastructure in the country is expected to cost businesses $147B in losses from 2013 through next year. And meanwhile, there are few signs that at the Federal level, policymakers are about to get serious anytime soon about the hundreds of billions of dollars of investment deemed necessary to fix our crumbling drinking water and sewage infrastructure.

Continue reading.

Forbes

by Rob Day

Mar 14, 2019

New Report Highlights Benefits of Utility Consolidation.

The US Water Alliance and the Environmental Finance Center at the University of North Carolina have released a new report titled Strengthening Utilities through Consolidation: The Financial Impact. The report synthesizes the financial impacts of consolidating water utility service by looking at the real-world, diverse experiences of eight communities from across the country.

There are tens of thousands of water utilities and authorities in the United States. According to many experts across the sector, collaboration could be essential to securing the nation's water future. Consolidating water utilities is one of many options communities may consider to pool resources, streamline decision-making, and increase efficiency.

While complex, consolidation may be an appropriate consideration when the community value proposition outweighs costs. The report is intended to inform water leaders about the financial effects of consolidating utility service.

For more information on the US Water Alliance visit uswateralliance.org.

For more information on the EFC, visit efc.sog.unc.edu.

BY WFM STAFF

MARCH 11, 2019

National League of Cities Pushes for Federal Government to Invest in Infrastructure.

Mayor Muriel Bowser and over 2000 municipal leaders met this week during the National League of Cities (NLC) Congressional City Conference held this week in Washington. Bowser, who is chair of the NLC's Housing Taskforce, pushed for federal corporation in improving infrastructure and housing for all.

"Washington D.C. is a growing city. We're 700,000 people strong with a strong local economy- in fact one of the strongest in the region," Bowser said during a press conference. "With our growth and prosperity we have developed other problems, where we have an expanding income gap, opportunity gap and in some cases achievement gap for our young people."

"So at this year's conference, cities and jurisdictions of all sizes, people from both side of the ideological spectrum are here today to focus on the big issues that affect us. Mayors will frequently say 'there's no Democrat or Republican way to pick up the trash.'

"Infrastructure will put American's back to work. Infrastructure will offer good paying jobs and infrastructure will allow us to compete region to region, nation to nation across the globe. This is the focus that we have had in the NLC housing task force," the District of Columbia mayor said.

Bowser touched on some specific issues around infrastructure and housing saying, "We still have housing pressures big and small. We know that the demand on housing, like housing shortages have to be met, and we also know that cities that seamingly have nothing in common sadly have homelessness in common."

The NLC has a robust agenda for federal government including:

- Act as a champion for tax-exempt municipal bonds, the primary financing mechanism for state and local infrastructure projects. Any policy to alter the tax-exempt status of these bonds will cost local governments billions of dollars and prevent many projects from going forward;
- Support adequate and reliable long-term funding for infrastructure reflecting local needs and priorities;
- Support a vibrant web of connected transportation options — from transit and air to railways,

roads, and waterways — as a means to reduce congestion, protect the environment, and stimulate economic development;
- Encourage and promote deployment of broadband networks in a competitive and technologically neutral manner, while preserving local authority to take action to ensure that residents have access to high-speed Internet and other communications services.

"Having safe and reliable infrastructure is a priority of every single leader because all communities will benefit from reliable water infrastructure, great streets and highways, a trained workforce and broadband infrastructure no matter where you live, said Mayor Karen Freeman-Wilson of Gary, Ind. and president of the National League of Cities.

"Investing in our infrastructure and investing in the people who can build our infrastructure should be one of the most single most priorities of government at every level. So as local leaders were are here this week calling on our federal government to rebuild with us," Freeman-Wilson said.

"We understand that no branch of government can do it alone," the NLC president added.

According to the Congressional Budget Office, federal, state and local governments spent $441 billion on infrastructure in 2017, ranging from aviation, water transportation, water resources and highways. The bulk of the funds, $177 billion, went to highways, water utilities and mass transit and rail according to a summary report.

By AFRO Staff – March 15, 2019

By George Kevin Jordan, AFRO Staff Writer

Blockchain Could Cut Middleman Costs, If It Catches On.

FORT MYERS, Fla. — Blockchain technology has the potential to cut costs for municipal bond issuers by reducing the need for some intermediaries in transactions and it is here to stay, a distributed ledger and cryptocurrency expert told bond lawyers Thursday.

At a National Association of Bond Lawyers conference in Florida, Stevie Conlon, vice president and tax and regulatory counsel at Wolters Kluwer spoke about the potential effects of cryptocurrency and blockchain on the public finance sphere. While Conlon urged the attendees to accept the changes blockchain and cryptocurrency may bring to public finance, some lawyers in attendance continued to be skeptical of blockchain's ability to flourish in the muni space.

A blockchain system could allow investors to buy bonds directly and standardize documents, therefore it could cut fees normally paid out to lawyers and underwriters, she said.

A member of the audience asked Conlon about the effect of blockchain on smaller investors, using $100 bonds as an example.

"I'm skeptical as to whether it's real for mom and pop investors, who will they trust, blockchain or underwriters?" he asked.

Conlon said blockchain could work and be used by younger generations who are more apt to use their phones to bank and avoid fees.

“Those small quantities that weren’t attractive in a hundred dollars before, it’s just the opposite now,” Conlon said.

In the corporate world, blockchain and cryptocurrency caused some concern due to a multitude of security issues. There have been some high-profile hacks, and cryptocurrency still carries a negative stigma among some people for having served as a defacto coin of the realm for illegal online activity.

In a blockchain, every block has to have a consensus from 50% of the other blocks, making it less likely to be obstructed by hackers. Hackers can become more apparent in smaller blockchains, where people can buy the computing power to gain that 50% and commit fraud, Conlon said.

“Anyone involved, whether it’s the finance attorneys or whether it’s the underwriter or whether it’s the issuer — all of those people have to say, am I comfortable with the related risks of the complete process?” Conlon said.

Lori Lea Shelley, a partner at law firm Mickes O’Toole LLC, said the conversation as a whole is interesting but is hesitant on whether blockchain and cryptocurrency would take off. Hacking and the use of blockchain for illegal activities taints the practice, Shelley said.

“I feel like a lot of that underworld activity or illegal activity is being financed that way and it just might sabotage the whole idea for legitimate business reasons,” Shelley said. “So I have a hard time buying into it.”

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 03/07/19 03:04 PM EST

Considering a State Bank for Local Governments.

Proponents say it could help with infrastructure financing, particularly for smaller jurisdictions. Bankers are skeptical.

OLYMPIA, Wash. — Lawmakers and researchers have been taking a fresh look here at creating a public bank, specifically to provide state agencies and local governments with improved access to infrastructure financing and other financial services.

The type of “state-chartered, public cooperative bank” under consideration would not be open to consumers or businesses.

But depending on how the bank were to take shape—if it ever takes shape at all—it’s possible that its scope and offerings would be broader than state “infrastructure banks” that typically offer low interest loans and other financing assistance for transportation projects.

Continue reading.

Route Fifty

By Bill Lucia,
Senior Reporter

MARCH 5, 2019

Market Seeing Tremendous Flow Into Muni Bonds: Portfolio Manager

Part of the investor noise affecting the capital markets in 2018 was rising interest rates. The Federal Reserve didn't show much dynamism in 2018 with respect to monetary policy, obstinately sticking with a rate-hiking measure with four increases in the federal funds rate.

That appears to have changed given the current economic landscape, and especially in the capital markets as Fed Chair Jerome Powell is now preaching patience and adaptability. Powell's latest comments come as U.S. equities finished their worst year in over a decade–the Dow fell 5.6 percent, while the S&P 500 lost 6.2 percent and the Nasdaq Composite fell 4 percent.

This has posed challenges for not only equities, but the fixed income markets–specifically areas that were tried-and-truel safe-havens when stock markets go awry.

"Think about investment grade, high duration–that's seen a lot more volatility than many investors had expected," said Josh Rogers, Beta Specialist at JP Morgan Asset Management. "We believe that not only is that a challenge it's also an opportunity, especially when you look at the ultra short side of the curve where you can actually get paid now. Whereas if we rewound the clock two years ago you weren't getting anything."

While investors are flocking to safe haven assets like bonds, there's still a need for products that capture the upside potential in U.S. equities. At the same time, however, there's also a need for strategies that offer downside protection built into the product.

One area that has been experiencing an increased interest in the bond markets is municipal bonds. In the video below, Nisha Patel, portfolio manager with Eaton Vance, and Rachael Aiken, vice president and portfolio manager with Rockland Trust.

by ETF TRENDS on MARCH 5, 2019

Muni Bonds Enjoy Historic Run Despite Tax Overhaul.

Investors this year have poured the most money into municipal bond funds in at least 13 years

Municipal bonds are enjoying their strongest start to a year since at least 2006, defying expectations that President Trump's sweeping tax overhaul would depress demand in the market.

Investors poured more than $15 billion into municipal-bond funds in the first eight weeks of the year, the most over that period in at least 13 years, according to net inflows tracked by research firm Municipal Market Analytics. Demand stayed strong through the end of February, Investment Company Institute data show.

Many observers had expected Mr. Trump's tax changes in 2017, which cut corporate levies to the lowest point since 1939 and lowered individual taxes for many households, to reduce the market's appeal. Muni bonds are often exempt from federal taxes, making them valuable to people seeking tax-free investment income.

Continue reading.

The Wall Street Journal

By Gunjan Banerji

Updated March 6, 2019 6:47 p.m. ET

Shutdown Is Still Taking a Bite as Schools Report Missing Payments.

The longest-ever government shutdown may have ended, but it's still having an impact on the municipal-bond market.

Eight school districts in Oklahoma were late making interest payments on tax-credit bonds because they're still waiting on checks from the federal government, according to filings made today by trustee BancFirst.

Keys Public Schools in Park Hill, Oklahoma, made a late interest payment on qualified school construction bonds due March 1 because it still hasn't received payment from the Internal Revenue Service, according to a filing Tuesday. Bondholders receive a tax credit from the government for holding that type of tax-credit bond.

Sand Springs Public Schools also reported it was late with interest payments due on Build America Bonds, whose payments are partially covered by the U.S. government. "The Trustee has yet to receive payment from the Internal Revenue Service due to delays caused by the federal government shutdown," the filing said.

Other issuers have said they didn't have any problem receiving subsidy payments on bonds as a result of the shutdown. Chuck Tombarge, a spokesman for the University of Minnesota, said in an email last month that the school received a subsidy payment from the federal government that was due in February.

Bloomberg Politics

By Amanda Albright

March 5, 2019, 2:06 PM PST

— With assistance by Ariana Mika

Nuveen Sued by Preston Hollow Over 'Campaign of Intimidation'

- **Nuveen threatened to pull business from banks, lawsuit says**
- **Preston Hollow Capital seeks injunction in Delaware Court**

Nuveen's head of municipal bond investments, John Miller, engaged in a "campaign of intimidation" to coerce banks that underwrite high-yield state and local government debt deals from doing business with Preston Hollow Capital, the Dallas-based lender alleged in a lawsuit.

Miller and his staff at Nuveen, which oversees more than $140 billion in municipal assets and is the biggest buyer of the market’s high-yield debt, threatened to use its power to pull tens of millions of dollars in business from banks that engaged in limited offerings with Preston Hollow, the firm said. Chicago-based Nuveen also made threatening, anti-competitive and defamatory statements about Preston Hollow to the firm’s primary lender, the suit said.

“If broker-dealers do not make Preston Hollow aware of investment opportunities, or if they refuse to serve as underwriter for transactions that Preston Hollow directly originates, Preston Hollow’s business of investing in municipal bonds that are the product of its custom-structured solutions will be significantly impaired,” Preston Hollow said in the suit filed in Delaware Chancery Court.

A Nuveen spokesman said the company and Miller believe the claims are without merit and intends to vigorously defend itself against the allegations.

Preston Hollow, founded in 2014 by Jim Thompson, a former chief executive officer at Orix USA, occupies a growing niche in the $3.8 trillion municipal bond market by lending directly to risky projects. Preston Hollow has extended $2 billion in loans, financing projects like a hotel in a Dallas suburb, hospitals in California and New York, student housing in Pennsylvania, and roads, sewers and other infrastructure for economic redevelopment projects in the suburbs of New York City, Cleveland and Atlanta.

Preston Hollow is “highly dependent” on its relationships with investment bankers who can help the firm find deals, the suit said. Since Preston Hollow typically buys all of a borrowers securities in a limited offering, that would potentially put it in direct competition with Nuveen as a buyer.

Miller allegedly defamed Preston Hollow by saying that the firm charged excessive rates, causing borrowers to overpay for projects. He boasted he had secured commitments from several banks to discontinue or curtail doing business with Preston Hollow, the suit alleged.

On Feb. 25, one bank told Preston Hollow it wouldn’t participate in certain deals with the firm because of Nuveen’s threats, according to the complaint.

Details on the alleged calls that Miller and his team made to banks were redacted in the complaint.

Preston Hollow wants the court to stop Nuveen from further “unlawful and tortuous communications” with banks and direct Nuveen to disavow Millers comments and adopt supervisory procedures to ensure Miller and Nuveen employees don’t engage in future misconduct.

“Miller’s efforts to weaponize Nuveen’s considerable market power and use its leverage with those institutions pose a serious risk to Preston Hollow and its businesses, causing Preston Hollow to suffer irreparable harm,” the suit said. Left unchecked “Miller and Nuveen will be emboldened to similarly attack other, smaller competitors to the detriment of the municipal markets as a whole.”

The case is Preston Hollow Capital LLC v. Nuveen LLC. Docket Number: 2019-0169 in Delaware Court of Chancery.

Bloomberg Markets

By Martin Z Braun

March 6, 2019, 9:51 AM PST

Drama Erupts in the Tiny Corner of High-Yield Munis.

A lawsuit involving Nuveen and Preston Hollow shows there's money for ambitious capital projects.

There's nothing quite like big drama in a relatively small market.

The latest public spat isn't about manipulation on a global scale, like foreign exchange or the London Interbank Offered Rate. Nor is it about trading stocks on inside information. It centers on the U.S. municipal-bond market, specifically a dispute between investors involved in the small corner devoted to high-yield state and local government debt. Bloomberg News's Martin Z. Braun has the details:

Continue reading.

Bloomberg Opinion

By Brian Chappatta

March 7, 2019, 2:00 AM PST

Banks In Record Retreat From Muni-Bonds After Tax Cut Makes Them Less Attractive.

- **State Street, JPMorgan, Bank of America report cutting stakes**
- **Signals first annual pullback from the market since 1995**

Big banks cut their holdings of state and local-government bonds during the last three months of 2018 as the corporate tax cut reduced the benefit of owning the securities, signaling the industry's biggest annual pullback from the market on record and its first in more than two decades.

State Street Corp., JPMorgan Chase & Co., Bank of America Corp. and Goldman Sachs Group Inc. together reduced their holdings of municipal debt during the fourth quarter by $5 billion, according to filings with the Securities and Exchange Commission. While some, including Wells Fargo & Co. and Citigroup Inc., stepped up their purchases at the end of the year, it wasn't enough to make up for the cutbacks by other lenders.

The fourth-quarter reduction comes after banks slashed nearly $40 billion from their state and local-government bond holdings from January through September, according to Federal Reserve Board figures, marking a stark reversal for an industry that had been a steadily growing source of demand. The filings indicate that banks' holdings declined overall last year for the first time since 1995 and eclipsed the record drop of $29 billion in 1987.

Continue reading.

Bloomberg Markets

By Michelle Kaske

March 6, 2019, 7:33 AM PST

Private Money Takes On Bigger Role in Airport Projects.

When Paine Field, about 25 miles north of Seattle in Everett, Wash., was born in the 1930s as a New Deal project, it was envisioned as a major commercial airport for the region. But that never happened. Instead, it became known as the place where Boeing offers "North America's only publicly available commercial jet assembly plant tour."

That is about to change. Thanks to private investment, Paine Field is finally set to offer air service to the public. A sleek, new, $40 million two-gate terminal was built by Propeller Airports, a Seattle company, and commercial flights are set to begin this month.

Brett Smith, Propeller's founder and chief executive, expects that travelers will be attracted by the convenience of avoiding traffic jams near Seattle-Tacoma International Airport. "No reason why tax dollars should be used to build passenger travel while there's private-sector money ready and willing to do it," he said.

Continue reading.

The New York Times

By Amy Zipkin

March 3, 2019

---

5 Ways Congress May Try to Fix the Highway Trust Fund.

Better mileage and slower growth in miles traveled have combined to produce less revenue than Congress voted to spend

For nearly half a century, taxes on gas and diesel fuel funded what Congress spent from the Highway Trust Fund on roads, bridges and, after a 1982 compromise, mass transit.

For the past decade, however, better mileage for cars and trucks and slower growth in the number of miles Americans traveled combined to produce less revenue than Congress voted to spend.

The current five-year transportation law, which expires in September 2020, covered that shortfall by transferring $70 billion from the general fund. To spend similar amounts from 2021 through 2025, Congress would have to find an extra $17 billion to $23 billion a year, or $94 billion over five years, according to the Congressional Research Service.

And that's to maintain a spending level that is inadequate, according to business and transportation advocates, many lawmakers and, at times, President Donald Trump.

The American Society of Civil Engineers' national infrastructure report card in 2016 said there was a $1.1 trillion shortfall over the coming decade between total needs for surface transportation and estimated funding available. When other public works such as water and sewer systems, the electrical grid and airports are included, the shortfall exceeds $2 trillion.

The House Ways and Means Committee will discuss the need for "immediate action" on "crumbling infrastructure" on Wednesday. Rep. Earl Blumenauer, D-Ore., said Tuesday the House tentatively has set aside floor time in "the late spring" to take up a still-undefined infrastructure package.

Here's a look at some of the ways to cover a funding shortfall that Congress is considering.

Gas and diesel taxes

Last raised in 1993, the federal gas tax is 18.3 cents a gallon, and the diesel tax is 24.3 cents a gallon. If those rates had been indexed to inflation, in 2017 they would have been 31.7 cents for gas and 42.1 cents for diesel, according to the CRS.

In 2015, the Congressional Budget Office said a 1-cent increase in fuel tax rates would generate about $1.7 billion a year, but that would drop to $1.5 billion within 10 years.

That indicates that a 10-cent increase in the gas tax, indexed to inflation, would come close to plugging the first year's shortfall, but it would not accommodate any major increase in spending.

As the traditional funding source, fuel taxes are the most discussed option for closing the trust fund shortfall. They are also the easiest to implement and have the lowest administrative costs. But any tax increase, even one sold as a user fee, comes with political danger, especially in a politically polarized environment a year ahead of a presidential election.

Supporters have been arguing that Democratic and Republican state legislators and governors in more than two dozen states have raised their gas taxes without being punished by voters. Newly elected Michigan Gov. Gretchen Whitmer, a Democrat who ran on a promise to "fix the damn roads," announced in her budget speech Tuesday she wants to raise the state gas tax by 45 cents a gallon.

Blumenauer said that as a national funding model, the gas tax would not be reliable in 10 or 15 years. "But in the short term, the fuel tax, I anticipate, will be what we hear people feel most comfortable with," he said.

The U.S. Chamber of Commerce has endorsed a 25-cent increase over five years. The American Trucking Associations has endorsed a 20-cent increase over four years. Representatives of both groups will testify Wednesday.

Miles-traveled tax

Taxing miles traveled would require plug-in electric cars that do not fill up at the pump — which comprised 1.1 percent of vehicle sales in 2017 — and hybrids that use less fuel to contribute more toward their wear and tear on roads and bridges.

But such taxes are only in the experimental stage in some states, and taking them national would incur new administrative and enforcement costs, which CRS said could range from 5 percent to 13 percent of collections.

The system would also have to address privacy concerns, since putting a global positioning tracker in a vehicle to measure how far it travels would also tell the government where it went and when. And there would have to be a way for motorists who do not have credit cards or bank accounts to pay.

House Transportation and Infrastructure Chairman Peter A. DeFazio, D-Ore., has said he would prefer the next transportation bill to create a national pilot program, and that the tax be designed to charge less for using lightly traveled rural roads and more for adding to rush-hour congestion.

Tolls and private financing

While the number of miles of roads with tolls grew by 1,280, to a total of 6,001, from 1990 through 2017, toll revenue as a share of total transportation spending has remained steady at about 5 percent to 7 percent for more than 50 years, according to the CRS.

“While there may be many existing roads on which tolling would be financially feasible, the vast majority of mileage on the federal-aid system probably has too little traffic to make toll collection economically viable,” the research service said.

Future upgrades or replacements could be made to federal projects by allowing private companies to collect tolls to recoup construction costs through public-private partnerships, often called P3s. But local officials may resist new tolls on bridges that were previously free, for example, and such projects would need enough guaranteed traffic to make the private investment feasible.

“Private-sector financing generated through P3s might best be seen as a supplement to traditional public-sector financing rather than a substitute,” CRS wrote.

Other proposals have included “asset recycling,” which is the sale of existing public works to private operators to use the revenue to build new projects; and developing national “infrastructure banks” that could lend money for projects and use repayments from states or other borrowers to fund new projects.

Roll back tax cuts

Senate Democrats in 2018 released an infrastructure plan that included a proposal to roll back parts of the Republican-crafted 2017 tax overhaul. Specifically, it called for raising the top individual tax rate back to 39.6 percent from 37 percent for couples with more than $600,000 in income and individuals with more than $500,000; increasing the Alternative Minimum Tax, the estate tax, taxes on the income of hedge fund operators, and raising the top corporate tax rate to 25 percent from 21 percent.

The proposal has little chance of being signed by Trump as he goes into his 2020 re-election bid, however. And the president of the U.S. Chamber of Commerce, Thomas Donohue, said last month that while he would work to support any member of Congress who ends up in danger of losing re-election for voting for a gas tax increase, he would fight any effort to roll back the 2017 tax law’s provisions.

Blumenauer, a member of the Ways and Means Committee, indicated it is not a route the House is preparing to take.

“Of all the ways that we could have to fund the rebuilding and renewing of America, I think that is fraught with peril,” Blumenauer said. “You’re stepping on toes, you have little landmines, you have conflicting priorities, and you don’t need to do it, because there are paths forward that do not involve a food fight.”

Spend less

The Highway Trust Fund was set up to be a temporary program to fund the construction of the interstate highway system. And while Trump said during the 2016 campaign that he wanted to fund a $1 trillion infrastructure program, some in his party have said the federal government could pull back.

Some lawmakers argue that the highway fund should be dedicated solely to roads and bridges and that Congress should end setting aside for transit the first 2.86 cents of the 18.3-cent gas tax. Mass transit has expanded since the dedication, however, and systems in both red and blue states rely on it, though the biggest systems tend to be in states with Democratic senators.

Marc Scribner of the Competitive Enterprise Institute, who will testify at Wednesday's Ways and Means hearing, said Congress should focus transportation spending on areas intended by the Constitution, particularly interstate routes used for commerce and shipping.

"As important as the New York City subway system is, I don't think it's a nationally significant project," he said.

Roll Call

by Herb Jackson

Posted Mar 6, 2019 12:20 PM

S&P OPEB Brief: The Credit Impacts Of OPEB Obligation Bonds

Other postemployment benefit (OPEB) underfunding of obligations is pervasive across U.S. state and local governments, and costs are likely to continue to rise rapidly. Although, compared with pensions, these obligations may have some more flexibility in how they're provided, we recognize that funded levels are almost universally lower than those of pensions and could quickly become a challenge to

Continue Reading

Mar. 11, 2019

S&P Pension Brief: The 'California Rule' Survives The First Round Of The State Supreme Court

The California State Supreme Court issued an opinion March 4, 2019, regarding a long-discussed and anticipated California Firefighters Union (Cal Fire) case dealing with the "California Rule."

Continue Reading

Mar. 6, 2019

What Makes Muni Bonds Attractive in 2019?

The municipal bond market has experienced its fair share of headwinds over the past few years, including credit issues in Illinois and Puerto Rico and rising interest rates. While the economy has been improving, many municipalities have been hesitant to issue new

bonds given the rising interest rates. However, demand among investors has remained robust given the favorable yields.

In this article, we will take a look at three reasons why muni bonds remain attractive to investors in 2019 as well as some lingering concerns in the market.

Continue reading.

municipalbonds.com

by Justin Kuepper

Mar 06, 2019

New Law Aims to Improve Water Infrastructure Planning for Municipalities: Barnes & Thornburg

The Water Infrastructure Improvement Act (H.R. 7279), which became law on Jan. 14, 2019, amends the Clean Water Act (CWA) to codify 2012 EPA guidance on flexible, cost-effective approaches to integrated infrastructure planning for municipalities. The act provides municipalities with the tools to prioritize investments in wastewater and stormwater projects and to more easily comply with CWA requirements.

Barnes & Thornburg worked closely with U.S. Conference of Mayors and the National Association of Clean Water Agencies in developing the Water Infrastructure Improvement Act and lobbying for its passage.

The act allows communities to incorporate integrated plans directly into their National Pollutant Discharge Elimination System (NPDES) permits to update water infrastructure and achieve CWA compliance. NPDES permits that incorporate integrated plans can address CWA regulatory requirements related to any or all of the following:

- combined sewer overflows
- capacity, management, operation and maintenance programs for sanitary sewer collection systems
- municipal stormwater discharges
- municipal wastewater discharges
- water quality-based effluent limitations to implement an applicable wasteload allocation in a total maximum daily load

Additionally, a permittee's integrated plan can include innovative water reuse projects and green infrastructure. The act allows NPDES permits to include compliance schedules to allow for the implementation of integrated plans, and those schedules, if authorized, can exceed a single permit term.

The act also includes several important provisions that relate to CWA municipal issues other than integrated planning. For example, it establishes an Office of Municipal Ombudsman within EPA to support cities in complying with the CWA by providing technical assistance, federal financial assistance information, and information on integrated planning opportunities.

Further, the act requires EPA to promote the use of green infrastructure in CWA permitting, enforcement, planning, research, technical assistance, and guidance. The act is also designed to ensure coordination in the use of green infrastructure between EPA, other federal agencies, state governments, tribal and local governments, and the private sector.

Within two years of enactment, EPA will provide an update to Congress regarding all integrated plans that have been developed and implemented under the CWA since the publication of EPA's 2012 guidance.

by Ashley E. Parr

USA March 7 2019

Barnes & Thornburg LLP

GASB Issues Proposed Implementation Guide on Leases.

Norwalk, CT, February 28, 2019 — The Governmental Accounting Standards Board (GASB) has issued a proposed Implementation Guide that contains questions and answers about the GASB's new standards on accounting and financial reporting for leases.

The Exposure Draft proposes answers to questions about GASB Statement No. 87, Leases. GASB Implementation Guides are intended to clarify, explain, or elaborate on the requirements of Board Statements.

This Exposure Draft of a proposed Implementation Guide, Leases, is available for download at no charge on the GASB website, www.gasb.org. Stakeholders are encouraged to review and provide comments by April 30, 2019.

State and Local Governments and Impact Investing.

A Guidebook for Strategic Engagement

Abstract
Impact investing approaches, which deploy capital seeking both a financial return and a social or environmental impact, have gained increasing attention and popularity. Conspicuously absent from many conversations on it, however, are state and local government actors. Yet there are clear benefits for governments to engage with impact investing as well as for impact investors, investees, and communities. For governments, impact investing can leverage significant private and philanthropic funds in the interest of social and environmental goals, access resources to stimulate growth and boost governance capacity, and help shift risks for innovative solutions. At the same time, governments can add significant value to impact investing efforts through a range of roles. In this report, we argue that governments can and should consider engaging with impact investing efforts and in many cases already are. Adopting a coherent, and locally appropriate strategic policy that accounts for the full opportunities, risks, and options presented by impact investing will enable governments and the communities they serve to leverage and support these new financial resources in ways that benefit the public.

Read the Full Report.

The Urban Institute

Matthew Eldridge, Rayanne Hawkins, & Mayookha Mitra-Majumdar

February 27, 2019

America's Cities Are Running on Software From the '80s.

Even San Francisco's tech chops can't save it from relying on computers that belong in a museum.

The only place in San Francisco still pricing real estate like it's the 1980s is the city assessor's office. Its property tax system dates back to the dawn of the floppy disk. City employees appraising the market work with software that runs on a dead programming language and can't be used with a mouse. Assessors are prone to make mistakes when using the vintage software because it can't display all the basic information for a given property on one screen. The staffers have to open and exit several menus to input stuff as simple as addresses. To put it mildly, the setup "doesn't reflect business needs now," says the city's assessor, Carmen Chu.

San Francisco rarely conjures images of creaky, decades-old technology, but that's what's running a key swath of its government, as well as those of cities across the U.S. Politicians can often score relatively easy wins with constituents by borrowing money to pay for new roads and bridges, but the digital equivalents of such infrastructure projects generally don't draw the same enthusiasm. "Modernizing technology is not a top issue that typically comes to mind when you talk to taxpayers and constituents on the street," Chu says. It took her office almost four years to secure $36 million for updated assessors' hardware and software that can, among other things, give priority to cases in which delays may prove costly. The design requirements are due to be finalized this summer.

For local officials throughout the country, the shift from old-school servers to rented cloud storage has made it tougher than ever to fund upgrades. They can budget physical equipment as capital expenses, meaning they could issue bonds to pay for them. But cloud computing is a service, as the people selling it love to say, which means officials have to pay for it with operating funds—the same pool of money that goes toward addressing more tangible demands, such as parks and cops. The deliberate pace of government compounds the problem of strained resources, says Marc Pfeiffer, a former New Jersey official who now advises municipalities on managing technology as part of Rutgers University's Bloustein Local Government Research Center.

Continue reading.

Bloomberg Businessweek

By Romy Varghese

February 28, 2019

Closing of SLGS Window Will Affect 3 Types of Muni Transactions.

WASHINGTON — When the Treasury closes the window at noon Friday on the purchase of state and local government securities it will add complexity and costs to the municipal bond market for three types of transactions.

“Any time the SLGS window closes, it causes an inconvenience and an increase in costs to state and local governments,” Shaun Snyder, executive director of the National Association of State Treasurers, said in an email Wednesday.

The SLGS window is closing as the Treasury begins to take extraordinary measures to prevent breaching the nation’s debt limit after it is reset on Saturday.

At midnight Friday the current suspension of the debt limit expires.

The nonpartisan Congressional Budget Office reports the national debt stood at $21.9 trillion at the end of January and the new debt ceiling will reflect additional borrowing that has occurred between Jan. 31 and March 1.

SLGS purchases are being suspended until Congress acts to set a new debt limit or once again suspend the debt ceiling for a period of time.

SLGS are typically used by state and local governments and other entities that issue tax-exempt municipal bonds because of yield restrictions and arbitrage rebate requirements under the Internal Revenue Code.

The role of SLGS has been significantly diminished by the termination of advance refundings under the Tax Cuts and Jobs Act, with the amount of SLGS outstanding declining about 32%.

There were 15,254 SLGS bonds and notes with a combined value of $61.4 billion as of Jan. 31 of this year compared to 21,015 SLGS bonds and notes valued at $94.4 billion at the end of 2017, according to the Treasury.

Rich Moore, president-elect of the National Association of Bond Lawyers and partner at Orrick Herrington & Sutcliffe in San Francisco, said there still are three uses for SLGS.

First, they are sometimes used for escrows in current refundings. They also are sometimes used for equity defeasance escrows which are yield restricted. The third use is for longstanding advance refunding escrows.

Current refundings represent the smallest share of SLGS use, Moore said. “No one is buying SLGS for a 7-day escrow, but if it’s 30 to 90 days they might well buy SLGS,” he explained.

“An equity defeasance may come up because someone is taking a remedial action and needs to defease the non-qualified bonds,” Moore said, explaining the second use for SLGS. “Or an issuer may do an equity defeasance of bonds for business reasons. If there’s a long-term defeasance escrow for non-callable bonds, that escrow is going to be yield restricted.”

Moore said that three years ago SLGS weren’t needed for an equity defeasance, but he’s now seeing a use for them “in a minority of cases” where the defeasance escrow is capable of earning a yield in excess of the bond yield.

“And in those circumstances it’s nice to be just able to apply for SLGS to get a perfect escrow,” he said.

The third continued use for SLGS in the municipal bond market involves longstanding advance refundings.

“There are some advance refunding escrows out there or equity defeasance escrows from way back,” Moore said. “Those are the ones who are probably least happy with having the SLGS window being closed, because they will have to find a different way to invest the proceeds while the SLGS window is closed.”

Issuers can make yield reduction payments to the Treasury to remain in compliance.

However, Moore said, “Now all of a sudden they’ve got to hire a rebate analyst or undertake that burden themselves. It’s been so long since anyone has been able to earn arbitrage there’s not many escrows like that left. I know of some.”

“It’s frankly one more mouth to feed,” Moore added.

Snyder echoed Moore’s sentiment that state and local governments will cope with the closing of the SLGS window.

“Just as they have in the past, state treasurers will adapt and will keep their hopes up that the SLGS window will only be closed for a short time,” Snyder said.

The SLGS window has previously closed 13 times since 1995, most recently between Dec. 8, 2017 and Feb. 12, 2018.

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 02/27/19 02:04 PM EST

C-PACE De-Mystified: C-PACE Alliance Releases New Guide That Explains Bonds vs. Direct Financing For Commercial Pace.

WASHINGTON, Feb. 25, 2019 /PRNewswire/ — C-PACE Alliance, a coalition of large capital providers and transaction experts, announced today the release of a comprehensive guide that demystifies C-PACE and the use of bonds vs. direct financing for C-PACE programs. The C-PACE Alliance Policy Note explains that direct financing typically offers property owners lower costs and less complexity, while bond funding promotes better liquidity and potentially offers lower interest rates over time.

C-PACE is a program that state and local officials can authorize, allowing property owners to finance improvements in energy and water efficiency and increased resiliency of commercial buildings. C-PACE programs have launched in 23 states and the District of Columbia, with more programs slated for 2019. To date, property owners have financed over $850 million in improvements in more than 1,800 buildings using C-PACE programs.

C-PACE programs envision two methods to fund a transaction– direct financing or bond funding. The optimum funding method depends case-by-case on many variables, often leaving state and local officials in an uncomfortable position in determining how best to proceed. Officials who understand the difference between bonds and direct financing can avoid common misconceptions and are better-prepared to design C-PACE programs that benefit their constituents.

The Policy Note urges that state and local officials offer both direct financing and bond funding, if possible, unless local political realities or priorities favor just one option. Allowing free-market competition for both types of financing will maximize the flexibility and overall success of a C-PACE program.

About C-PACE Alliance
Formed in 2018, the C-PACE Alliance consists of six of the largest C-PACE capital providers along with major law firms and an accounting firm. The C-PACE Alliance articulates and advocates for industry practices that increase the usage and streamlining of C-PACE in order to maximize energy and water savings, resiliency and economic development impact. Visit http://www.c-pacealliance.com/ to learn more.

Contact: Cliff Kellogg
202-744-1984
ckellogg@c-pacealliance.com

SOURCE C-PACE Alliance

Related Links
http://www.c-pacealliance.com/

S&P: U.S. Independent Schools' Fiscal 2018 Median Ratios Are Steady, With A Stable Sector Outlook For 2019

S&P Global Ratings' outlook for the U.S. kindergarten through 12th grade (K-12) independent school sector is stable. The outlook reflects healthy financial and enterprise profiles for our rated schools – with steady enrollment and demand, proactive management oversight, good revenue diversity, and growing resources, building upon healthy market returns and solid fundraising efforts.

Continue Reading

Feb. 28, 2019

The Drastic, Risky, Measures to Fix America's Brokest Pension Systems.

Kentucky and Illinois are weighing extreme options to reduce their pension debt — but critics say they could ultimately cost the states more.

Kentucky and Illinois have two of the worst-funded pension plans in the country, and they're struggling under the weight of skyrocketing costs. Both are now considering drastic measures to ease the annual burden in ways that critics say will ultimately make the problem worse.

In Kentucky, where teachers staged a "sickout" on Thursday over separate pension legislation, an unusual, if not unprecedented, bill is making its way through the legislature that would allow regional colleges, universities and other quasi-government institutions to leave the state's troubled pension system without immediately paying off their debt. Instead, they could pay it off over 25 years. Employers leaving the fund would be required to provide other retirement options for their employees, such as a 401(k).

The legislation is being pushed by the presidents of the regional universities as increasing pension costs are squeezing their budgets and forcing them to raise tuition.

But ditching the plan without a lump sum payout is a move that actuaries have warned could threaten the solvency of the $2 billion plan.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | MARCH 1, 2019 AT 4:00 AM

S&P Extra Credit: Todd Talks Take On 2019

In this week's Extra Credit, we give our 2019 outlook for pensions and other post-employment benefits in 2019. Hear what our analysts think will be the risks and opportunities in the upcoming year. Sussan Corson, Todd Tauzer, Todd Kanaster and Lisa Schroeer discuss the issues.

Listen to Audio

Feb. 25, 2019

Municipalities and Universities New Targets in ADA Website Accessibility Lawsuits.

For years, private businesses have faced demand letters and litigation over the accessibility of their websites by individuals with disabilities, with 2018 seeing a record number of website accessibility lawsuits under the Americans with Disabilities Act. Now, plaintiffs' firms are focusing on new targets, including municipalities, county governments, and universities.

People with disabilities access websites in a variety of ways, and common website problems may create barriers for these individuals. For example, a blind person may use screen-reading software, which reads the text of the website out loud to the individual. If the website has used images to convey information without using text alternatives, the screen-reading software cannot convey that information and the blind person will not be able to use the website. The "World Wide Web Consortium's Web Content Accessibility Guidelines" – otherwise known as WCAG – is the most commonly accepted voluntary set of guidelines for ensuring websites are accessible to all.

Title II of the ADA applies to public entities, including state and local governments and public universities. Public entities are required to "take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others." 28 C.F.R. §35.160(a)(1). Moreover, Section 504 of the

Rehabilitation Act of 1973 also prohibits entities that receive federal funding from discriminating against individuals with disabilities. In January 2018, updated Section 508 regulations specifically adopted WCAG version 2.0 level AA as the web accessibility standard. Some states, including Oklahoma, also have state laws regarding electronic and information technology accessibility for state agencies.

Website accessibility lawsuits on the rise

Local governments across the country that been sued for inaccessible websites include Palm Beach and Orange counties in Florida; Carver County, Minnesota; and the city of Atlanta, Georgia. Both private and public universities have also been hit with lawsuits under the ADA. In the final months of 2018, 50 universities were hit with lawsuits alleging their websites were not accessible to the screen-reading software used by the same blind plaintiff, who said he came across the universities at a college fair in New York City for prospective students interested in performing and visual arts.

The issue of website accessibility is not a new one for colleges and universities, which have long faced complaints over accessibility. In fact, the U.S. Department of Education's Office for Civil Rights reported in May 2018 that it had investigated "hundreds" of complaints regarding website accessibility against educational institutions throughout the country. Harvard and M.I.T. were sued in 2015 over failing to caption online courses. In 2017, The University of California, Berkeley removed more than 20,000 audio and visual files from their website in response to a Department of Justice accessibility order. In response to the large number of complaints, the U.S. Department of Education Office of Civil Rights in May 2018 announced a new technical assistance initiative designed to offer technical assistance regarding website accessibility directly to information technology professionals who work with schools.

An issue of accessibility, not accommodations

Many universities may think that they have solved the problem by providing a disability accommodations office. For example, an instructor may refer a student with a hearing impairment to the accommodations office, instead of captioning an online lecture. However, the issue is one of accessibility, not accommodations.

Accommodations are provided upon request, on a case-by-case basis, based on the specific needs of a student with a documented disability. Accessibility, on the other hand, is the responsibility of the creator or publisher of the online content, with no need for a specific complaint or explanation of need. Moreover, academic institutions need to remember who their audience for their website is. Many educational websites are public-facing, meaning that the university could face lawsuits from individuals with disabilities who are not students of the university.

Appeals court confirms websites must comply with ADA

Meanwhile, the first ADA website accessibility case of 2019 was a big win for individuals with disabilities. In *Robles v. Dominos Pizza, LLC*, the Ninth Circuit Court of Appeals announced that websites and mobile apps are clearly covered by the ADA, holding that the ADA applies to "the services *of* a place of public accommodation, not services *in* a place if public accommodation." Notably, the court held that potential places of public accommodations have received fair notice that their websites and apps must comply with the ADA.

Risks of noncompliance

To date, most lawsuits have been filed in California, Florida, and New York. However, if the flood of

ADA website litigation continues, local governments and educational institutions in Oklahoma that are not making efforts to ensure their websites are accessible are risking a lawsuit, or at the very least, a complaint from a resident or student.

Robles v. Dominos Pizza, LLC, No. 17-55504 at 11 (9th Cir. Jan. 15, 2019)

McAfee & Taft

by Elizabeth Bowersox

March 1, 2019

The Ability of Municipalities to Regulate Electric Scooters, Segways, Electric Bicycles, and Other Light Motorized Vehicles.

As dockless electric scooters from companies like Bird, Lime, Razor, and Spin gain popularity and notoriety in municipalities across the country, towns and cities should be aware of the scope of their ability to regulate these and other light motorized vehicles, and what they can and cannot do under local, state, and federal law.

Where should municipalities look to determine regulatory scope?

1. Town or City Code and Ordinances
   Take a good look into your own town or city codes and ordinances. Many codes have provisions regulating what kind of vehicles are allowed on sidewalks and streets, and other relevant traffic regulations. You may already have some useful tools at your disposal.
2. County Codes, Ordinances, and Regulations
   The county (or counties) in which your town or city is located likely has rules and regulations regarding vehicles or devices permitted in county parks and trails. Counties may also specify whether the county or the municipality officials (or both) have the ability to determine locations for signage and time-of-day restrictions permitting or disapproving of various vehicles.
3. State Statutes
   Before looking anywhere else, look for definitions sections in your state, county, and municipality laws. Before you can determine whether something is worth regulating, you need to know precisely what that "something" is. In Arizona, the majority of these definitions will be found in state statute. See A.R.S. § 28-101. Importantly, look at how "pedestrian" is defined and what devices (devices that in non-lawyer speak would never be confused with human beings) are legally characterized as pedestrians. See A.R.S. § 28-908. In Arizona, for example, Segways, wheelchairs, electric wheelchairs, and other "electric personal assistive mobility devices" are legally considered pedestrians.
4. Federal Law
   Perhaps the most relevant federal law to consider in regulating light motorized vehicles is the Americans with Disabilities Act (ADA). The ADA has clarified that regardless of the laws and regulations a local authority may enact about other power-driven mobility devices (or "OPDMD" as used by the ADA), when such a device is being used by a person with a mobility disability, different rules apply than when such a device is used by a person without a disability. Reasonable accommodations must be made for those with mobility disabilities. If pedestrians are allowed to be in a particular area, so is the OPDMD when used by a person who affirms he or she has a mobility disability, unless there is a true danger in doing so.

What kind of regulations are permissible?

As an example, Arizona municipalities are permitted to enact the following types of restrictions:

- Time of day restrictions
- Age-based restrictions (the State of Arizona also created an age limitation that a person must be at least sixteen years old to operate an electric personal assistive mobility device. See A.R.S. § 28-911)
- Location of use restrictions (both temporary and permanent)
- Safety restrictions (such as requiring closed toed shoes and helmets)
- Parking restrictions

What kind of regulations are not permissible?

A municipality may not ban the use of Segways or electric personal assistive mobility devices across the board. Under some state laws (such as in Arizona), certain devices (like Segways and wheelchairs) are considered pedestrians; but they are subject to all applicable laws to which pedestrians are subject. Under federal law, municipalities must make exceptions—even for devices other than electric personal assistive mobility devices that normally could be regulated en masse by a municipality—when such a device is used by a person with a mobility disability.

What considerations should municipalities take into account?

As with almost any new invention, there are positives and negatives with light motorized vehicles such as dockless electric scooters and electric bicycles. Articles such as https://slate.com/technology/2018/12/electric-scooter-bird-lime-lakes-r-vers-environment-vandalism.html from Slate.com highlight both sides. Before enacting regulations or ordinances, take time to consider your overarching goals in regard to these light motorized vehicles and note the positives and negatives that each proposed regulation would have on your community. Don't overlook the possibility that some of the electric scooter companies, for example, are also trying to think of innovative solutions to problems with their devices, and may be willing to work creatively with municipalities on how to use and regulate these devices appropriately. For example, articles like the one above indicate that companies have the ability to continue charging riders' credit cards until the devices are parked in permissible locations.

Is there currently pending legislation on this issue?

Yes. Pending in the Arizona Legislature is S.B. 1398, a bill that would add two new electric device categories and definitions for state and local regulation: "Electric Miniature Scooters" and "Electric Standup Scooters." The bill adds "handlebars" as one of the defining features of these devices, and separates the two based on speed and weight.

As revised by the bill, A.R.S. § 28-819 would place operators of "Electric Miniature Scooters" and "Electric Standup Scooters" in the same category as operators of "Electric Bicycles" and would grant them all the rights and privileges of, and subject them to all the duties of, a person riding a bicycle. The devices themselves (rather than the operators) would also be regulated as bicycles. The proposed bill includes language that these devices would be subject not only to state statute, but also to local regulation. The bill specifically states, "A local authority may consider the environmental benefits and traffic benefits of electric bicycles, electric miniature scooters and electric standup scooters when regulating the electric bicycles, electric miniature scooters and electric standup scooters." See S.B. 1398 (proposed revisions to A.R.S. § 28-819(A)).

Although neither category of devices would be required to comply with statutory provisions related to certificates of title, registration, vehicle license tax, driver licenses or vehicle insurance, "Electric Standup Scooters" are required to have "a unique identification that consists of both letters and numbers and that is visible from a distance of at least five feet." For more information, see S.B. 1398 (proposed revisions to A.R.S. § 28-819(F)) and the Arizona State Senate Fact Sheet for S.B. 1398 available here: https://www.azleg.gov/legtext/54leg/1R/summary/S.1398TPS.pdf.

The sponsor of the bill stated in testimony before the Arizona Senate on February 13, 2019 that the bill is a collaborative effort between Bird, Lime, other scooter entities, cities, towns, and the League of Arizona Cities and Towns. While there may still be revisions to the bill, such as additional language affirming the powers of the local authorities to regulate, the cities, towns, and scooter companies present at the Senate hearing all agreed that having common definitions would be beneficial. For more information on the purpose of the bill, see: https://www.azcentral.com/story/news/politics/arizona/2019/02/12/arizona-senate-bill-1398-could-put-electric-scooter-definitions-state-law/2796250002/ (explaining that one of the bill's purposes is to distinguish between children's scooters and those used by adults).

Until the bill becomes law, the devices in these new categories remain subject to current statutes and regulations for various types of light motorized vehicles discussed in this Client Alert.

In a world of new technology, it pays to think outside the box.

by Erica Morris

February 27, 2019

Dickinson Wright

[Aqua America CEO Sees Surge in Water-Related Deals.]

Water deals are poised to pick up, according to the chief executive of one of the biggest publicly traded water investors, thanks to regulatory changes and critical infrastructure needs that weigh on municipal finances.

Water is a fragmented market. Some 85% of water is controlled by municipalities scattered across America—but that is slowly changing, according to the CEO of water and wastewater utility Aqua America (ticker: WTR), Chris Franklin.

Buyers like Aqua have been seeing more enthusiasm from local officials, in large part thanks to the squeeze on public finances and as new legislation allows more generous valuations. Six of the eight states where Aqua operates, including Illinois and Ohio, have passed "fair value" laws that let operators raise customer rates beyond just recouping the cumulative value of the utility's assets.

Because purchase prices can be higher than the sum of the parts, this change helps loosen deals out of municipal hands, as they can get much a higher price–"in their minds a much fairer price," Franklin says.

Last year Aqua did $130 million worth of municipal transactions, Franklin tells Barron's, and already has $100 million in signed agreements so far this year.

“That’s big movement in the municipal sector,” he says.

Deals related to water utilities in the U.S. spiked in 2018, to 33 from 14 in 2017, according to data provider Preqin, and five so far this year.

It’s not just legislation: Many local governments are already under financial pressure, with looming pension payments and not enough money to meet them. The U.S. will need to spend $1 trillion over the next 25 years to meet water-related demands, according to the American Water Works Association.

The crisis of undrinkable water in Flint, Mich.,–which Franklin says was “100% preventable”–has forced local officials to consider their own capacity to address such issues.

“It’s amazing how many people ask me about Flint,” he says. “I think that really shook up a few municipal officials, who think, on a blue sky day, `I probably have the team to run this’–but what happens when something goes wrong?”

At the end of last year, Aqua announced it was buying Peoples, a natural gas company in Pittsburgh for $4.3 billion in an all-cash transaction. The two companies’ functions are similar, Franklin says: conducting a natural resource through underground pipes to customers’ homes, measured by a meter.

Aqua undertook this diversifying deal, Franklin says, in part because “elected officials often ask us to wait a few years ‘till we can make the [water] investment, and raise the rates accordingly, because there are elections to deal with and everything else.”

The resulting entity’s asset mix will be 70% water, 30% gas, he says, “so it’s largely a water utility owning a pretty good stake in a gas utility.”

To finance the deal, Aqua will issue $2.5 billion of stock, Franklin says, in the coming months.

“We’re doing so much equity because we want to keep the balance sheet strong so we have debt capacity to continue to buy municipals,” he says. “Full speed ahead on muni transactions.”

The acquisition added $14.2 million in costs last year, helping full-year expenses rise to $308.5 million from $282.3 million in 2017, Aqua reported this month. Net income sank to $192 million from $239.7 million, thanks to a wrong-way interest-rate swap it signed in October, along with other transaction-related expenses, the company said.

Muni deals do often meet local resistance. But the public is increasingly educated about the water they consume, and what they’re paying for, Franklin says. They want clean, safe water, and realize they “probably pay less than they should,” he says. “Those things aren’t always in concert.”

“Generally people understand: There is a bill coming; water is not free and wastewater services is not free,” he says. “There was a time when people said it falls from the sky, it’s in the lake or creek, why are you charging me for it? People today realize it has nothing to do with the cost of the raw material, and everything to do with how well you want to treat it, what does the pipe look like, and is it reliable to bring it to my home? These things are real costs.”

Barron’s

By Mary Childs

Feb. 27, 2019 11:11 a.m. ET

Why is Federal Infrastructure Policy So Difficult?

In an era of partisan strife, Americans of all political parties overwhelmingly agree on one issue: we need better infrastructure. Crumbling bridges, unsafe water, and communities without broadband threaten our nation's health, safety, and economic future. Yet the federal government's role has remained largely unchanged for generations. Why is it so hard to find consensus on such an obvious problem?

In my three decades of work with the federal government, including my time in the White House, I kept running into the same three challenges. Our path to a new federal infrastructure policy is blocked by irrational expectations around limited funding, a failure to appreciate the diversity of needs, and misaligned incentives.

Our path to a new federal infrastructure policy is blocked by irrational expectations around limited funding, a failure to appreciate the diversity of needs, and misaligned incentives.

Let's start with expectations.

Continue reading.

The Brookings Institute

DJ Gribbin
Nonresident Senior Fellow – Metropolitan Policy Program

February 28, 2019

Democrats Lay Down a Marker on Drinking Water and Sewer Funding.

But a bill introduced Thursday calling for billions in new spending and a tax increase is likely to be a tough sell with Republicans.

Raising federal taxes on corporate profits and funneling the revenue toward a new water and sewer infrastructure account—that's one of the proposals in a public works bill that Democratic lawmakers in Congress rolled out on Thursday.

The bill calls for hiking the corporate income tax rate to 24.5 percent from 21 percent and funneling up to $34.8 billion annually in proceeds toward a trust fund for waterworks programs. It lays out a framework where nearly 90 percent of that funding would go to what are known as state revolving funds, or "SRFs" for short.

"Drinking water, safe, clean, affordable drinking water, is a human rights issue," U.S. Rep. Brenda Lawrence, said during a press conference on Thursday. "We are treating it as if it's a luxury."

Continue reading.

Route Fifty

By Bill Lucia,
Senior Reporter

FEBRUARY 28, 2019

States Consider Asset Transfers As Way To Shore Up Plan Funding.

As many states grapple with massive unfunded pension liabilities, some are looking into transferring government-owned assets to their pension plans as a way to boost funding. And while asset transfers such as these could present issues of their own, more public pension plans are likely to explore this avenue.

"There's a depth where some governments find themselves in where they're so deep in the hole on underfunding that you cannot credibly tax your way out, you can't cut your way out and you can't grow your way out," said Michael Imber, a managing director at EisnerAmper LLP, an accounting firm based in New York. "Short of defaulting, the only way that I think you can change the math is if you start contributing hard assets."

Illinois, New Jersey and Connecticut — states that face perpetual funding issues — are publicly looking into transferring assets to their pension plans, while a few other states will likely follow soon, sources said.

Mr. Imber sits on Connecticut's Pension Sustainability Commission, which was created in 2017 and tasked with studying "the feasibility of placing state capital assets in a trust and maximizing those assets for the sole benefit of the state pension system," according to the state website. Connecticut Gov. Ned Lamont has proposed legislation that would restructure the state $18.7 billion Teachers' Retirement Fund and create the TRF Special Capital Reserve Fund, which would initially be funded with $381 million out of the state's current year general fund surplus and provided with a backstop funded by lottery proceeds.

In February, Illinois Gov. J.B. Pritzker created the Pension Asset Value and Transfer Taskforce to examine state assets and recommend how they can be used for the pension funds to help stabilize the state's finances.

Illinois' five state pension plans have a $134 billion unfunded liability. During a speech last month, Illinois Deputy Gov. Daniel Hynes likened the state pouring billions of dollars into its pension system in recent decades, while seeing its unfunded liability continue to grow, to the ancient Greek mythology of Sisyphus, who continually tried pushing a boulder up a mountain only to have it repeatedly roll back down.

In New Jersey, Treasurer Elizabeth Maher Muoio put out a request last month for qualification for financial advisory firms to help the state determine if certain state assets — such as roads, transit facilities and airports — could be used to help finance the $70.9 billion New Jersey Pension Fund, Trenton.

"While the idea of maximizing the value of state assets has been discussed for many years, little concrete action has ever been taken," Ms. Muoio said in a statement. "At the direction of the governor, we designed this RFQ to explore tangible, creative solutions to help maximize the state's assets in order to minimize the burden to taxpayers."

Trying to win big

New Jersey was the first state to transfer an asset to its pension plan. In July 2017, then-Gov. Chris Christie signed a law making the lottery a pension fund asset and providing about $1 billion a year for the pension fund through lottery revenue.

"The transfer has helped offset the amount that must be contributed from our general fund as we continue our commitment to ramping up payments by 10% each year until we meet the full actuarially required contribution by 2023," Jennifer Sciortino, a spokeswoman for the state Department of the Treasury, wrote in an email.

Michael D. Belsky, executive director of the Center for Municipal Finance at the University of Chicago's Harris School of Public Policy, said the basic theory behind an asset transfer is that pension funds have a fiduciary obligation to grow assets for their pensioners, so the funds are more likely to do a better job managing the asset than the government itself.

"If it's operating more efficiently, not only does its value go up, but whatever excess cash flows they have should increase too," Mr. Belsky said. "If you're operating a lottery or a toll road or something like that more efficiently, you should have an increase in cash flow, and that excess cash can go toward making pension payments."

But when a government transfers an income-producing asset like a lottery, it doesn't necessarily bring in more money, it simply moves the revenue in its books, said Todd N. Tauzer, San Francisco-based director of U.S. public finance at S&P Global Ratings. "It's state-owned revenue that's already being used in the budget that they're now transferring to the pension system, but whatever holes that leaves in the budget they still have to fill them," he said. "It's not like they created a new revenue stream." The type of transfer that most excites EisnerAmper's Mr. Imber is a government taking undeveloped, non-income-producing assets and finding a way to have them produce revenue, such as putting raw land into a trust, selling it to a power provider for solar energy, and putting the revenues toward the pension plan.

But figuring out which assets to transfer is difficult. "The idea of parting with assets is as much a political decision as it is an economic decision," Mr. Imber said. "The trick is that if you're going to maximize the economic utility of assets contributed for the benefit of the pension, after you make the contribution you have to take the politics out of it, otherwise you won't unlock the hidden equity that might be sitting in the asset."

Australian example

A 2017 white paper from the Stanford Global Projects Center focused on an in-kind contribution in Queensland, Australia. In 2011, the Queensland government transferred a 40-year concession to operate a toll road to government-owned QIC Ltd. that manages its defined benefit fund. The pension fund received the toll road at a value of A$3.1 billion ($2.2 billion), then made improvements like adding lanes and new roads, and sold the asset three years later for A$7.1 billion.

Michael Bennon, managing director of the Stanford Global Projects Center, said the success in Queensland can be a guide for U.S. pension plans. It can also be a "two birds with one stone" arrangement — funding a pension plan with an asset that then encourages the plan to upgrade and optimize the asset — he said.

However, Mr. Bennon said that part of what made the Queensland transfer work was the fund's direct investment capability for its infrastructure allocation. It hired professionals capable of managing and structuring infrastructure investments. But most U.S. pension funds “go through infrastructure funds, so it’s more difficult for them to do one of these direct investments from a capability perspective,” he said.

Mr. Belsky said an asset transfer needs to be done in conjunction with other strategies, like potential increased participant contributions, raising the retirement age or raising taxes. “It’s not a panacea.”

For Mr. Tauzer, an asset transfer could be a net positive for a given state, but the “reason why they’ve got such a large unfunded liability in the first place has to do more with the funding discipline over time, and if they don’t correct those issues, these one-time changes won’t do much in the grand scheme of things.”

PENSIONS & INVESTMENTS

BY BRIAN CROCE · MARCH 4, 2019

Can You Index Municipal Bonds?

Indexing has limitations. Some markets or market segments are easier to index than others. The degree of difficulty is largely a factor of the breadth, depth, standardization, and liquidity of the pool of assets in question. Nonstandard assets that are difficult to trade, like municipal bonds, can be difficult to index. Indeed, running an index-tracking municipal bond fund is a tricky proposition. The managers of an indexed municipal bond portfolio have to strike a balance between tracking their index and the costs involved in doing so. Based on the performance records of many of the municipal bond index funds available to investors, these funds’ managers appear to be capable of managing this balancing act.

Let’s say you’re a portfolio manager running a bond index fund. When your fund’s target index rebalances, you’ll likely need to do some trading so the fund’s holdings match those in the index. This is a necessary maintenance activity that keeps your fund’s portfolio and performance in line with its benchmark.

Now suppose the target index requires that you buy bond A following a rebalance. You go to the market, but there is only one willing seller of bond A. You make an offer to buy. But that lone seller knows he’s the only show in town and attempts to take advantage of his status by counter-offering at a higher price. You’re in a predicament. You can buy the bond, but it’s going to cost you. And that cost is absorbed by the fund’s shareholders.

Continue reading.

Morningstar

by Daniel Sotiroff

22 Feb 2019

---

5 Steps to Maintain or Improve Your Municipal Bond Rating.

Maintaining or improving municipal bond ratings can be challenging, but there are steps finance leaders can take to be sure they are fully prepared for the review process.

Bond ratings are important to a government from both a perception standpoint as well as an economic one. They indicate how safe an investment in the city's or county's bonds are and serve much like an individual's credit score. Since a municipal bond rating holds such power, each government should understand what factors influence their bond rating and take the appropriate steps to either maintain or improve their bond rating.

Maintaining or improving municipal bond ratings can be challenging. Annual reviews can alter the rating and many government finance directors dread the review process.

What can finance leaders do to be sure they are fully prepared for the review process? It begins with a year-round proactive approach to address the factors that comprise a bond rating and own the conversation with the ratings agent.

In our latest webinar, Charlie Francis, a 45-year veteran of government finance and former CFO and finance director, presented steps that governments can take to ensure they achieve the best possible score.

Here are some highlights from the live webinar:

- Know that rating agencies measure quantitative and qualitative factors. When you know what is being measured, you can manage to those factors. Luckily, ratings agencies post all factors that influence their ratings online. Factors that are scored include:
    - Management
    - Budgetary flexibility
    - Budgetary performance
    - Liquidity
    - Debt and contingent liabilities
    - Institutional framework

Qualitative factors influence the quantitative factors. The overall functioning of your government, as well as accountability and transparency play a key role in bond ratings. Owning this data and the story behind it will enable your government to make a case for a higher rating.

- **Build a relationship with your rating agency.** Get to know the people who review your government. Be sure to keep an ongoing dialogue going with them and share stories of what your government is doing to proactively manage issues. Share policies and keep them informed of what is happening and how it is being addressed.
- **Be able to back up information with data.** Every self-assessment score needs to be proven with data for it to be justified. Inflated scores will only cause damage and break down trust.
- **Prepare all year round.** Transparency, solid management practices, accountability, and leadership all influence ratings and can be improved continually. Know what each agency measures, add performance context with stories about how your government is making a difference in citizens' lives, and prepare a scorecard and keep it updated throughout the year. By taking a proactive approach, you own the factors that you can control and can be more prepared for official ratings reviews.

In addition, Charlie shared five steps municipalities can take to continually maintain or improve bond ratings:

1. Conduct a risk-based analysis of general fund reserve requirements and adopt a reserve policy.
2. Conduct a comprehensive review of factors affecting the government's ability to issue debt and adopt a debt affordability policy.
3. Formally monitor financial and economic conditions and implement financial/economic mitigation management plans.
4. Develop, adopt, and maintain an asset management policy, strategy, and plans.
5. Develop a model that evaluates the impact on revenues, spending, and reserve levels from various budget initiative and economic scenarios, and incorporate long-term financial planning in all policy decisions.

OpenGov can help governments strengthen their financial reporting and story presentation to continually be prepared for bond rating reviews.

For more ways on how to maintain or improve your municipal bond rating, and for a more in-depth discussion on the ideas and steps presented above, view the webinar on-demand or download our latest eBook, How to Maintain or Improve Your Municipal Bond Rating.

OPENGOV | FEBRUARY 20, 2019 AT 5:30 PM

Deutsche Bank Lost $1.6 Billion on a Bond Bet.

One of the banking industry's biggest soured bets since the financial crisis involved a complex municipal-bond investment. Warren Buffett was enmeshed in the deal.

Deutsche Bank AG DB -0.12% racked up a loss of $1.6 billion over nearly a decade on a complex municipal-bond investment that it bought in the runup to the 2008 financial crisis, and failed to confront head-on even as markets were upended and regulations tightened.

The loss, which hasn't previously been reported, represents one of Deutsche Bank's largest ever from a single wager—roughly quadruple its entire 2018 profit—and ranks as one of the banking industry's biggest soured bets in the last decade.

The prolonged struggle over how to handle the investment sheds light on cultural and financial challenges inside one of Europe's biggest banks that have hampered its ability to compete with stronger U.S. rivals.

Continue reading.

The Wall Street Journal

By Jenny Strasburg and Gretchen Morgenson

Feb. 20, 2019 2:31 p.m. ET

Mayors in Support of Advance Refundings.

Today, executive chair of the Municipal Bonds for America (MBFA) Coalition Steve Benjamin, Mayor of Columbia, S.C., submitted an opinion piece to the Bond Buyer advocating for the full reinstatement of advance refundings, while also explaining why this important financing tool is significant for local government infrastructure investment and local control. You can view his commentary online here.

An offline copy of his commentary is provided in pdf format here.

Continued Work and Advocacy on Advance Refundings:

In 2019, the MBFA Coalition will continue to advocate to preserve the tax-exempt status of municipal bonds as discussions and hearings begin on infrastructure next month. MBFA began holding meetings in earnest with key Congressional Members on the House Ways and Means and Senate Finance Committees early this year on advance refundings as its principle legislative advocacy item. With Mayor Benjamin's leadership on this issue at the national level as the president of the U.S. Conference of Mayors, the MBFA is positioned to have a significant influence in the process should technical fixes to the 2017 passed tax law arise this year.

The BDA will continue to keep you updated on legislative or technical fixes to tax laws and infrastructure proposals as they advance through Congress.

Additional Information:

For additional updates on activities of the MBFA Coalition, please visit our website here.

Bond Dealers of America

February 20, 2019

Fitch Introduces ESG Relevance Scores.

Read the Fitch report.

Bond Raters Advise on Fix to California Law that Doomed PG&E.

- **Legislators say they will seek input from credit-rating firms**
- **Utilities face junk ratings amid mounting risk from fires**

It's no secret that lobbyists help craft laws. But what about credit-rating companies?

As California lawmakers work on a plan to stabilize the state's biggest electric companies, which are facing increasing pressure from wildfire liabilities, they say they'll seek input from ratings analysts to help ensure the utilities can retain access to capital markets. In a statement Tuesday, S&P Global Ratings said "there was a relatively short window" for legislators to show "concrete steps" before it downgrades the companies again.

Senate Majority Leader Bob Hertzberg said in an interview that any legislative proposals would be "informed by Moody's, Standard & Poor's and Fitch." He wants to talk to the companies personally, the Democrat said.

"Once we come up with various structures, they're going to be very instrumental in determining whether or not they'll give credit so we can have borrowing by both investor owned and municipal-owned utilities," said Hertzberg, who was Assembly Speaker during the state's energy crisis almost two decades ago.

Fatal wildfires, which have intensified in severity because of climate change, have ravaged California in the past two years and helped push its biggest utility, PG&E Corp., into bankruptcy in January. The company's power lines are suspected of sparking last year's Camp Fire, the deadliest in state history, which killed 86 people and destroyed the Butte County town of Paradise. Utilities can be held liable for blazes sparked by their equipment, even if they followed safety rules, and credit-rating companies have cited that unique state rule in their downgrades of PG&E and its peers.

Junk Ratings

S&P last month cut Edison International's Southern California Edison Co. and Sempra Energy's San Diego Gas & Electric Co. closer to junk status and said it could lower the ratings more. Moody's Investors Service said it may downgrade them as well, and Fitch Ratings changed their outlooks to negative, indicating it could do so.

Downgrades to junk could limit the companies' access to capital, an outcome Edison Chief Executive Officer Pedro Pizarro warned would happen without any legislative action.

Shares of PG&E climbed Tuesday after Citigroup Inc. upgraded the stock on the prospect that legislation may be passed within three months to limit risk from future blazes. Governor Gavin Newsom in a speech last week said he gave his team working on the issue 60 days to map out a plan.

Legislators have said they are urgently reviewing options. But addressing the doctrine known as inverse condemnation, in which utilities are on the hook for damages, is "off the table," Hertzberg said.

State Senator Bill Dodd, who guided legislation last year that helped utilities finance some of their wildfire liabilities, said in an interview that legislators are looking at other avenues beyond inverse condemnation that would satisfy the raters.

"We have to negotiate, and we have to understand what there is beyond that and what the cost to the ratepayers really is before making that decision," the Democrat said.

Moody's declined to comment. S&P said it doesn't discuss interactions with market participants including elected officials. Fitch didn't respond to requests for comment.

In its statement, S&P said "there is a window of opportunity to bring clarity to the regulatory construct that will start to close at the beginning of the 2019 wildfire season" this summer.

Bloomberg Markets

By Romy Varghese

February 19, 2019

— With assistance by Molly Smith, and Mark Chediak

S&P Pension Brief: Are Asset Transfers A Gimmick Or A Sound Fiscal Strategy?

To face persistent and growing pension challenges, some U.S. state and local governments have looked to develop creative solutions to help mitigate expanding liabilities and bolster wanting asset levels. Increasingly, they are considering asset transfers along with other revenue streams…

Continue Reading

Feb. 19, 2019

The Slow Housing Market Can Hurt Government Revenues, But Doesn't Have To.

How much home sales impacts a place depends a lot on its property tax policies.

Home sales have been ticking down for months. It's been particularly bad in the West, where 15 percent fewer homes were sold in December compared to the previous December. The slowdown is widely expected to continue, but how it affects local governments will differ.

That's largely thanks to a government's property tax policies. According to a new analysis from Fitch Ratings, the places least vulnerable to a slow housing market have strong caps on property tax rates and have assessed property values that lag far behind market values.

That bodes well for places out West, such as California, which has one of the nation's toughest restrictions on property taxes. Thanks to Proposition 13, which caps property tax rates, counties in California were spared from severe drops in property tax revenue when the housing market collapsed in 2007 because that revenue was already artificially depressed, according to Fitch's analysis.

"You have a huge way to go for the market decline to affect the assessed value," says analyst Amy Laskey, who co-authored the report. "That's why in Los Angeles, you saw big home price declines, but there was no corresponding decline in assessed value."

By contrast, places without caps on property tax revenue have assessed values that trend closer to actual home values. That creates more volatility.

So while Los Angeles and Chicago had similar declines in home values — about 40 percent between 2006 and 2012 — assessed values in L.A. only dipped by 2 percent. In Chicago, they fell by a whooping 28 percent.

Reasons for the Slow Housing Market

Rising mortgage rates and home prices are largely being blamed for the current slowdown.

According to new data from the National Association of Realtors, the market is slowest in the West, which along with the Midwest, has shown minimal or zero gains in prices from a year ago. Nationally, prices are up nearly 3 percent from last December, but that's roughly half the average growth rate in 2017.

Some believe that the 2017 federal tax overhaul's new limits on mortgage interest and property tax deductions will create more downward pressure on home prices in certain places across the country. That will affect localities differently, too.

Cumberland Advisors CEO John Mousseau is watching places where wealth is concentrated and where taxes are high, including Boston, New York City and its suburbs in Northern New Jersey and Fairfield County, Conn. Homeowners in these places are no longer getting the tax breaks they used to on their properties. "As long as there's no recession," he says, "I think home prices in places like these will stagnate or maybe even decline a little." That could further hurt the local government's property tax revenues.

But declining home prices aren't necessarily a bad thing, Mousseau says. According to Fitch's data, several major markets — including many out West — are currently overvalued. "I think what you'll see is a realignment of house prices," he says. "The idea that house prices can go up 6 or 7 percent a year — I think that's going to go away."

GOVERNING.COM

BY LIZ FARMER | FEBRUARY 21, 2019

Corps Engages Stakeholders for P3 Project Pilot Program.

On February 1, the U.S. Army Corps of Engineers announced a Request for Information (RFI) about the conceptual delivery of a Corps Civil Works program via a public private partnership (P3). The RFI, published in the federal register, opened a 60-day submission period for proposed P3 projects. The program will choose 10 pilot projects to inform future program policy and direction on P3 project delivery. Proposals must be submitted to Corps Headquarters by April 2.

The Corps said the announcement supports the administration's initiative on building U.S. infrastructure. "The Corps is trying to develop additional tools that may be used to deliver infrastructure more efficiently and effectively," said Aaron Snyder, Corps Infrastructure Team, funding and financing, and P3 program development team lead. Congress authorized funding in the fiscal year 2018 appropriations to start the P3 pilot program.

"The Corps has worked on a P3 program for a number of years, and this is really a continuation of those efforts with more of a focus on gathering input from stakeholders and our non-federal sponsors," Snyder said.

The Corps said in its announcement, "The goal of the pilot program is to demonstrate the viability of new delivery methods that can significantly reduce the cost and time of project delivery."

On January 8, Assistant Secretary of the Army for Civil Works R.D. James signed the implementation guidance for the P3 pilot program, which was originally drafted in September 2018. The program is part of the "Revolutionize USACE Civil Works Initiative," which follows a February 2018 administration report on better legislative principles for infrastructure. The administration's framework for rebuilding called for a $2 billion federal investment to stimulate at least $1.5 trillion in new investment over the next decade, where P3s and local non-federal project sponsors take on bigger project roles and responsibilities.

Criteria and Selection

In the original September memorandum, a P3 is defined as: “a long-term contractual relationship between a public sector contracting authority and a private sector entity for the financing and delivery of public infrastructure and/or the provision of public services.” The goal, the Corps said, is to transfer the risk associated with the delivery and performance of a project to the private partner.

Federally led P3s are: “P3 contracts directly between the Corps and a competitively selected non-federal entity for the design, construction, financing, operation and/or maintenance of the federally authorized project.”

Locally led P3s are: “contractual relationships executed between a non-federal project sponsor and a private entity for the design, construction, financing, operation and/or maintenance of an infrastructure asset over a stipulated period of time, whereby the non-federal project sponsor has a separate project-partnership agreement (PPA), memorandum of agreement, and/or a memorandum of understanding with the Corps setting forth the rights and responsibilities of both the Corps and non-federal entities with respect to the project.”

The Corps Infrastructure Team will take the lead on implementation of the P3 pilot program. Snyder said the Infrastructure Team is made of individuals from across the Corps. “We have engineers, economists, planners and biologists, to name a few,” Snyder said. “The team also represents all levels of the Corps from districts, divisions and headquarters.”

During the initial screening process, the Corps Infrastructure Team will use the following criteria to evaluate P3 project proposals:

- Construction cost of more than $50 million;
- Non-federal sponsor support;
- Design, build, finance, operation and maintenance or some combination for federally authorized projects;
  Project delivery acceleration; and
- Ability to generate revenue or leverage non-federal funding sources.

The proposals must also be for projects with existing authorities that are sufficient to allow the P3 project to be completed. The project must also have an initial analysis demonstrating that a P3 contract structure will deliver the project faster and more cost effectively than traditional approaches to project delivery.

Snyder said the Corps does not have any formal requirements for the analysis. “We would like people to provide us with why they think this approach is better. Once a project has been identified as either a pilot or as a project that we need to further develop, we would collectively work on a Value for Money analysis,” Snyder said.

Once projects qualify based on the initial criteria, they will be evaluated and selected based on the following:

- Budget – P3 proposals will be evaluated and ranked on the basis of Return on Federal Investment (ROFI).
- Replicability – P3s that are replicable, the structure or underlying concepts may be applied to other projects.

- Funding – P3s must identify reliable non-federal funding sources for the construction, operation and maintenance of projects.
- Risk Allocation – P3s must allocate delivery and performance risk to non-federal entities and minimize federal liabilities.

The Corps expects both internal and external applications. External applicants should complete a P3 project fact sheet. A copy of the fact sheet and other information on P3 projects and the program can be found here. For outside applicants, the Corps Infrastructure Team will evaluate the projects based on the initial set of criteria and complete the project screening matrix, used for evaluating projects.

Internal submittals from the Corps will include both project fact sheet and a completed matrix. Each Major Subordinate Command (MSC), which includes nine Corps divisions, will designate a P3 point of contact, who will make all submissions to the Infrastructure Team. Each MSC can evaluate and submit projects with no limits, but each will aim to identify at least two projects.

Funding and Long-term Budgets

The program will identify 10 P3 pilot projects, in addition to one the Corps already has in progress – the Fargo Moorhead Diversion Project, which provides flood protection to the area.

Once projects are accepted into the pilot program, they will need to compete for funding. If the project requires a new start, the Corps will conduct an affordability analysis to ensure it can meet future budget requests. The Corps will also maintain a life-cycle budget, which covers all future budget requirements. The life-cycle budget recommendation will be prepared with the final list of projects and updated annually.

Snyder said the authorities for each of the selected projects will vary. “The Corps has a number of existing authorities that could be used to support the development and implementation of P3 projects. For instance, the Fargo-Moorhead project is using Section 221,” he said.

In general, the Corps said it will maintain oversight of the projects delivered under a P3 arrangement. Specific project management and controls will be project specific and clearly articulated in the PPA.

In early February, the Corps held two webinars for interested stakeholders. Snyder said the sessions were well attended with more than 100 participants. “The webinars were intended to focus on the RFI criteria, the known constraints from previous work, but most importantly to answer questions from stakeholders,” he said.

Information must be submitted to Corps Headquarters on or before April 2. Stakeholders may submit information by mail to: Headquarters U.S. Army Corps of Engineers, Directorate of Civil Works, Infrastructure Team, Attn: John Coho 3F65, 441 G Street NW, Washington, DC 20314; or by email to: CW.Infrastructure.Team@usace.army.mil.

BY ANNA TOWNSHEND

FEBRUARY 20, 2019